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Title 3—

The President

Memorandum of February 21, 2012

Driving Innovation and Creating Jobs in Rural America Through Biobased and Sustainable Product Procurement

Memorandum for the Heads of Executive Departments and Agencies

The BioPreferred program—established by the Farm Security and Rural Investment Act of 2002 (Public Law 107–171)(2002 Farm Bill), and strengthened by the Food, Conservation and Energy Act of 2008 (Public Law 110–234)(2008 Farm Bill)—is intended to increase Federal procurement of biobased products to promote rural economic development, create new jobs, and provide new markets for farm commodities. Biobased and sustainable products help to increase our energy security and independence.

The Federal Government, with leadership from the Department of Agriculture (USDA), has made significant strides in implementing the BioPreferred program. It is one of the key elements in my efforts to promote sustainable acquisition throughout the Government under Executive Order 13514 of October 5, 2009 (Federal Leadership in Environmental, Energy, and Economic Performance). Further efforts will drive innovation and economic growth and create jobs at marginal cost to the American public.

The goal of this memorandum is to ensure that executive departments and agencies (agencies) effectively execute Federal procurement requirements for biobased products, including those requirements identified in Executive Order 13514 and prescribed in the 2002 Farm Bill, as amended by the 2008 Farm Bill. It is vital that these efforts are in accord and carefully coordinated with other Federal procurement requirements.

Therefore, I direct that agencies take the following steps to significantly increase Federal procurement of biobased and other sustainable products.

Section 1. *Actions Related to Executive Order 13514.* (a) Agencies shall include and report on biobased acquisition as part of the sustainable acquisition goals and milestones in the Strategic Sustainability Performance Plan required by section 8 of Executive Order 13514.

(b) As required by section 2(h) of Executive Order 13514, agencies shall ensure that 95 percent of applicable new contract actions for products and services advance sustainable acquisition, including biobased acquisition, where such products and services meet agency performance requirements. In doing so, agencies shall:

(i) include acquisition of biobased products in their Affirmative Procurement Programs and Preferable Purchasing Programs, as applicable (as originally required by Executive Order 13101 of September 14, 1998 (Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition) and reinforced by Executive Order 13423 of January 24, 2007 (Strengthening Federal Environmental, Energy, and Transportation Management) and Executive Order 13514);

(ii) include biobased products as part of their procurement review and monitoring program required by section 9002(a) of the 2008 Farm Bill, incorporating data collection and reporting requirements as part of their program evaluation; and

(iii) provide appropriate training on procurement of biobased products for all acquisition personnel including requirements and procurement staff.

(c) The Office of Management and Budget (OMB) shall emphasize biobased purchasing in the fiscal year 2012 and 2013 Sustainability/Energy scorecard, which is the periodic evaluation of agency performance on sustainable acquisition pursuant to section 4 of Executive Order 13514.

Sec. 2. *Biobased Product Designations.* The USDA has already designated 64 categories of biobased products for preferred Federal procurement. Although these categories represent an estimated 9,000 individual products, less than half of the known biobased products are currently included in the preference program. Increasing the number of products subject to the Federal procurement preference will increase procurement of biobased products. Therefore, I direct the Secretary of Agriculture to:

(a) increase both the number of categories of biobased products designated and individual products eligible for preferred purchasing by 50 percent within 1 year of the date of this memorandum; and

(b) establish a web-based process whereby biobased product manufacturers can request USDA to establish a new product category for designation. The USDA shall determine the merit of the request and, if the product category is deemed eligible, propose designation within 180 days of the request.

Sec. 3. *Changes in Procurement Mechanisms.* Several actions can be taken to facilitate improvement in and compliance with the requirements to purchase biobased products. To achieve these changes, I direct:

(a) the Senior Sustainability Officers and Chief Acquisition Officers of all agencies to randomly sample procurement actions (such as solicitations and awards) to verify that biobased considerations are included as appropriate. Agencies shall include results of these sampling efforts in the Sustainability/Energy scorecard reported to OMB;

(b) the Secretary of Agriculture to work with relevant officials in agencies that have electronic product procurement catalogs to identify and implement solutions to increase the visibility of biobased and other sustainable products;

(c) the Senior Sustainability Officers of all agencies that have established agency-specific product specifications, in coordination with any other appropriate officials, to review and revise all specifications under their control to assure that, wherever possible and appropriate, such specifications require the use of sustainable products, including USDA-designated biobased products, and that any language prohibiting the use of biobased products is removed. The review shall be on a 4-year cycle. Significant review should be completed within 1 year of the date of this memorandum, and the results of the reviews shall be annually reported to OMB and the Office of Science and Technology Policy (OSTP); and

(d) the Secretary of Agriculture to amend USDA's automated contract writing system, the Integrated Acquisition System, to serve as a model for biobased product procurement throughout the Federal Government by adding elements related to acquisition planning, evaluation factors for source selection, and specifications and requirements. Once completed, USDA shall share the model with all agencies and, as appropriate, assist any agency efforts to adopt similar mechanisms.

Sec. 4. *Small Business Assistance.* A majority of the biobased product manufacturers and vendors selling biobased products and services that use biobased products to the Federal Government are small businesses. To improve the ability of small businesses to sell these products and services to the Federal Government, I direct:

(a) the Secretary of Commerce, in consultation with the Secretary of Agriculture, to use relevant programs of the Department, such as the Manufacturing Extension Partnership network, to improve the performance and competitiveness of biobased product manufacturers;

(b) the Secretary of Agriculture to work cooperatively with Procurement Technical Assistance Center programs located across the Nation to provide

training and assistance to biobased product companies to make these companies aware of the BioPreferred program and opportunities to sell biobased products to Federal, State, and local government agencies; and

(c) the Secretary of Agriculture to develop training within 6 months of the date of this memorandum for small businesses on the BioPreferred program and the opportunities it presents, and the Administrator of the Small Business Administration (SBA) to disseminate that training to Small Business Development Centers and feature it on the SBA website.

Sec. 5. *Reporting.* The Federal Government should obtain the most reliable information to gauge its progress in purchasing biobased products, including measuring the annual number of procurements that include direct purchase of biobased products, the annual number of construction and service contracts that include the purchase of biobased products, and the annual volume and type of biobased products the Federal Government purchases. I direct that:

(a) within 1 year of the date of this memorandum, the Federal Acquisition Regulatory Council shall propose an amendment to the Federal Acquisition Regulation to require reporting of biobased product purchases, to be made public on an annual basis; and

(b) following the promulgation of the proposed amendment referenced in subsection (a) of this section, the Secretary of Agriculture, in consultation with the Chief Acquisition Officers Council, shall develop a reporting template to facilitate the annual reporting requirement.

Sec. 6. *Jobs Creation Research.* Biobased products are creating jobs across America. These innovative products are creating new markets for agriculture and expanding opportunities in rural America. Therefore, I direct the Secretary of Agriculture to prepare a report on job creation and the economic impact associated with the biobased product industry to be submitted to the President through the Domestic Policy Council and OSTP within 2 years of the date of this memorandum. The study shall include:

(a) the number of American jobs originating from the biobased product industry annually over the last 10 years, including the job changes in specific sectors;

(b) the dollar value of the current domestic biobased products industry, including intermediates, feedstocks, and finished products, but excluding biofuels;

(c) a forecast for biobased job creation potential over the next 10 years;

(d) a forecast for growth in the biobased industry over the next 10 years; and

(e) jobs data for both biofuels and biobased products, but shall generate separate data for each category.

Sec. 7. *Education and Outreach.* In compliance with the 2002 Farm Bill, several agencies established agency promotion programs to support the biobased products procurement preference. The Federal Acquisition Institute has added biobased procurement training to its course offerings. To assure both formal and informal educational and outreach instruction on the BioPreferred program are in place and being implemented by each agency, I direct:

(a) the Secretary of Agriculture to update all existing USDA BioPreferred and related sustainable acquisition training materials within 1 year of the date of this memorandum;

(b) the Senior Sustainability Officers and Chief Acquisition Officers of agencies to work cooperatively with the Secretary of Agriculture to immediately implement such BioPreferred program agency education and outreach programs as are necessary to meet the requirements of this memorandum and relevant statutes; and

(c) the Secretary of Agriculture to work actively with the Committee for Purchase From People Who Are Blind or Severely Disabled to promote

education and outreach to program, technical, and contracting personnel, and to purchase card holders on BioPreferred AbilityOne products.

Sec. 8. *General Provisions.* (a) This memorandum shall apply to an agency with respect to the activities, personnel, resources, and facilities of the agency that are located within the United States. The head of an agency may provide that this memorandum shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the agency determines that such application is in the interest of the United States.

(b) The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States, and with respect to which the head of the agency has not made a determination under subsection (a) of this section, in a manner consistent with the policies set forth in this memorandum, to the extent the head of the agency determines practicable.

(c) For purposes of this memorandum, ''biobased product'' shall have the meaning set forth in section 8101(4) of title 7, United States Code.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Secretary of Agriculture is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, February 21, 2012

[FR Doc. 2012–4468
Filed 2–23–12; 8:45 am]
Billing code 3410–10–P

Rules and Regulations

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

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG08

Small Business Size Standards: Transportation and Warehousing

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The United States Small Business Administration (SBA) is increasing the small business size standards for 22 industries in North American Industry Classification System (NAICS) Sector 48–49, Transportation and Warehousing, and retaining the current standards for the remaining 37 industries in that Sector. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all receipts based standards for industries in NAICS Sector 48–49 to determine whether they should be retained or revised. SBA did not review the employee based standards for industries in NAICS Sector 48–49, but will do so at a later date with other employee based size standards.

DATES: This rule is effective March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Jon Haitsuka, Program Analyst, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov*.

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—average annual 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), 7(a), and Certified Development Company (CDC or 504) Loan Programs determine small business eligibility using either the industry based size standards or net worth and net income size based standards. At the start of the current comprehensive review of SBA's small business size standards, there were 41 different size standards levels, covering 1,141 NAICS industries and 18 sub-industry activities. Of these, 31 were based on average annual receipts, seven based on number of employees, and three based on other measures.

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. SBA last conducted a comprehensive review of size standards during the late 1970s and early 1980s. Since then, most reviews of size standards have been limited to a few 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 to revise them, where necessary.

In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). 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 every18-month period from the date of its enactment and review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data is also consistent with Executive Order 13563 on improving regulation and regulatory review.

SBA has chosen not to review all size standards at one time. Rather, it is reviewing groups of related industries on a Sector by Sector basis.

As part of SBA's comprehensive review of size standards, the Agency reviewed all receipts based size standards in NAICS Sector 48–49, Transportation and Warehousing, to determine whether the existing size standards should be retained or revised. On May 13, 2011, SBA published a proposed rule in the **Federal Register** (76 FR 27935) seeking public comment on its proposal to increase the size standards for 22 industries in NAICS Sector 48–49. The rule was one of a series of proposed rules that examines industries grouped by NAICS Sector.

SBA 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 comment and also included it as a supporting document in the electronic docket of the May 13, 2011 proposed rule at *www.regulations.gov*.

In evaluating an industry's size standard, SBA examines its characteristics (such as average firm size, startup costs, industry competition and distribution of firms by size) and the level and small business share of Federal contract dollars in that industry. SBA also examines the potential impact a size standard revision might have on its financial assistance programs and whether a business concern under a revised size standard would be dominant in its industry. SBA analyzed the characteristics of each industry in NAICS Sector 48–49 that has a receipts based size standard, mostly using a special tabulation obtained from the U.S. Bureau of the Census based on its 2007 Economic Census (the latest available). SBA also evaluated the level and small business share of Federal contracts in each of those industries using the data from the Federal Procurement Data System—Next Generation (FPDS–NG) for fiscal years 2007 to 2009. To evaluate the impact of changes to size standards on its loan programs, SBA analyzed internal data

on its guaranteed loan programs for fiscal years 2008 to 2010.

SBA's ''Size Standards Methodology'' provides a detailed description of its analyses of various industry and program factors and data sources, and how the Agency uses the results to derive size standards. In the proposed rule, SBA detailed how it applied its ''Size Standards Methodology'' to review and modify, where necessary, the existing standards for industries in NAICS Sector 48–49. 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 applications of anchor size standards are appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider.

SBA sought comments on its proposal to increase receipts based size standards for 22 industries in NAICS Sector 48–49 (Transportation and Warehousing) and retain the existing size standards for remaining industries in that Sector. Specifically, 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 Subsectors and Industry Groups in NAICS Sector 48–49.

SBA's analyses supported lowering existing receipts based standards for 18 industries. However, as SBA pointed out in the proposed rule, lowering size standards would reduce the number of firms eligible to participate in Federal small business assistance programs and this is contrary to what the Federal government and the Agency are doing to help small businesses. Therefore, SBA proposed to retain the current size standards for those industries and requested comments on whether the Agency should lower size standards for those industries for which its analyses might support lowering them.

In addition, because of lack of relevant industry data, SBA proposed no changes to current size standards for the following: Offshore Marine Air Transportation Services (sub-industries or ''exceptions'' to both NAICS Codes 481211 and NAICS 481212); Offshore Marine Water Transportation Services (exception to NAICS Subsector 483); Non-Vessel Owning Common Carriers and Household Goods Forwarders (exception to NAICS Code 488510); and Postal Services (NAICS Code 491110). SBA sought comments on this proposal as well as supporting information if different size standards appeared more appropriate for these industries or sub-industries.

Summary of Comments

SBA received six comments to the proposed rule. However, three of them were related to the proposed rule for NAICS Sector 54 (Professional, Technical, and Scientific Services), which was published for comments separately about the same time. One of those three comments was submitted within the comment period for the NAICS Sector 54 proposed rule, and therefore SBA considered it along with the other comments in drafting a final rule for that Sector. However, the other two comments were submitted after the closing date for the comment period for Sector 54 (June 15, 2011), and thus were not considered for NAICS Sector 54 (because they were untimely) or for this rule (because they were not relevant). Therefore, SBA received and considered three valid comments to the proposed rule on NAICS Sector 48–49. Each of these comments is discussed below.

SBA received one comment on NAICS 484230 (Specialized Freight (except Used Goods) Trucking, Long-Distance). For the reasons provided in the proposed rule, SBA proposed to retain the current $25.5 million size standard for that NAICS code, although its analyses of industry data related to all industries within NAICS Subsector 484 and to NAICS Code 484230 individually supported a lower $19 million size standard. The commenter stated that the size standard for NAICS Code 484230 should not be lowered to $19 million based on SBA's analyses, but instead should be increased to $30 million from the current $25.5 million. However, the comment provided no specific data or analysis justifying why the $30 million size standard is a more appropriate size standard than $25.5 million for that industry. Rather, the commenter simply pointed out SBA's results on certain industry and Federal procurement factors to justify the $30 million size standard. Although the four-firm concentration ratio was only 8 percent (*i.e.,* much lower than 40 percent for this to factor in the calculated size standard), the commenter suggested that the size standard be increased to $30 million based on that factor. Similarly, although the Gini coefficient value reflecting the size distribution of firms in that industry supported the current $25.5 million size standard, the commenter argued that the size standard should be $30 million instead. Finally, the commenter contended that the size standard for NAICS Code 484230 should be $30 million because the Federal contracting factor, based on the 2007–2009 FPDS–NG data, supported that level. As explained in the SBA's size standards methodology as well as in the proposed rule, SBA calculates an industry's size standard based on the average of size standards supported by each of industry and Federal factors, not based on one or several factors that support a higher size standard. Although SBA sought comments on whether it should weigh some factors more heavily than others for specific industries, the commenter provided no feedback on this issue.

In response to the comment, SBA analyzed updated 2008–2010 Federal procurement data and industry data from an updated tabulation of the 2007 Economic Census. The updated data produced a Gini coefficient value that supported a higher $30 million size standard, and the Federal contracting factor based on the updated data supported a higher $35.5 million size standard than the previous analyses. However, SBA's analysis based on all factors continued to support the current $25.5 million size standard for NAICS Code 484230 because the remaining industry factors supported a standard much lower than the current $25.5 million size standard. Because all industries within NAICS Subsector 484 currently share a common size standard, SBA also used the updated data to recalculate the appropriate common size standard for NAICS Subsector 484 and found it to be $19 million. Since SBA received no comments opposing its proposal to retain a common size standard for all industries in NAICS Subsector 484, the Agency is maintaining a common size standard for these industries. However, continuing its policy of not lowering any size standards under the current economic environment, SBA is adopting the current $25.5 million size standard for all industries in NAICS Subsector 484, including NAICS Code 484230. In other words, SBA has not adopted the commenter's recommendation to increase the size standard for NAICS Code 484230 to $30 million.

Additionally, the commenter suggested that fuel surcharges should be excluded from the calculation of receipts when determining if a company meets the size standard. 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. The definition of receipts provides for a limited number of specific exclusions, none of which relates to fuel surcharges or other fuel related costs. Fuel surcharges are part of the usual and customary costs of doing business. In addition, fuel surcharges that businesses collect are subject to taxation and therefore are part of a firm's revenues. Further, SBA uses data from the Economic Census, and the revenue data that firms report under law to the Economic Census include those costs. Accordingly, SBA does not exclude fuel surcharges from the calculation of receipts for small business size determination purposes. SBA acknowledges that firms in the transportation industries may have substantial fuel surcharges or other fuel related costs, and, as such, the Agency may consider such costs as a secondary factor in addition to the primary industry and Federal procurement factors that SBA evaluates when establishing small business size standards.

Another commenter felt that most of the revenues generated from the commenter's firm's contracts are passed through to its many subcontractors, which were tied to its costs and thus should not be included as part of its revenues. The commenter pointed out that on average the subcontractors are paid 82 percent of the total contract value, and including these pass-throughs overstates the firm's revenues. The commenter stated that the requirement to include subcontracting costs in revenues had an adverse impact on its business' size determination because it caused its total revenues to exceed the size standard. The commenter suggested that costs of goods sold be removed from the definition of receipts and that actual profit be the determining factor on whether a firm qualifies as small.

This is not a new suggestion, nor is it unique to transportation industries. As explained above, SBA's definition of receipts states that ''receipts means 'total income' * * * plus 'cost of goods sold' * * *'' and provides for a limited number of specific exclusions. 13 CFR 121.104. None of the enumerated exclusions relates to subcontracting costs.

Similar to fuel surcharges mentioned above, SBA does not allow for the exclusion of subcontracting costs (commonly known as ''pass-throughs'') from the calculation of revenues because they are part of the usual and customary costs of doing business. Additionally, SBA uses data from the U.S. Bureau of the Census' 2007 Economic Census, and the revenue data that firms report under law to the Economic Census include subcontracting and other costs of goods sold. If the Agency were to exclude the value of ''pass-through'' revenues, SBA would also have to establish a lower size standard to reflect the size of the industry without them.

SBA has always included all revenues, including pass-throughs or subcontracting costs, for size standards purposes for several reasons. First, as stated above, the revenue data SBA receives from the Economic Census includes those costs. Second, this practice is consistent with the Small Business Act, which refers to SBA's establishing size standards based on ''* * * annual average *gross receipts* of the business concern * * *'' § 3(a)(2)(C)(ii)(II) [emphasis added]. Third, SBA's existing definitions of receipts and employees provide a consistent approach to establishing eligibility for small business programs for all industries. Fourth, if SBA were to exclude certain costs for one or a few industries, other industries could raise the same questions, creating a ''slippery slope'' leading toward widespread inconsistency in how businesses calculate their receipts to determine if they qualify as small.

The third commenter supported the increase in the size standard for NAICS Code 485113 (Bus and Motor Vehicles Transit Systems) from $7.0 million in average annual receipts to $14.0 million in average annual receipts because the higher size standard better reflected current operations of the commenter's business, where a large portion of small business set-aside contracts had to be subcontracted to other businesses. The commenter stated that subcontractors are paid on average 85 percent of the total contract value, while the commenter's business receives the remaining 15 percent.

SBA acknowledges that some industries may have substantially higher subcontracting costs than others. SBA considers subcontracting costs as a secondary factor, in addition to the primary industry and Federal procurement factors, when it reviews size standards for those industries. In other words, SBA may make further adjustments to small business size standards, if necessary, for industries for which subcontracting costs are substantially higher than for other industries.

SBA notes that two of the three comments indicated that subcontracting costs accounted for more than 80 percent of the total value of work in their industries. It is important to point out that SBA's regulations on Government Contracting Programs provide that ''[i]n 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, * * * 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 firm undertaking such contracts must comply with these ''limitations on subcontracting,'' even if it otherwise appears to meet the small business size standard for a particular procurement. It cannot qualify as small for award under any of the aforementioned programs if it subcontracts more than 50 percent of the contract.

SBA received no comments opposing its proposal to retain the current size standards where analyses suggested lowering them. The Agency also received no comments opposing SBA's proposal to retain the current standards where relevant data were not available.

All comments to the proposed rule are available for public review at *http://www.regulations.gov.*

Conclusion

Based on SBA's analyses of relevant industry and program data and the public comments it received on the proposed rule, SBA has decided to increase the small business size standards for the 22 industries in NAICS Sector 48–49 to the levels it proposed. Those industries and their revised size standards are shown in the following Table 1, Summary of Revise Size Standards in NAICS Sector 48–49.

TABLE 1—SUMMARY OF REVISED SIZE STANDARDS IN NAICS SECTOR 48–49

NAICS codes	NAICS industry title	Current size standard (millions)	New size standard (millions)
481219	Other Nonscheduled Air Transportation	$7.0	$14.0
485111	Mixed Mode Transit Systems	7.0	14.0
485112	Commuter Rail Systems	7.0	14.0
485113	Bus and Other Motor Vehicle Transit Systems	7.0	14.0
485119	Other Urban Transit Systems	7.0	14.0
485210	Interurban and Rural Bus Transportation	7.0	14.0
485310	Taxi Service	7.0	14.0
485320	Limousine Service	7.0	14.0
485410	School and Employee Bus Transportation	7.0	14.0
485510	Charter Bus Industry	7.0	14.0
485991	Special Needs Transportation	7.0	14.0
485999	All Other Transit and Ground Passenger Transportation	7.0	14.0
486210	Pipeline Transportation of Natural Gas	7.0	25.5
488111	Air Traffic Control	7.0	30.0
488119	Other Airport Operations	7.0	30.0
488190	Other Support Activities for Air Transportation	7.0	30.0
488210	Support Activities for Rail Transportation	7.0	14.0
488310	Port and Harbor Operations	25.5	35.5
488320	Marine Cargo Handling	25.5	35.5
488330	Navigational Services to Shipping	7.0	35.5
488390	Other Support Activities for Water Transportation	7.0	35.5
488510	Freight Transportation Arrangement [10]	[10] 7.0	14.0

For the reasons stated above in this rule and in the proposed rule, SBA has decided to retain the current receipts based size standards for 18 industries for which analytical results suggested lower size standards. Not lowering size standards in NAICS Sector 48–49 is consistent with SBA's recent final rules on 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 NAICS Sector 81, Other Services (75 FR 61591, October 6, 2010). In each of those final rules, SBA adopted its proposal not to reduce small business size standards for the same reasons. SBA is also retaining the existing receipts based size standards for two industries for which the results supported them at their current levels. Accordingly, SBA has retained the existing receipts based size standards for all industries in NAICS Subsector 484 (Truck Transportation), Subsector 487 (Scenic and Sightseeing Transportation), Subsector 492 (Couriers and Messengers), and Subsector 493 (Warehousing and Storage).

SBA has also retained current receipts based size standards for Offshore Marine Air Transportation Services (exceptions to NAICS Code 481211 and NAICS Code 481212), Offshore Marine Water Transportation Services (exception to NAICS Subsector 483, Water Transportation), Non-Vessel Owning Common Carriers and Household Goods Forwarders (exception to NAICS Code 488510), and Postal Services (NAICS Code 491110).

SBA did not review the 15 industries in NAICS Sector 48–49 that have employee based size standards. Therefore, SBA has retained the size standards for those industries at their current levels until the Agency reviews employee based size standards at a later date.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, 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 22 industries in NAICS Sector 48–49, Transportation and Warehousing, 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)) delegates 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. The Jobs Act requires the Administrator to review one-third of all size standards within 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 section of the May 13, 2011 proposed rule and this 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 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) Business Development program and programs benefiting small businesses located in Historically Underutilized Business Zones (HUBZone), women owned small businesses (WOSB), and service-disabled veteran-owned small businesses (SDVOSB). 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 22 industries in NAICS Sector 48–49 for which SBA has decided to increase size standards, SBA estimates that about 1,200 additional firms will gain small business status and become eligible for these programs. That number is 0.7 percent of the total number of firms in industries in NAICS Sector 48–49 that have receipts based size standards. SBA estimates that this would increase the small business share of total industry receipts in those industries from 36 percent under the current size standards to 39 percent.

The benefits of increasing size standards to a more appropriate level will accrue to three groups in the following ways: (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 a larger pool of small businesses from which to draw for their small business procurement programs.

Based on the data for fiscal years 2007 to 2009, more than two-thirds of total Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 22 industries for which SBA is increasing 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 $25 million per year through the 8(a), HUBZone, WOSB, and SDVOSB programs and through other, unrestricted procurements. The added competition for many of these procurements may also 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 to 2010 data, SBA estimates that approximately 10 additional loans totaling $4 million to $5 million in new Federal loan guarantees could be made to the newly defined small businesses under the revised size standards. 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 SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. That is, under the Jobs Act, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has a tangible net worth that does not exceed $15 million and also has an average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed $5.0 million. Thus, increasing the size standards may result in an increase in small business guaranteed loans to small businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount loaned.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan 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 all 1,200 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, SDVOSB, and 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 set-aside contracting will likely 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 additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely 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 SDVOSB 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 gains and losses among small and large businesses, there are several likely impacts. There may be a transfer of some Federal contracts from large businesses to small 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 agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open bidding opportunities. 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 more 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 small businesses under the existing size standards. The SBA cannot estimate with precision the potential distributional impacts of these transfers.

The revisions to the existing size standards for Transportation and Warehousing industries are consistent with SBA's statutory mandate to assist small business. 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 benefits and costs associated with this action including possible distributions 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 has presented its methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also 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. The presentation also 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.

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 non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 48–49, Transportation and Warehousing, is consistent with EO 13563 § 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 were 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 all 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 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 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 rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose any new reporting or record keeping requirements.

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 NAICS Sector 48–49, Transportation and Warehousing. As described above, this rule may affect small entities seeking Federal contracts, SBA's 7(a) and 504 Guaranteed Loans, SBA's 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?

Most of SBA's size standards for the Transportation and Warehousing industries had not been reviewed since the 1980s. 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?

SBA estimates that approximately 1,200 additional firms will become small because of increases in size standards in 22 industries in NAICS Sector 48–49. That represents 0.7 percent of total firms in industries in that Sector that have receipts based size standards. This will result in an increase in the small business share of total industry receipts in those industries from about 36 percent under the current size standards to nearly 39 percent under the proposed standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries. The revised size standards will enable more small businesses to retain their small business status for a longer period. Under current size standards, many small businesses may have lost their eligibility or found it difficult to compete with companies that are significantly larger than they are, and this final rule attempts to correct that impact. SBA believes these changes will have a positive impact for existing small businesses and for those that have either exceeded or are about to exceed current size standards.

(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?

Revising size standards does not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other Federal programs requires that entities register in the Central Contractor Registration (CCR) database and certify

at least 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. Revising size standards alters the access to SBA programs that are designed to 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 § 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 existing system of numerical size standards. The possible alternative size standards considered for the individual NAICS Code industries within NAICS Sector 48–49 are discussed in the supplementary information to the proposed rule and this final rule.

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 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, 694a(9).

■ 2. In § 121.201, in the table, revise the entries for ''481219'', ''485111'', ''485112'', ''485113'', ''485119'', ''485210'', ''485310'', ''485320'', ''485410'', ''485510'', ''485991'', ''485999'', ''486210'', ''488111'', ''488119'', ''488190'', ''488210'', ''488310'', ''488320'', ''488330'', ''488390'', and ''488510'' to 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
*	*	*	*
	Sector 48–49—Transportation and Warehousing		
*	*	*	*
481219	Other Nonscheduled Air Transportation	$14.0	
*	*	*	*
485111	Mixed Mode Transit Systems	14.0	
485112	Commuter Rail Systems	14.0	
485113	Bus and Other Motor Vehicle Transit Systems	14.0	
485119	Other Urban Transit Systems	14.0	
485210	Interurban and Rural Bus Transportation	14.0	
485310	Taxi Service	14.0	
485320	Limousine Service	14.0	
485410	School and Employee Bus Transportation	14.0	
485510	Charter Bus Industry	14.0	
485991	Special Needs Transportation	14.0	
485999	All Other Transit and Ground Passenger Transportation	14.0	
*	*	*	*
486210	Pipeline Transportation of Natural Gas	25.5	
*	*	*	*
488111	Air Traffic Control	30.0	
488119	Other Airport Operations	30.0	
488190	Other Support Activities for Air Transportation	30.0	
488210	Support Activities for Rail Transportation	14.0	
488310	Port and Harbor Operations	35.5	
488320	Marine Cargo Handling	35.5	
488330	Navigational Services to Shipping	35.5	
488390	Other Support Activities for Water Transportation	35.5	

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
*	* * * * *	*	*
488510	Freight Transportation Arrangement [10]	[10] 14.0	
*	* * * * *	*	*

Footnotes

* * * * *

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: December 21, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2012–4330 Filed 2–23–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25738; Directorate Identifier 2006–NE–27–AD; Amendment 39–16961; AD 2012–04–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all GE CF6–80C2B series turbofan engines. That AD currently requires installing software version 8.2.Q1 to the engine electronic control unit (ECU), which increases the engine's margin to flameout. This new AD requires the removal of the affected ECUs from service. This AD was prompted by two reports of engine flameout events during flight in inclement weather conditions, eight reports of engine in-flight shutdown (IFSD) events caused by dual-channel central processing unit (CPU) faults in the ECU, and four reports of engine flameout ground events. We are issuing this AD to prevent engine flameout or un-commanded engine IFSD of one or more engines, leading to an emergency or forced landing of the airplane.

DATES: This AD is effective March 30, 2012.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *tomasz.rakowski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–12–07, Amendment 39–15085 (72 FR 31174, June 6, 2007). That AD applies to the specified products. The NPRM was published in the **Federal Register** on November 14, 2011 (76 FR 70382). That NPRM proposed to remove the affected ECUs from service.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Change Unsafe Condition

Commenter GE stated that in all of the events of flameout the engines relit and in all dual-channel CPU fault in-flight shutdowns the engines were capable of restarting. GE stated that these events should not be considered unsafe conditions.

We do not agree. Although a flameout with a consecutive relight or an in-flight shutdown with a consecutive restart during cruise flight is not in itself an unsafe condition, these types of loss of thrust can be unsafe conditions during takeoff or during approach and landing. We did not change the AD.

Request To Clarify Engine Flight Cycle and ECU Cycle Count

Commenter All Nippon Airways (ANA) requested that we clarify the relationship between the engine flight cycles and ECU cycles of operation in the engine, and whether previous ECU history affects the flight cycle count.

We do not agree. The flight cycle intervals in paragraph (g) of the AD refer to the engine start-stop cycles with the affected ECU part numbers (P/Ns) installed, rather than ECU operational cycles. Engine flight cycles accrued before the effective date of the AD are not accounted for in the cycle count. We did not change the AD.

Request To Remove Certain Affected ECU P/Ns From the AD

Commenters Atlas Air, ANA, KLM, and China Airlines requested that we remove from the list of affected ECU P/Ns in Table 2 of the AD, ECUs with software version 8.2.Q1 and 8.2.R, a new front panel assembly (FPA) and an old pressure subsystem (PSS), or an old FPA and a new PSS generation circuit boards.

We do not agree. Dual-channel CPU faults have not been ruled out for the new FPA or the new PSS, therefore any ECU with either a new FPA or a new PSS must be addressed regardless of the version of software installed. We did not change the AD.

Request To Add ECU P/Ns to the AD

Commenter Atlas Air stated that ECUs P/Ns 1471M63P41, 1519M89P31, and 1820M33P14 are not listed in the proposed AD, but should be listed.

We do not agree. Those ECUs have the old generation of FPA and PSS circuit

boards and, therefore, are not susceptible to dual-channel CPU faults. The referenced ECUs also have the latest available version of software installed. We did not change the AD.

Request To Mandate Software Version 8.2.R or Later

Commenter Atlas Air requested to add a requirement to install software version 8.2.R or later in all affected engines at specified times, without regard to FPA and PSS circuit board hardware configuration.

We do not agree. Certain ECU P/Ns that have software version 8.2.R are susceptible to CPU channel faults. We did not change the AD.

Request To Modify ECUs

Commenter Atlas Air requested to modify ECU P/Ns 1471M63P42, 1519M89P32, and 1820M33P15 to ECU P/Ns 1471M63P41, 1519M89P31, and 1820M33P14, respectively.

We do not agree. No approved procedure exists to downgrade the ECUs. Engine owners and operators may propose such a procedure for approval, and request an alternative method of compliance to the AD, as specified in paragraph (i) of the AD. We did not change the AD.

Request To Add ECU Rework Procedures

Commenter ANA requested that we add rework procedures to the AD to modify affected ECUs into serviceable configurations of ECUs.

We do not agree. The AD is written to only remove affected ECU P/Ns from service. Refer to the manufacturer's service information for upgrading affected ECUs. We did not change the AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 697 GE CF6–80C2B series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about 4 work-hours per engine to perform a removal and replacement of the ECU, and that the average labor rate is $85 per work-hour. A replacement ECU costs about $4,600. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $3,443,180.

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

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–12–07, Amendment 39–15085 (72 FR 31174, June 6, 2007), and adding the following new AD:

2012–04–05 General Electric Company (GE): Amendment 39–16961; Docket No. FAA–2006–25738; Directorate Identifier 2006–NE–27–AD.

(a) Effective Date

This airworthiness directive (AD) is effective March 30, 2012.

(b) Affected ADs

This AD supersedes AD 2007–12–07, Amendment 39–15085 (72 FR 31174, June 6, 2007).

(c) Applicability

This AD applies to GE CF6–80C2B1F, CF6–80C2B1F1, CF6–80C2B1F2, CF6–80C2B2F, CF6–80C2B3F, CF6–80C2B4F, CF6–80C2B5F, CF6–80C2B6F, CF6–80C2B6FA, CF6–80C2B7F, and CF6–80C2B8F turbofan engines, including engines marked on the engine data plate as CF6–80C2B7F1.

(d) Unsafe Condition

This AD results from:

(1) Two reports of engine flameout events during flight in inclement weather conditions; and

(2) Eight reports of engine in-flight shutdown (IFSD) events caused by dual-channel central processing unit (CPU) faults in the electronic control unit (ECU); and

(3) Four reports of engine flameout ground events.

(e) We are issuing this AD to prevent engine flameout or un-commanded engine IFSD of one or more engines, leading to an emergency or forced landing of the airplane.

(f) Compliance

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

(g) ECU Removal

(1) Remove from service ECUs with part numbers (P/Ns) listed in Table 1 of this AD within 6 months or 450 engine flight cycles after the effective date of this AD, whichever occurs first.

TABLE 1—AFFECTED ECU P/NS

1471M63P01	1471M63P02	1471M63P03	1471M63P04	1471M63P05
1471M63P06	1471M63P07	1471M63P08	1471M63P09	1471M63P10
1471M63P11	1471M63P12	1471M63P13	1471M63P14	1471M63P15
1471M63P16	1471M63P17	1471M63P18	1471M63P23	1471M63P24

TABLE 1—AFFECTED ECU P/NS—Continued

1471M63P25	1471M63P26	1471M63P27	1471M63P28	1471M63P29
1471M63P30	1471M63P31	1471M63P32	1471M63P33	1471M63P34
1471M63P35	1471M63P36	1519M89P01	1519M89P02	1519M89P03
1519M89P04	1519M89P05	1519M89P06	1519M89P07	1519M89P08
1519M89P09	1519M89P10	1519M89P13	1519M89P14	1519M89P15
1519M89P16	1519M89P17	1519M89P18	1519M89P19	1519M89P20
1519M89P21	1519M89P22	1519M89P23	1519M89P24	1519M89P25
1519M89P26	1820M33P01	1820M33P02	1820M33P03	1820M33P04
1820M33P05	1820M33P06	1820M33P07	1820M33P08	1820M33P09

(2) Remove from service ECUs with P/Ns 2121M37P01, 2121M37P02, 2121M38P01, 2121M38P02, 2121M41P01 and 2121M41P02 within 14 months or 1,050 engine flight cycles after the effective date of this AD, whichever occurs first.

(3) Remove from service ECUs with P/Ns listed in Table 2 of this AD within 60 months or 4,500 engine flight cycles after the effective date of this AD, whichever occurs first.

TABLE 2—AFFECTED ECU P/NS

1471M63P37	1471M63P38	1471M63P39	1471M63P40	1471M63P42
1519M89P27	1519M89P28	1519M89P29	1519M89P30	1519M89P32
1820M33P10	1820M33P11	1820M33P12	1820M33P13	1820M33P15
2121M25P01	2121M25P02	2121M26P01	2121M26P02	2121M29P01
2121M29P02	2121M37P03	2121M38P03	2121M41P03	

(h) Installation Prohibition

(1) After the effective date of this AD, do not install any ECU P/N listed in Table 1 of this AD onto any airplane.

(2) After the effective date of this AD, do not operate any airplane with more than one ECU P/N 2121M37P02, 2121M38P02, or 2121M41P02 installed.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures in 14 CFR 39.19 to make your request.

(j) Related Information

For more information about this AD, contact Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *tomasz.rakowski@faa.gov*.

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on February 17, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–4284 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1245; Directorate Identifier 2008–NE–27–AD; Amendment 39–15912; AD 2009–11–02]

RIN 2120–AA64

Airworthiness Directives; CFM International S.A. Model CFM56 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register.** That AD applies to CFM International S.A. CFM56–2, CFM56–3, CFM56–5A, CFM56–5B, CFM56–5C, and CFM56–7B series turbofan engines with certain part number (P/N) and serial number (SN) high-pressure compressor (HPC) 4–9 spools installed. In Table 1 of the AD, the HPC 4–9 spool SN GWN05AMO in the 2nd column of the Table is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective February 24, 2012. The effective date for AD 2009–11–02 (74 FR 23305, May 19, 2009) remains June 23, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Martin Adler, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@faa.gov.*

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2009–11–02, Amendment 39–15912 (74 FR 23305, May 19, 2009), currently requires removing certain HPC 4–9 spools listed by P/N and SN in the AD.

As published, in Table 1 of the AD, the HPC 4–9 spool SN GWN05AMO in the 2nd column of the Table is incorrect.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register.**

The effective date of this AD remains June 23, 2009.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of May 19, 2009, on page 23306, in the 3rd column, in Table 1, under the HPC 4–9 Spool SN heading, in the twentieth line of AD

2009–11–02; Amendment 39–15912 is corrected as follows:

* * * * *

GWN05AM0

* * * * *

Issued in Burlington, Massachusetts, on February 13, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–4285 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 110525297–1476–01]

RIN 0694–AF26

Amendment to Existing Validated End-User Authorizations for Applied Materials (China), Inc., Boeing Tianjin Composites Co. Ltd., CSMC Technologies Corporation, Lam Research Corporation, and Semiconductor Manufacturing International Corporation in the People's Republic of China, and for GE India Industrial Pvt. Ltd. in India

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the existing Authorization Validated End-User (VEU) listings for five VEUs in the People's Republic of China (PRC) and one VEU in India. For Applied Materials (China), Inc. (AMAT), this rule amends the eligible items AMAT may receive under Authorization VEU. For Boeing Tianjin Composites Co., Ltd. (BTC), this rule amends the eligible items the company may receive under Authorization VEU and revises the address of the eligible destination (i.e., facility) to which items may be exported, reexported, or transferred (in-country) under Authorization VEU. For CSMC Technologies Corporation (CSMC), this rule revises the address of one eligible destination. For Lam Research Corporation (Lam), this rule revises the list of facilities to which eligible items may be exported, reexported, or transferred (in-country) under Authorization VEU. For Semiconductor Manufacturing International Corporation (SMIC), this rule revises the list of eligible items that may be exported, reexported, or transferred (in-country) to SMIC under Authorization VEU. Finally, this rule revises the listed name for GE India to GE India Industrial Pvt Ltd. (GE India), amends the list of eligible items that may be exported, reexported, or transferred (in-country) to GE India under Authorization VEU, and removes one of the company's eligible destinations.

DATES: This rule is effective February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230; by telephone: (202) 482–5991, by fax: (202) 482–3991 or email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646), creating a new authorization for ''validated end-users'' (VEUs) located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license, in conformance with section 748.15 of the EAR. VEUs may obtain eligible items that are on the Commerce Control List, set forth in Supplement No. 1 to Part 774 of the EAR, without having to wait for their suppliers to obtain export licenses from BIS. Eligible items may include commodities, software, and technology, except those controlled for missile technology or crime control reasons.

The VEUs listed in Supplement No. 7 to Part 748 of the EAR were reviewed and approved by the U.S. Government in accordance with the provisions of section 748.15 and Supplement Nos. 8 and 9 to Part 748 of the EAR. The revisions to Supplement No. 7 to Part 748 set forth in this rule are being made either at the request of the VEUs or pursuant to the U.S. Government's periodic review of VEU authorizations, and were approved by the End-User Review Committee (ERC) following the process set forth in Section 748.15 and Supplement No. 9 to Part 748 of the EAR.

Amendment to Existing Validated End-User Authorizations in the PRC

Revision to the List of ''Eligible Items'' for Applied Materials (China), Inc.

Applied Materials (China), Inc. (AMAT) was designated as a VEU on October 19, 2007 (72 FR 59164). Subsequently, AMAT's VEU authorization listing has been amended to add additional facilities, modify the items it is eligible to receive, and change the company's name (74 FR 19382 (Apr. 29, 2009) and 75 FR 27185 (May 14, 2010)). In this rule, BIS amends Supplement No. 7 to Part 748 of the EAR to add an additional Export Control Classification Number (ECCN) paragraph, ECCN 3B001.a, as an eligible item for all eligible AMAT destinations.

Correction of Facility Address and Revision to the List of ''Eligible Items'' for Boeing Tianjin Composites Co. Ltd.

BIS designated BHA Aero Composite Parts Co. as a VEU on October 19, 2007 (72 FR 59164). On April 29, 2009, BIS amended the authorization by changing the name of the VEU to Boeing Tianjin Composites Co., Ltd. (BTC) (74 FR 19382). In this rule, BIS amends Supplement No. 7 to Part 748 of the EAR to correct the spelling of the name of the road on which BTC's ''Eligible Destination'' (i.e., facility) is located: ''Heibei Road'' will be revised to read ''Hebei Road.'' BIS also revises the list of ''Eligible Items (By ECCN)'' that may be exported, reexported, and transferred (in-country) to BTC by removing ECCN 2B001.a from the parenthetical limiting statement for ECCN 1E001. Pursuant to the latter revision, the export, reexport or transfer (in-country) of 1E001 ''technology,'' according to the General Technology Note, for the ''development'' or ''production'' of items controlled by ECCN 2B001.a is no longer authorized to BTC under Authorization VEU. This amendment is not the result of activities of concern by BTC.

Revisions to the List of ''Eligible Destinations'' for CSMC Technologies Corporation

BIS designated CSMC Technologies Corporation (CSMC) as a VEU on January 18, 2011 (76 FR 2802). Thereafter, on June 28, 2011, BIS amended the list of CSMC's eligible items (76 FR 37364). This rule amends Supplement No. 7 to Part 748 by updating the address of CSMC Technologies Fab 2 Co., Ltd., a CSMC ''Eligible Destination.''

Revisions to the List of ''Eligible Destinations'' for Lam Research Corporation

BIS designated Lam Research Corporation (Lam) as a VEU on October 12, 2010 (75 FR 62462). This rule amends Supplement No. 7 to Part 748 by adding three and updating six addresses of the company's list of

facilities eligible to receive items under Authorization VEU. The revised list of ''Eligible Destinations'' for Lam in Supplement No. 7 to Part 748 is as follows:

Eligible Destinations

Lam Research (Shanghai) Service Co., 1st Floor, Area C, Hua Hong Science & Technology Park, 177 Bi Bo Road, Zhangjiang Hi-Tech Park, Pudong, Shanghai, China 201203

Lam Research Shanghai Co., Ltd., No. 1 Jilong Rd., Room 424–2, Waigaoqiao Free Trade Zone, Shanghai, China 200131

Lam Research International Sarl (Lam Shanghai Warehouse), c/o HMG Supply Chain (Shanghai) Co., Ltd., No. 3869, Longdong Avenue, Pudong New District, Shanghai, China 201203

Lam Research International Sarl (Lam Shanghai Warehouse; WGQ Bonded Warehouse), c/o HMG Supply Chain (Shanghai) Co., Ltd., No. 55, Fei la Road Waigaoqiao Free Trade Zone, Pudong New Area, Shanghai, China 200131

Lam Research Service Co., Ltd. (Beijing Branch), Room 1010, Zhaolin Building, No. 15 Rong Hua Zhong Road, BDA, Beijing, China 100176

Lam Research International Sarl (Lam Beijing Warehouse), Beijing Lam Electronics Tech Center, No. 8 Building, No. 1, Disheng North Street, BDA, Beijing, China 100176

Lam Research Service Co., Ltd., Wuxi Representative Office, Singapore International Park, 6 #302, No. 89 Xing Chuang, 4 Road New District, Wuxi, Jiangsu, China 214028

Lam Research International Sarl (Wuxi EPZ Bonded Warehouse), c/o HMG WHL Logistic (Wuxi) Co., Ltd., F1, Area 4, No. 1, Plot J3, No. 5 Gaolang East Road, Export Processing Zone, Wuxi, China 214028

Lam Research Service Co., Ltd., Wuhan Representative Office, No. 1 Guanshan Road, Donghu Development Zone, Room E4–302, Optical Valley Software Park, Wuhan, Hubei, China 430074

Lam Research Semiconductor (Suzhou) Co., Ltd. (Suzhou), A Division of Lam Research International Sarl, A–2 Building, Export Processing Zone, Suzhou New District, Jiangsu Province, China 215151

Lam Research International Sarl (Lam Beijing Warehouse), Building 3, No. 9 Ke Chuang Er Street, Beijing Economic Technology Development Zone, Beijing, China 100176

Lam Research International Sarl (Wuhan TSS), c/o HMG Wuhan Logistic Co., Ltd., 1st—2nd Floor, No. 5 Building, Hua Shi Yuan Er Road, Optical Valley Industry Park, East-Lake Hi-Tech Development Zone, Wuhan City, Hubei Province, China 430223

Revision to the List of ''Eligible Items'' for Semiconductor Manufacturing International Corporation

BIS designated Semiconductor Manufacturing International Corporation (SMIC) as a VEU on October 19, 2007 (72 FR 59164). Two subsequent rules amended SMIC's eligible destinations (i.e., facilities) (75 FR 67029 (Nov. 1, 2010); 76 FR 69609 (Nov. 9, 2011)). In this rule, BIS amends Supplement No. 7 to Part 748 of the EAR by revising SMIC's eligible items to correspond with changes to an entry on the Commerce Control List (Supplement No. 1 to Part 774 of the EAR). Specifically, ECCN 2B350.i.4 is being replaced with ECCN 2B350.i.3 to conform to the harmonization of fluoropolymer classifications in the EAR. BIS is also updating the citations in the ''**Federal Register** Citation'' column in Supplement No. 7 to Part 748 for SMIC to include the citation for the November 9, 2011, revision to SMIC's list of ''Eligible Destinations'' (76 FR 69609). This information was inadvertently omitted from the November 9 Notice.

Amendment to Existing Validated End-User Authorization in India

Revision to the List of ''Eligible Items'' and Removal of One ''Eligible Destination'' for GE India

BIS designated GE India as a VEU on June 2, 2009 (74 FR 31620). Subsequently, on December 23, 2009, BIS amended the company's list of eligible destinations (74 FR 68147). In this rule, BIS amends Supplement No. 7 to Part 748 of the EAR by changing the company's name listing from ''GE India'' to ''GE India Industrial Pvt Ltd.'' and removing an unnecessary address (AIFACS) from the ''Eligible Items (By ECCN)'' column. In addition, this rule amends the list of items eligible for export, reexport and transfer (in-country) to GE India Industrial Pvt Ltd. (GE India) by removing ECCN 2E983 from the list of eligible items for the GE India Technology Centre Private Limited (GEITC) eligible destination and by adding ECCNs 2E003.f and 9E003.a.2 for all GE India eligible destinations. With this amendment, all GE India eligible destinations may receive the same eligible items.

Since August 21, 2001, the Export Administration Act (the Act) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694–0088 are not expected to increase significantly as a result of this rule.

Notwithstanding any other provisions of law, no person is required to respond nor 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.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because such notice and comment here are unnecessary. In determining whether to grant VEU designations, a committee of U.S.

Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR Part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2).

The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313, July 2, 2006, and 72 FR 33646, June 19, 2007). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy; in publishing this final rule, BIS simply amends six VEU authorizations by correcting names, correcting addresses, revising ''Eligible Destinations,'' and/or revising ''Eligible Items (By ECCN).'' This has been done within the established regulatory framework of the Authorization VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorization granted in the rule is consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. Just as license applicants do, VEU authorization applicants provide the U.S. Government with confidential business information. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the thorough nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments; allowing additional public comment on this amendment to an individual VEU authorization, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. However, section 553(d)(1) of the APA provides that a substantive rule which grants or recognizes an exemption or relieves a restriction, may take effect earlier. Today's final rule grants an exemption from licensing procedures and thus is effective immediately.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable and no regulatory flexibility analysis has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 748 of the EAR (15 CFR parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

2. Supplement No. 7 to Part 748 is amended by revising the entries for ''Applied Materials (China), Inc.'', ''Boeing Tianjin Composites Co. Ltd.'', ''CSMC Technologies Corporation'', ''Lam Research Corporation'', and ''Semiconductor Manufacturing International Corporation'' in ''China (People's Republic of)'', and the entry for ''GE India'' in ''India'' to read as follows:

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU); LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
China (People's Republic of).				
*	*	*	*	*
	Applied Materials (China), Inc.	2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.a, 3B001.b, 3B001.c, 3B001.d, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to ''software'' specially designed for the ''use'' of stored program controlled items classified under ECCN 3B001).	Applied Materials South East Asia Pte. Ltd.—Shanghai Depot, c/o Shanghai Applied Materials, Technical Service Center, No. 2667 Zuchongzhi Road, Shanghai, China 201203. Applied Materials South East Asia Pte. Ltd.—Beijing Depot, c/o Beijing Applied Materials, Technical Service Center, No. 1 North Di Sheng Street, BDA, Beijing, China 100176. Applied Materials South East Asia Pte. Ltd.—Wuxi Depot, c/o Sinotrans Jiangsu Fuchang, Logistics Co., Ltd., 1 Xi Qin Road, Wuxi Export Processing Zone, Wuxi, Jiangsu, China 214028. Applied Materials South East Asia Pte. Ltd.—Wuhan Depot, c/o Wuhan Optics Valley Import & Export Co., Ltd., No. 101 Guanggu Road, East Lake High-Tec Development Zone, Wuhan, Hubei, China 430074.	72 FR 59164, 10/19/07. 74 FR 19382, 4/29/09. 75 FR 27185, 5/14/10. 77 FR [INSERT FR PAGE NUMBER] 2/24/12.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU); LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
			Applied Materials (China), Inc.—Shanghai Depot, No. 2667, Zuchongzhi Road, Shanghai, China 201203. Applied Materials (China), Inc.—Beijing Depot, No. 1 North Di Sheng Street, BDA, Beijing, China 100176.	
		2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.a, 3B001.b, 3B001.c, 3B001.d, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to ''software'' specially designed for the ''use'' of stored program controlled items classified under ECCN 3B001), and 3E001 (limited to ''technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by ECCN 3B001).	Applied Materials (Xi'an) Ltd., No. 28 Xin Xi Ave., Xi'an High Tech Park Export Processing Zone, Xi'an, Shaanxi, China 710075.	
	Boeing Tianjin Composites Co. Ltd.	1A002.a, 1B001.f, 1C010.b, 1C010.e, 1D001 (limited to ''software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 1B001.f), 1E001 (limited to ''technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by 1A002.a, 1B001.f, and 1C010.b & .e), 2B001.b.2 (limited to machine tools with accuracies no better than (i.e., less than) 13 microns), 2B001.e, 2D001 (limited to ''software,'' other than that controlled by 2D002, specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 2B001.b.2 and 2B001.e), and 2D002 (limited to ''software'' for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a ''numerical control'' unit, capable of coordinating simultaneously more than 4 axes for ''contouring control'' controlled by 2B001.b.2 and 2B001.e).	Boeing Tianjin Composites Co. Ltd., No. 4–388 Hebei Road, Tanggu Tianjin, China.	72 FR 59164, 10/19/07. 74 FR 19381, 4/29/09. 77 FR [INSERT FR PAGE NUMBER] 2/24/12.
	CSMC Technologies Corporation.	1C350.c.3, 1C350.c.11, 2B230.a, 2B230.b, 2B350.f, 2B350.g, 2B350.h, 3B001.c.1.a, 3B001.c.2.a, 3B001.e, 3B001.h (except for multilayer masks with a phase shift layer designed to produce ''space qualified'' semiconductor devices), 3C002.a, and 3C004.	CSMC Technologies Fab 1 Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China. CSMC Technologies Fab 2 Co., Ltd., 8 Xinzhou Rd., Wuxi National New Hi-Tech Industrial Development Zone, Wuxi, Jiangsu 214061, China. Wuxi CR Semiconductor Wafers and Chips Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China.	76 FR 2802, 1/18/11. 76 FR 37634, 6/28/11. 77 FR [INSERT FR PAGE NUMBER] 2/24/12.
*	*	*	*	*
	Lam Research Corporation.	2B230, 2B350.c, 2B350.d, 2B350.g, 2B350.h, 2B350.i, 3B001.c and 3B001.e (items classified under ECCNs 3B001.c and 3B001.e are limited to parts and components), 3D001 and 3D002 (items classified under ECCNs 3D001 and 3D002 are limited to ''software'' specially designed for the ''use'' of stored program controlled items classified under ECCN 3B001), and 3E001 (limited to ''technology'' according to the General Technology Note for the ''development'' of equipment controlled by ECCN 3B001).	Lam Research (Shanghai) Service Co., 1st Floor, Area C, Hua Hong Science & Technology Park, 177 Bi Bo Road, Zhangjiang Hi-Tech Park, Pudong, Shanghai, China 201203. Lam Research Shanghai Co., Ltd., No. 1 Jilong Rd., Room 424–2, Waigaoqiao Free Trade Zone, Shanghai, China 200131. Lam Research International Sarl (Lam Shanghai Warehouse), c/o HMG Supply Chain (Shanghai) Co., Ltd., No. 3869, Longdong Avenue, Pudong New District, Shanghai, China 201203.	75 FR 62462, 10/12/10. 77 FR [INSERT FR PAGE NUMBER] 2/24/12.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU); LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
			Lam Research International Sarl (Lam Shanghai Warehouse; WGQ Bonded Warehouse), c/o HMG Supply Chain (Shanghai) Co., Ltd., No. 55, Fei la Road, Waigaoqiao Free Trade Zone, Pudong New Area, Shanghai, China 200131. Lam Research Service Co., Ltd. (Beijing Branch), Rm 1010, Zhaolin Building No. 15, Rong Hua Zhong Road, BDA, Beijing, China 100176. Lam Research International Sarl (Lam Beijing Warehouse), Beijing Lam Electronics Tech Center, No. 8 Building, No. 1, Disheng North Street, BDA, Beijing, China 100176. Lam Research Service Co., Ltd., Wuxi Representative Office, Singapore International Park, 6 #302, No. 89 Xing Chuang, 4 Road, New District, Wuxi, Jiangsu, China 214028. Lam Research International Sarl (Wuxi EPZ Bonded Warehouse), c/o HMG WHL Logistic (Wuxi) Co., Ltd., F1, Area 4, No. 1, Plot J3 No. 5, Gaolang East Road, Export Processing Zone, Wuxi, China 214028. Lam Research Service Co., Ltd., Wuhan Representative Office, No. 1 Guanshan Road, Donghu Development Zone, Room E4–302, Optical Valley Software Park, Wuhan, Hubei, China 430074. Lam Research Semiconductor (Suzhou) Co., Ltd. (Suzhou), A Division of Lam Research International Sarl, A–2 Building, Export Processing Zone, Suzhou New District, Jiangsu Province, China 215151. Lam Research International Sarl (Lam Beijing Warehouse), Building 3, No. 9 Ke Chuang Er Street, Beijing Economic Technology Development Zone, Beijing, China 100176. Lam Research International Sarl (Wuhan TSS), c/o HMG Wuhan Logistic Co., Ltd., 1st–2nd Floor, No. 5 Building, Hua Shi Yuan Er Road, Optical Valley Industry Park, Eastlake Hi-Tech Development Zone, Wuhan City, Hubei Province, China 430223.	
	Semiconductor Manufacturing International Corporation.	Items controlled under ECCNs 1C350.c.3, 1C350.d.7, 2B006.b.1, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.3, 3B001.a, 3B001.b, 3B001.c, 3B001.d, 3B001.e, 3B001.f, 3C001, 3C002, 3C004, 5B002 and 5E002 (limited to ''technology'' according to the General Technology Note for the ''production'' of integrated circuits controlled by ECCN 5A002 that have been classified by BIS as eligible for License Exception ENC under paragraph (b)(2) or (b)(3) of section 740.17 of the EAR, or classified by BIS as a mass market item under paragraph (b)(3) of section 742.15 of the EAR).	Semiconductor Manufacturing International (Shanghai) Corporation, 18 Zhang Jiang Rd., Pudong New Area, Shanghai, China 201203. Semiconductor Manufacturing International (Tianjin) Corporation, 19 Xing Hua Avenue, Xi Qing Economic Development Area, Tianjin, China 300385. Semiconductor Manufacturing International (Beijing) Corporation, No. 18 Wen Chang Road, Beijing Economic-Technological Development Area, Beijing, China 100176.	72 FR 59164, 10/19/07. 75 FR 67029, 11/1/10. 76 FR 69609, 11/9/11. 77 FR [INSERT FR PAGE NUMBER] 2/24/12.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU); LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
*	*	*	*	*
India	GE India Industrial Pvt Ltd.	1C002.a.1, 1C002.a.2, 1C002.b.1.a, 1C002.b.1.b, 1E001, 2E003.f, 9E003.a.1, 9E003.a.2, 9E003.a.4, 9E003.a.5, 9E003.a.6, 9E003.a.8, and 9E003.c.	GE India Technology Centre Private Limited (GEITC), No. 122, EPIP, Phase II, Hoodi Village, Whitefield Road, Bangalore 560066, Karnataka, India. Bangalore Engineering Center (BEC), c/o GE India Technology Centre Private Limited (GEITC), No. 122, EPIP, Phase II Hoodi Village, Whitefield Road, Bangalore 560066, Karnataka, India.	74 FR 31620, 7/2/09. 74 FR 68147, 12/23/09. 77 FR [INSERT FR PAGE NUMBER] 2/24/12.

Dated: February 14, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012–4365 Filed 2–23–12; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[110817508–2069–2]

RIN 0691–AA79

International Services Surveys: BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to add new entities that are required to report information on the BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions, to change the survey title, and to collect data in greater detail. Specifically, this rule expands the covered entities to include companies that operate debit networks based on a personal identification number (PIN). PIN-based debit network companies will be required to report on cross-border transactions between U.S. cardholders traveling abroad and foreign businesses and foreign cardholders traveling in the United States and U.S. businesses. This change improves the identification of cross-border travel transactions. This rule also changes the survey title from Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions to Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel to reflect this change to the regulations. In addition, this rule makes certain changes to the BE–150 form to collect data in greater detail. The revised BE–150 survey will be conducted on a quarterly basis beginning with the first quarter of 2012.

DATES: The final rule is effective March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; email *Christopher.Emond@bea.gov;* or phone (202) 606–9826.

SUPPLEMENTARY INFORMATION: This rule amends 15 CFR 801.9 to expand the covered entities to include companies that operate debit networks based on a personal identification number (PIN). To reflect this change to the regulations, this final rule also changes the title of the form from Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions to Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel. In addition, this final rule revises the BE–150 survey form to collect certain data in greater detail.

In the October 28, 2011 issue of the **Federal Register** (76 FR 66872–66874), BEA published a notice of proposed rulemaking that would amend 15 CFR 801.9(c)(7) to set forth the reporting requirements for the BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions. No comments were received on the proposed rule. Thus, the proposed rule is adopted without change.

Description of Changes

This final rule amends 15 CFR 801.9(c)(7) to require companies that operate PIN-based debit networks to submit information on BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions in addition to U.S. credit card companies that are required to complete the current survey. These companies are required to submit information on cross-border transactions between (1) U.S. cardholders traveling abroad and foreign businesses and (2) foreign cardholders traveling in the United States and U.S. businesses. The revised BE–150 survey is mandatory for all U.S. credit card companies and PIN-based debit network companies. The PIN-based debit network companies have been added to the list of required reporters to close a gap in the coverage of international travel transactions. This final rule also changes the title of the form from Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions to Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel to reflect the change in companies that are required to report.

BEA also revised the BE–150 survey to collect in greater detail certain information that was currently collected on the BE–150. The revised survey distinguishes between transactions when the bank or payment card is present at the point of sale and when the bank or payment card is not present at the point of sale. This change improves the identification of cross-border travel transactions. In addition, the revised survey disaggregates transactions by spending category by type of card—personal card, government card, and business or corporate card. This change provides the detail necessary for BEA to publish U.S. international travel statistics in accordance with international economic accounting guidelines.

Upon the effective date of this rule, BEA will conduct the revised BE–150 on a quarterly basis, beginning with transactions for the first quarter of 2012, under the authority provided in the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–

3108, hereinafter, ''the Act.'' BEA will begin sending the survey to potential respondents in March of 2012; responses will be due by May 15, 2012.

The revised BE–150 survey data will be used by BEA to estimate the travel component of the U.S. International Transactions Accounts. In constructing the estimates, these data will be used in conjunction with data BEA collected separately from U.S. and foreign travelers on the Survey of International Travel Expenditures about the methods these travelers used to pay for their international travel, such as credit, debit, and charge card purchases, cash withdrawals, currency brought from home, and travelers' checks.

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users, to ensure that, as far as possible, the required data serve their intended purposes and are available from the existing records, that instructions are clear, and that unreasonable burdens are not imposed. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (for example, whether the data are available on respondents' books), and BEA's experience in previous annual and quarterly surveys.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the revised survey under the Act, which provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA.

The revised survey will provide a basis for compiling the travel account of the U.S. International Transactions Accounts. In constructing the estimates, these data will be used in conjunction with data BEA collected separately from U.S. and foreign travelers on the Survey of International Travel Expenditures on the methods these travelers used to pay for international travel expenditures. With the two data sources, BEA will be able to estimate total expenditures by foreign travelers in the United States (U.S. exports) and total expenditures by U.S. travelers abroad (U.S. imports) by country and region.

Executive Order 12866

This final rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

Paperwork Reduction Act

The collection-of-information requirement in this final rule has been approved by the Office of Management and Budget (OMB) under control Number 0608–0072 pursuant to the requirements of the Paperwork Reduction Act.

Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The revised BE–150 quarterly survey is expected to result in the filing of reports from six respondents on a quarterly basis, or 24 reports annually. The respondent burden for this collection of information varies from one respondent to another, but is estimated to average 16 hours per response (64 hours annually), including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for the revised BE–150 survey is estimated at 384 hours.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent to both *Christopher.emond@bea.gov* and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project, Attention PRA Desk Officer for BEA, via email at *pbugg@omb.eop.gov*, or by FAX at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements, Travel expenses, Cross-border transactions, Credit card, and Debit card.

Dated: February 6, 2012.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p. 86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

■ 2. Amend § 801.9, by revising paragraph (c)(7) to read as follows:

§ 801.9 Reports required.

* * * * *

(c) * * *

(7) BE–150, Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel:

(i) A BE–150, Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel will be conducted covering the first quarter of the 2012 calendar year and every quarter thereafter.

(A) *Who must report.* A BE–150 report is required from each U.S. company that operates networks for clearing and settling credit card transactions made by U.S. cardholders in foreign countries and by foreign cardholders in the United States and from PIN-based debit network companies. Each reporting company must complete all applicable parts of the BE–150 form before transmitting it to BEA. Issuing banks,

acquiring banks, and individual cardholders are not required to report.

(B) *Covered transactions.* The BE–150 survey collects aggregate information on the use of credit, debit, and charge cards by U.S. cardholders when traveling abroad and foreign cardholders when traveling in the United States. Data are collected by the type of transaction, by type of card, by spending category, and by country.

(ii) [Reserved]

[FR Doc. 2012–4352 Filed 2–23–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0047]

Drawbridge Operation Regulation; Snake Creek, Islamorada, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of Snake Creek Bridge, mile 0.5, across Snake Creek, in Islamorada, Florida. The regulation is set forth in 33 CFR 117.331. The deviation is necessary due to the high volume of vehicle traffic anticipated during the Annual Nautical Flea Market, which will be held in Islamorada, Florida on February 25, 2012 and February 26, 2012. The deviation will result in the bridge only opening to navigation at the top of the hour from 8 a.m. until 5 p.m. daily on February 25, 2012 and February 26, 2012. At all other times on February 25, 2012 and February 26, 2012, the bridge will open on demand.

DATES: This deviation is effective from 8 a.m. on February 25, 2012 through 5 p.m. on February 26, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0047 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0047 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 Jessica Hopkins, Seventh District Bridge Branch, Coast Guard; telephone (305) 415–6946, email *Jessica.R.Hopkins@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 Monroe County Sheriff's Office has requested a temporary modification to the operating schedule of Snake Creek Bridge in Islamorada, Florida. This deviation will result in the bridge opening only on the top of the hour from 8 a.m. to 5 p.m. daily on February 25, 2012 and February 26, 2012 during the Annual Nautical Flea Market. The Annual Nautical Flea Market generates a high volume of vehicle traffic. Opening this bridge on demand in past years during the event has resulted in significant vehicle congestion. By opening the bridge only on the top of the hour vehicular congestion will be reduced.

The vertical clearance of Snake Creek Bridge, across Snake Creek is 27 feet. Vessels with a clearance of less than 27 feet may pass underneath the bridge while it is in the closed position. The normal operating schedule for Snake Creek Bridge is set forth in 33 CFR 117.331. 33 CFR 117.331 requires the bridge to open on signal; except that from 8 a.m. to 4 p.m., the bridge need only open on the hour and half-hour. As a result of this temporary deviation, Snake Creek Bridge will only open to navigation on the top of the hour from 8 a.m. until 5 p.m. daily on February 25, 2012 and February 26, 2012. At all other times on February 25, 2012 and February 26, 2012, the bridge will open on signal. However, the drawspan will open as soon as possible for the passage of tugs with tows, vessels in distress, and Public vessels of the United States.

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 regulation is authorized under 33 CFR 117.35.

Dated: February 1, 2012.

B.L. Dragon,

Bridge Program Director, Seventh Coast Guard District.

[FR Doc. 2012–4392 Filed 2–22–12; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0092]

RIN 1625–AA87

Security Zone, East River and Bronx Kill; Randalls and Wards Islands, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters of the East River and Bronx Kill, in the vicinity of Randalls and Wards Islands, New York. This security zone is necessary to ensure the safety of the President of the United States, members of his official party, and other senior government officials. The zone is intended to restrict vessels from a portion of the East River and Bronx Kill when public officials are scheduled to arrive and depart the area. Persons or vessels may not enter this security zone without permission of the Captain of the Port New York (COTP) or the COTP's designated on-scene representative.

DATES: This rule is effective from 4 p.m. until 11:30 p.m. on Thursday, March 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0092 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0092 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Mr. Jeff Yunker, Waterways Management Division, Coast Guard Sector New York; telephone 718–354–4195, email *Jeff.M.Yunker@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior

notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because specific information regarding the event was not received in time to publish a NPRM and seek comments before issuing a final rule before the effective date. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice and comment rulemaking could be completed, thereby potentially jeopardizing the safety of the President of the United States, members of his official party, and other senior government officials.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the reasons in the preceding paragraph.

Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1226 and 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; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones.

The United States Secret Service requested that the Coast Guard establish a security zone on the waters of the East River and Bronx Kill during the arrival and departure of the President of the United States to and from Randalls and Wards Islands, New York. The purpose of the temporary security zone is to facilitate the security and safety of the President of the United States during his visit to New York City.

Discussion of Rule

The temporary security zone is effective on March 1, 2012, from 4 p.m. until 11:30 p.m. The security zone is located on a portion of the East River and the Bronx Kill. The East River security zone is approximately 1,500 yards to 2,150 yards long and 290 yards to 860 yards wide. The Bronx Kill security zone is approximately 430 yards long and 30 yards to 340 yards wide. Specific geographic locations are specified in the regulatory text. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the limited time that vessels will be restricted from the zone. The temporary security zone will only be in effect for less than eight hours on March 1, 2012. The Coast Guard expects minimal adverse impact to mariners from the zone's activation based on the limited duration of the enforcement period, the limited geographic area affected and because affected mariners may request authorization from the COTP or the designated on-scene representative to transit the zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the East River or Bronx Kill, in the vicinity of Randalls or Wards Islands, NY, during the effective period.

This temporary security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The security zone is of limited size and duration. Persons or vessels may request permission to transit the security zone from the COTP or the designated on-scene representative.

Additionally, before and during the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway, including verbal broadcast notice to mariners and distribute a written notice to waterway users online at *http://homeport.uscg.mil/newyork.*

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 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 which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishment of a temporary security zone on a portion of the East River and Bronx Kill during the arrival and departure of the President of the United States to and from Randalls and Wards Islands. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0092 to read as follows:

§ 165.T01–0092 Security Zone, East River and Bronx Kill; Randalls and Wards Islands, NY

(a) *Location.* The following area is a temporary security zone: All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position 40°47′27.12″ N, 073°54′35.14″ W (Lawrence Point, Queens) to a point at approximate position 40°47′52.55″ N, 073°54′35.25″ W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6).

(b) *Definitions.* For purposes of this section ''Designated on-scene representative'' is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf.

(c) *Effective period.* This section is effective from 4 p.m. until 11:30 p.m. on March 1, 2012.

(d) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry, transit, or anchoring within the security zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or the COTP's designated representative. The designated on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard.

(3) The COTP will provide notice of this security zone by appropriate means, which may include but are not limited to a Local Notice to Mariners or Broadcast Notice to Mariners.

(4) Vessel operators given permission to enter or operate in the security zone must comply with all directions given to them by the COTP or the designated on-scene representative. Those vessels may be required to anchor or moor up to a waterfront facility.

(5) Vessel operators desiring to enter or operate within the security zone shall telephone the COTP at 718–354–4356 or the designated on-scene representative via VHF channel 16 to obtain permission to do so.

Dated: February 14, 2012.

G.P. Hitchen,

Captain, U.S. Coast Guard, Acting Captain of the Port New York.

[FR Doc. 2012–4270 Filed 2–23–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0494; FRL–8883–1]

Flazasulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flazasulfuron in or on citrus fruit, grape, and sugarcane. ISK Biosciences Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 24, 2012. Objections and requests for hearings must be received on or before April 24, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0494. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; email address: *stanton.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0494 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 24, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0494, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 4, 2010 (75 FR 46926) (FRL–8834–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7666) by ISK Biosciences Corporation, 7470 Auburn Rd., Suite A, Concord, OH 44077. The petition requested that 40 CFR part 180 be amended by adding a section for the herbicide flazasulfuron and establishing tolerances therein for residues of flazasulfuron, N-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(trifluoromethyl)-2-pyridinesulfonamide, in or on fruit, citrus, group 10 at 0.01 parts per million (ppm); grapes at 0.01 ppm; and sugarcane at 0.01 ppm. That notice referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

EPA has made minor changes to the citrus and grape commodity terms. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include

occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for flazasulfuron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flazasulfuron follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Flazasulfuron exhibits low acute toxicity via oral, dermal and inhalation routes of exposure. It is not irritating to the skin or eyes and is not a dermal sensitizer. Subchronic studies in animals indicated decreased body weight gain, slight anemia in rats, and liver abnormalities in dogs. Dermal or systemic toxicity was not seen in a subchronic dermal study in rabbits at dose levels up to the limit dose.

In the longer-term mammalian toxicity studies, the kidney and liver were the primary target organs of flazasulfuron toxicity. Observed effects included adverse changes in kidney function (chronic nephropathy) and kidney physiology (enlargement, dark color of kidney), increases in liver weight and hepatocellular hypertrophy, increases in inflammatory cell infiltration, hepatocellular necrosis, hepatocellular swelling, and bile duct proliferation.

Developmental toxicity was observed in both rats and rabbits. Reduced fetal weights and delays in ossification were seen in a developmental toxicity study with Sprague-Dawley rats; an increased incidence of visceral malformations (intraventricular septal defect) was seen in a developmental study with Wistar rats. The developmental study in rabbits showed high incidences of abortion at the highest dose tested. Decreases in body weight and chronic nephropathy were observed in offspring in a 2-generation rat reproduction toxicity study. The effects on offspring in these studies occurred at dose levels which were also toxic to the parents.

A transient decrease in motor activity 5 hours post-dosing on Day 0 was observed at the mid-dose in an acute neurotoxicity study. This observation may be associated with a systemic effect and not with neurotoxicity. The effect was reversed by the next scheduled observation (Day 7), and neurohistopathologic evaluation of tissues from the central and peripheral nervous systems of high dose and control animals did not demonstrate any test material-related neurotoxic lesions.

There was no evidence of carcinogenicity in the mouse oncogenicity study or the combined chronic toxicity/carcinogenicity study in the rat and no evidence of genotoxic potential in *in vitro* and *in vivo* mutagenicity studies. Based on the results of these studies, EPA has classified flazasulfuron as ''No evidence of carcinogenicity to humans.''

Specific information on the studies received and the nature of the adverse effects caused by flazasulfuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Flazasulfuron: Human Health Risk Assessment for Proposed Uses on Citrus, Grapes, Sugarcane, Christmas Trees, and Industrial Vegetation,'' at p. 36 in docket ID number EPA–HQ–OPP–2010–0494.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for flazasulfuron used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLAZASULFURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including females, 13–49 years old, infants and children).	NOAEL = 50 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.5 mg/kg/day aPAD = 0.5 mg/kg/day	Acute neurotoxicity study in rats. LOAEL = 1,000 mg/kg/day based on transient decrease in motor activity at Day 0 (5 hours post-dosing).
Chronic dietary (All populations)	NOAEL= 1.3 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.013 mg/kg/day cPAD = 0.013 mg/kg/day	Combined Chronic Toxicity/Carcinogenicity in rats. LOAEL = 13.3 mg/kg/day based on adverse change in kidney function (chronic nephropathy).

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLAZASULFURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (Oral, dermal, inhalation) ..	Classification: "No evidence of carcinogenicity to humans" based on lack of carcinogenic effects in the rat and mouse carcinogenicity studies and lack of a mutagenicity concern.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flazasulfuron, EPA considered exposure under the petitioned-for tolerances. No other tolerances have been established for flazasulfuron. EPA assessed dietary exposures from flazasulfuron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for flazasulfuron. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that 100% of citrus fruit, grape, and sugarcane commodities are treated with flazasulfuron and that residues on these commodities are present at the tolerance levels.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA made the same assumptions (tolerance-level residues and 100 percent crop treated (PCT)) as in the acute dietary exposure assessment.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that flazasulfuron does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* The residues of concern in drinking water include flazasulfuron and its identified degradates DTPU (*N*-(4,6-dimethoxy-2-pyrimidinyl)-*N*-[3-(trifluoromethyl)-2-pyridinyl]urea), DTPP (4,6-dimethoxy-*N*-[3-(trifluoromethyl)-2-pyridinyl]-2-pyrimidinamine), TPSA (3-(trifluoromethyl)-2-pyridinesulfonamide), ADMP (2-amino-4,6-dimethoxypyrimidine), HTPP (6-methoxy-2-[[3-(trifluoromethyl)-2-pyridinyl]amino]-4-pyrimidinol), and 2,3-GTP (3-trifluoromethyl-2-pyridylguanidine). The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flazasulfuron and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flazasulfuron and its degradates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of flazasulfuron and its degradates for acute exposures are estimated to be 26.9 parts per billion (ppb) for surface water and 102 ppb for ground water. EDWCs of flazasulfuron and its degradates for chronic exposures for non-cancer assessments are estimated to be 4.67 ppb for surface water and 102 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessment, the water concentration value of 102 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Flazasulfuron is currently registered for use on non-residential turf, including recreation areas (golf courses and professionally managed sports fields). There is a potential for post-application short-term dermal exposure of adults and children entering recreation areas which have been treated with flazasulfuron. However, since no hazard associated with dermal exposure was identified in the toxicity database for flazasulfuron, flazasulfuron is not expected to pose a risk from post-application dermal exposure.

In accordance with current policy, EPA did not conduct a quantitative assessment of post-application inhalation exposure to flazasulfuron; however, volatilization of pesticides may be a source of post-application inhalation exposure of individuals nearby pesticide applications. The Agency sought expert advice and input on issues related to volatilization of pesticides from its Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (SAP) in December 2009, and received the SAP's final report on March 2, 2010 *http://www.epa.gov/scipoly/SAP/meetings/2009/120109meeting.html*. EPA is currently in the process of evaluating the SAP report and may, as appropriate, develop policies and procedures to identify the need for and, subsequently, the way to incorporate post-application inhalation exposure into the Agency's risk assessments. In the case of flazasulfuron, although EPA has not conducted a quantitative assessment of post-application inhalation exposure, the Agency's concern for such exposures is low due to flazasulfuron's low vapor pressure ($<1 \times 10^{-7}$ torr) and low acute toxicity.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has not found flazasulfuron to share a common mechanism of toxicity with any other substances, and flazasulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that flazasulfuron does not have a common mechanism of toxicity with other substances. For information regarding

EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The pre- and postnatal toxicity database for flazasulfuron includes developmental toxicity studies in rats (Sprague-Dawley and Wistar) and rabbits and a 2-generation reproduction toxicity study in rats.

There was no evidence of increased quantitative susceptibility of fetuses or offspring to flazasulfuron in any of the developmental or reproductive toxicity studies, since the effects on offspring occurred at dose levels which were also toxic to the parents. There is a potential concern for increased qualitative susceptibility of offspring based on the intraventricular septal defect seen in offspring at minimally toxic maternal dose levels in the Wistar rat developmental toxicity study; however, the concern for the increased susceptibility is low, and EPA did not identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors (UFs) to be used in the risk assessment for flazasulfuron. There was a clear NOAEL and LOAEL in the Wistar rat study, and thus the dose response for the observed effect is well defined. In addition, since the Agency is using PODs for risk assessment that are lower than the NOAEL in the Wistar rat study, the PODs are protective of the adverse developmental effect.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for flazasulfuron is complete, except for an immunotoxicity study (OPPTS Guideline 870.7800) and a subchronic neurotoxicity study (OPPTS Guideline 870.6200b). These studies are now requirements under 40 CFR 158.500 for pesticide registration. In the absence of specific immunotoxicity and subchronic neurotoxicity studies, EPA has evaluated the available flazasulfuron toxicity database to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity or neurotoxicity.

With the exception of a transient decrease in motor activity at a high dose level (1,000 mg/kg/day) in the acute neurotoxicity study, which may be associated with a systemic effect, there is no evidence of neurotoxicity in the flazasulfuron toxicity database. There is no evidence of immunotoxicity in the database, as indicated by hematology, lymphoid organ weights and histopathology in standard studies. Consequently, EPA believes the existing data are sufficient for endpoint selection for exposure/risk assessment and for evaluation of the requirements under FQPA, and an additional database uncertainty factor is not needed to account for the lack of these studies.

ii. Although there was evidence of potential increased qualitative susceptibility of fetuses in the developmental toxicity study in Wistar rats, EPA's concern for increased qualitative susceptibility is low and the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment for flazasulfuron.

iii. There are no residual uncertainties identified in the exposure databases.

The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to flazasulfuron in drinking water. These assessments will not underestimate the exposure and risks posed by flazasulfuron.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to flazasulfuron will occupy 4% of the aPAD for infants less than one year old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flazasulfuron from food and water will utilize 54% of the cPAD for infants less than one year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of flazasulfuron is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Although there is potential for short-term residential dermal and inhalation post-application exposure to flazasulfuron, no short-term dermal hazard was identified for flazasulfuron and inhalation exposure is expected to be negligible; therefore, EPA relies on the chronic dietary risk assessment for evaluating short-term aggregate exposure to flazasulfuron.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, flazasulfuron is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for flazasulfuron.

5. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, flazasulfuron is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flazasulfuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography/tandem mass spectrometry with multiple reaction monitoring (HPLC/MS–MS/MRM)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for flazasulfuron.

C. Revisions to Petitioned-For Tolerances

EPA has revised the citrus fruit crop group and grape commodity terms. ''Grapes'' has been changed to ''grape'' to agree with the Agency's Food and Feed Vocabulary. ISK Biosciences Corporation petitioned for a tolerance on the crop group ''fruit, citrus, group 10.'' In the **Federal Register** of December 8, 2010 (75 FR 76284) (FRL–8853–8), EPA issued a final rule that revised the crop grouping regulations. As part of this action, EPA expanded and revised the citrus fruit crop group. Changes to crop group 10 included adding Australian desert lime, Australian finger lime, Australian round lime, Brown River finger lime, Japanese summer grapefruit, Mediterranean mandarin, Mount White lime, New Guinea wild lime, Russell River lime, sweet lime, Tachibana orange, Tahiti lime, tangelo, tangor, trifoliate orange, and uniq fruit; creating subgroups; revising the representative commodities; and naming the new crop group citrus fruit group 10–10. EPA indicated in the December 8, 2010 final rule as well as the earlier January 6, 2010 proposed rule (75 FR 807) (FRL–8801–2) that, for existing petitions for which a Notice of Filing had been published, the Agency would attempt to conform these petitions to the rule. That is possible here because, despite the revisions to the representative commodities for the crop group, the petitioner's residue data submission pertaining to the representative commodities for the earlier version of the crop group meets the residue data requirements for the revised representative commodities. Additionally, EPA assessed the risk taking into account the additional crops included in the revised crop group. Therefore, consistent with this December 8, 2010 rule, EPA is establishing a tolerance on the revised subgroup ''fruit, citrus, group 10–10.''

V. Conclusion

Therefore, tolerances are established for residues of flazasulfuron, N-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(trifluoromethyl)-2-pyridinesulfonamide, including its metabolites and degrades, as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination With Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not

a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 9, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.655 is added to read as follows:

§ 180.655 Flazasulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of flazasulfuron, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only flazasulfuron (*N*-[[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonyl]-3-(trifluoromethyl)-2-pyridinesulfonamide).

Commodity	Parts per million
Fruit, citrus, group 10–10	0.01
Grape	0.01
Sugarcane	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2012–4332 Filed 2–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0364; FRL–9336–9]

Fluopyram; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluopyram in or on multiple commodities which are identified and discussed later in this document. Bayer Crop Science requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 24, 2012. Objections and requests for hearings must be received on or before April 24, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0364. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Lisa Jones, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9424; email address: *jones.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0364 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 24, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0364, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200

Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of January 6, 2010 (75 FR 864) (FRL–8801–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of two pesticide petitions (PP 8F7358 and 8F7463) by Bayer Crop Science, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709.

Petition 8F7358 requested that 40 CFR part 180 be amended by establishing tolerances on residues of the fungicide, fluopyram, *N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide, including its metabolites and degradates in or on the following commodities: Grape at 2.0 parts per million (ppm); strawberry at 2.0 ppm; and tomato at 1.0 ppm. A subsequent petition 8F7463 requested that 40 CFR part 180 be amended by establishing additional tolerances on residues of the fungicide, fluopyram, *N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide, including its metabolites and degradates in or on the following commodities: Alfalfa, forage at 0.25 ppm; alfalfa, hay at 0.80 ppm; almond, hulls at 8.0 ppm; apple, wet pomace at 2.5 ppm; artichoke at 2.0 ppm; banana at 1.0 ppm; beet, sugar, roots at 0.10 ppm; berry, low growing, subgroup 13–07G at 2.0 ppm; Brassica, head and stem, subgroup 5A at 3.0 ppm; Brassica, leafy greens, subgroup 5B at 35 ppm; bushberries, subgroup 13–07B at 10 ppm; caneberries, subgroup 13–07A at 5.0 ppm; citrus, oil at 10 ppm; corn, sweet, kernel plus cob with husk removed at 0.10 ppm; cotton, gin byproducts at 0.05 ppm; cotton, undelinted seed at 0.10 ppm; fruit, citrus, group 10 at 1.0 ppm; fruit, pome, group 11 at 1.0 ppm; fruit, small, vine, climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; fruit, stone, group 12 at 2.0 ppm; grain, cereal, forage, fodder and straw, group 16, except rice, forage at 8.0 ppm; grain, cereal, forage, fodder and straw, group 16, except rice, hay, straw and stover at 14 ppm; grain, cereal, forage, fodder and straw, group 16, except rice, aspirated fractions at 50 ppm; grain, cereal, group 15, except rice and sweet corn at 3.0 ppm; grape, raisin at 3.5 ppm; grass, forage, fodder and hay, group 17, forage at 80 ppm; grass, forage, fodder and hay, group 17, hay at 30 ppm; herbs, subgroup 19A, fresh at 50 ppm; herbs, subgroup 19A, dried at 260 ppm; hop, dried cones at 100 ppm; nut, tree, group (including pistachio) 14 at 0.05 ppm; okra at 8.0 ppm; oilseed, group 20, except cotton at 5.0 ppm; onion, bulb, subgroup 3–07A at 0.30 ppm; onion, green, subgroup 3–07B at 20 ppm; peanut at 0.05 ppm; peanut, hay at 50 ppm, pepper, non-bell at 8.0 ppm; potato, processed potato waste at 0.15 ppm; soybean, aspirated fractions at 70 ppm; soybean, forage at 8.0 ppm; soybean, hay at 30 ppm; soybean, hulls at 0.40 ppm; soybean, seed at 0.30 ppm; spices, except black pepper, subgroup 19B at 100 ppm; vegetable, cucurbit, group 9 at 1.0 ppm; vegetable, foliage of legume, except soybean, subgroup 7A, forage at 30 ppm; vegetable, foliage of legume, except soybean, subgroup 7A, hay at 75 ppm; vegetable, foliage of legume, except soybean, subgroup 7A, vines at 16 ppm; vegetable, fruiting, except non-bell pepper, group 8 at 1.0 ppm; vegetable, leafy, except Brassica, group 4 at 35 ppm; vegetable, leaves of root and tuber, group 2 at 30 ppm; vegetable, legume, edible podded, subgroup 6A at 2.0 ppm; vegetable, legume, succulent shelled, subgroup 6B at 0.20 ppm; vegetable, pea and bean, dried shelled (except soybean), subgroup 6C at 0.50 ppm; vegetable, root and tuber, except sugar beet, subgroup 1B at 0.50 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.05 ppm.

This petition (8F7463) also requested that 40 CFR part 180 be amended by establishing tolerances on residues of the fungicide, fluopyram, *N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide, including its metabolites and degradates, in or on the following commodities: Cattle, fat at 0.10 ppm; cattle, meat at 0.10 ppm; cattle, meat byproducts, except liver at 0.10 ppm; cattle, liver at 1.2 ppm; eggs at 0.1 ppm; goat, fat at 0.10 ppm; goat, meat at 0.10 ppm; goat, meat byproducts, except liver at 0.10 ppm; goat, liver at 1.2 ppm; hog, fat at 0.01 ppm; hog, meat at 0.01 ppm; hog, meat byproducts, except liver at 0.01 ppm; hog, liver at 0.15 ppm; horse, fat at 0.10 ppm; horse, meat at 0.10 ppm; horse, meat byproducts, except liver at 0.10 ppm; horse, liver at 1.2 ppm, milk at 1.2 ppm; poultry, fat at 0.05 ppm; poultry, meat at 0.03 ppm; poultry, meat byproducts at 0.20 ppm; sheep, fat at 0.10 ppm; sheep, meat at 0.10 ppm; sheep, meat byproducts, except liver at 0.10 ppm; and sheep, liver at 1.2 ppm.

That notice referenced a summary of the petitions prepared by Bayer Crop Science, the registrant, which is available in the docket, *http://www.regulations.gov.*

One comment was received from a private citizen who opposed the manufacturing and selling of this product due to the lack of available bee information. This comment is considered irrelevant because the safety standard for approving tolerances under section 408 of the FFDCA is directed solely at the safety of the pesticide residues in food to the food consumer and does not permit consideration of environmental effects on bees.

Based upon review of the data supporting the petitions, EPA has revised tolerance levels. Subsequently, the petitions have been further modified per Bayer Crop Science's request to withdraw a majority of the primary crops initially proposed for this action, and expanded the original rotatable crops of alfalfa and cotton to include canola, soybean, and cereals grains except rice, December 8, 2011 (76 FR 76676) (FRL–9328–8). The reason for these changes is explained in Unit IV.D.START.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has

reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for fluopyram including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with fluopyram follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Decreased body weight and liver effects were the common and frequent findings in the fluopyram subchronic and chronic oral toxicity studies in rats, mice, and dogs, and they appeared to be the most sensitive effects. Liver effects were characterized by increased liver weight, hepatocellular hypertrophy, hepatocellular vacuolation, increased mitosis and hepatocellular necrosis. In the carcinogenicity study, increased liver tumors were also observed in female rats. Liver effects in rodents were seen at lower dose levels than those in the dogs. Thyroid effects were found at dose levels similar to those that produced liver effects in rats and mice; these effects consisted of follicular cell hypertrophy, increased thyroid weight and hyperplasia at dose levels greater than or equal to 100 milligrams/kilogram/day (mg/kg/day). Changes in thyroid hormone levels were also seen in a subchronic toxicity study. In male mice, there was an increased incidence of thyroid adenomas.

Fluopyram is classified as ''Likely to be Carcinogenic to Humans'' and a unit risk, Q1*, of 1.55×10^{-2} (mg/kg/day)$^{-1}$ was used for the linear low dose extrapolation of cancer risk based on liver tumors in female rats; thyroid tumors were also observed in male mice. Fluopyram is not genotoxic or mutagenic.

Fluopyram is not a developmental toxicant, nor did it adversely affect reproductive parameters. No evidence of qualitative or quantitative susceptibility was observed in developmental studies in rats and rabbits or in a multigeneration study in rats.

In an acute neurotoxicity study, transient decreased motor activity was seen only on the day of treatment, but no other findings demonstrating neurotoxicity were observed. In addition, no neurotoxicity was observed in the subchronic neurotoxicity study in the presence of other systemic adverse effects. Fluopyram did not produce treatment-related effects on the immune system.

Fluopyram has low acute toxicity via the oral, dermal and inhalation routes of exposure. Fluopyram is not a skin or eye irritant or sensitizer under the conditions of the murine lymph node assay.

Specific information on the studies received and the nature of the adverse effects caused by fluopyram as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document ''Fluopyram: Human Health Risk Assessment for Proposed Uses on Apples, Bananas (Import only), Cherries (Sweet and Tart), Dried Beans, Peanuts, Potatoes, Strawberries, Sugar Beets, Tree Nuts, Watermelon, and Wine Grapes'' beginning at Appendix A, pages 41–47 in docket ID number EPA–HQ–OPP–2009–0364.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

The details for selecting toxicity endpoints and points of departure for various exposure scenarios can be found at *http://www.regulations.gov* in the document ''Fluopyram: Human Health Risk Assessment for Proposed Uses on Apples, Bananas (Import only), Cherries (Sweet and Tart), Dried Beans, Peanuts, Potatoes, Strawberries, Sugar Beets, Tree Nuts, Watermelon, and Wine Grapes'' in Appendix A on pages 47–66 in docket ID number EPA–HQ–OPP–2009–0364.

A summary of the toxicological endpoints for fluopyram used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUOPYRAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure	Uncertainty/ FQPA safety factors	RfD, PAD, Level of concern for risk assessment	Study and toxicological effects
Acute Dietary (General Population, including Infants and Children).	NOAEL= 50 mg/kg/day	UF_A= 10X ..... UF_H=10X FQPA SF=1X	aRfD = 0.50 mg/kg/day ..... aPAD = 0.50 mg/kg/day	Acute Neurotoxicity Study in Rats. The LOAEL of 100 mg/kg in females is based on decreased motor and locomotor activity in females. The LOAEL in males was 125 mg/kg/day.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUOPYRAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure	Uncertainty/ FQPA safety factors	RfD, PAD, Level of concern for risk assessment	Study and toxicological effects
Acute Dietary (Females 13–49 years of age).	An endpoint attributable to a single dose exposure has not been identified for this subpopulation.			
Chronic Dietary (All Populations).	NOAEL= 1.2 mg/kg/day	UF_A= 10X ..... UF_H= 10X FQPA SF=1X	cRfD = 0.012 mg/kg/day ... cPAD = 0.012 mg/kg/day	Combined Chronic/Carcinogenicity in Rats. The LOAEL of 6.0 mg/kg/day is based on follicular cell hypertrophy in the thyroid, and increased liver weight with gross pathological and histopathological findings.
Cancer (oral, dermal, inhalation).	Based on the liver tumor in female rats, EPA classified fluopyram as a ''Likely to be Carcinogenic to Human'' and recommended the use of linear low dose extrapolation model for risk assessment using a unit risk, $Q_1^* = 1.55 \times 10^{-2}$ (mg/kg/day)$^{-1}$.			

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = FQPA Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose (a = acute, c = chronic). mg/kg/day = milligrams/kilogram/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluopyram, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from fluopyram in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for fluopyram. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The acute dietary analysis included tolerance residue levels, 100% crop treated assumption and processing factors (empirical and default).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. The chronic dietary analysis included average residue levels from crop field trials, 100% crop treated assumption, and processing factors (empirical and default).

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that fluopyram should be classified as ''Likely to be Carcinogenic to Humans'' and a linear approach has been used to quantify cancer risk. The cancer dietary analysis included average residue levels from crop field trials, processing factors (empirical and default, commercial and household), and percent crop treated (PCT) estimates.

iv. *Anticipated residue and PCT information.* EPA used tolerance level residues and assumed 100% crop treated in the acute dietary assessment for fluopyram. For the chronic dietary assessment, EPA used average residues from field trials and 100% CT information. The cancer dietary risk assessment used average residues from field trials and projected percent crop treated estimates based on processing factors.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for new uses as follows:

Almonds: 33%; apples: 40%; barley: 22%; dry beans: 7%; cherry: 49%; cotton: 7%; grapes: 79%; oats: 23%; peanuts: 67%; potatoes: 64%; rapeseed: 73%; rye: 63%; sorghum: 12%; soybeans: 1%; strawberries: 71%; sugar beets: 48%; watermelon: 54%; and wheat: 1%.

EPA's estimate of the percent crop treated for the new uses of fluopyram represents the upper bound of use expected during the pesticide's initial 5 years of registration; that is, the percent crop treated for fluopyram is a threshold of use that EPA is reasonably certain will not be exceeded for this registered use site. The percent crop treated for use in the chronic dietary assessment is calculated as the average percent crop treated of the market leader or leaders (i.e., the pesticides with the greatest percent crop treated) on that crop over the 3 most recent years of available data. The percent crop treated for use in the acute dietary assessment is the maximum observed percent crop treated over the same period. Comparisons are only made among pesticides of the same pesticide types (e .g., the market leader for fungicides on the use crop is selected for comparison with a new fungicide). The market leader included in the estimation may not be the same for each year since different pesticides may dominate at different times.

To calculate these percent crop treated values, EPA used recent data from the National Agricultural Statistics Service (NASS) 2002–2006, and recent proprietary data (2006–2010). The estimates for the primary crops are based on the market leader approach involving several registered fungicides, and the estimates for the rotational crops are based on acres of wheat, corn, sorghum, barley, oats, rye, millet, soybeans, canola, cotton, and alfalfa grown relative to the total acreage of dry beans and potatoes treated with fluopyram.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which fluopyram may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluopyram in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluopyram. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Environmental fate studies indicate that the parent fluopyram is stable under environmental conditions. Reported half-lives range from 89 days in field and aqueous photolysis studies to >1,000 days in aerobic/anaerobic water/sediment systems. Fluopyram is mobile in soil and can therefore, be expected to occur in surface water runoff and/or in ground water leachate. Upper-bound ground water estimates were derived using the Tier I Screening Concentration in Ground Water (SCI–GROW) model. Surface water estimates were partially refined by incorporating a foliar degradation rate into the Tier II Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) model. The foliar decay rate was calculated from field trial studies in which residues were determined at various intervals following foliar application; no rain or irrigation occurring during the study period. All other inputs reflect high-end assumptions regarding application rates and percent cropped area (PCA) in the watershed.

Based on the Tier II PRZM/EXAMS and SCI–GROW models the estimated drinking water concentrations (EDWCs) of fluopyram for acute exposures are 13 parts per billion (ppb) for surface water and 0.32 ppb for ground water. The EDWCs of fluopyram for chronic exposures for non-cancer assessments are estimated to be 4.9 ppb for surface water and 0.32 ppb for ground water and the EDWCs of fluopyram chronic exposures for cancer assessments are estimated to be 3.5 ppb for surface water and 0.32 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value 13 ppb (1 in 10 year annual peak) based on a maximum application rate of 0.446 lb ai/A/season (cucumber) was used to access the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 4.9 ppb (1 in 10 year annual mean) based on a maximum application rate of 0.356 lb active ingredient/Acre (a.i./A)/season (potato) was used to access the contribution to drinking water. For cancer dietary risk assessment, the water concentration of value 3.5 ppb (1 in 30 year annual mean) based on a maximum application rate of 0.356 lb a.i./A/season (potato) was used to access the contribution of drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluopyram is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found fluopyram to share a common mechanism of toxicity with any other substances, and fluopyram does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluopyram does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity

and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The available developmental toxicity studies in rats and rabbits and the multi-generation reproduction in rats demonstrate no evidence of increased susceptibility in the developing or young animals which were exposed during prenatal or postnatal periods. Decreased fetal body weight was observed at levels equal to or greater than the maternal LOAEL in both rat and rabbit developmental studies. Likewise, body weight effects were seen in offspring at levels equal to the parental LOAEL in the rat 2-generation reproductive toxicity study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluopyram is complete and includes the immunotoxicity study and neurotoxicity screening battery.

ii. The fluopyram toxicology database did not demonstrate evidence of neurotoxicity. Although transient decreases in motor and locomotor activities in the acute neurotoxicity study on the day of treatment and limited use of hind-limbs and reduced motor activity in the rat chronic/carcinogenicity study were seen, there were no other associated neurobehavioral or histopathology changes found in other studies in the fluopyram toxicity database. The effects seen in the chronic/carcinogenicity study were in the presence of increased mortality and morbidity such as general pallor and appearance. Therefore, the reduced motor activity and limited use of hind-limbs seen in these two studies were judged to be the consequence of the systemic effects and not direct neurotoxicity. There is no indication that fluopyram is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fluopyram results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the multi-generation reproduction study.

iv. There are no residual uncertainties in the exposure database. Although extended field rotational crop studies are required as a condition of registration, the rotational crop tolerances used in the dietary risk assessment are not expected to underestimate exposure because they are based on crop residue results from direct foliar treatment as opposed to residues taken up by plants through roots from treated soil. The acute dietary exposure assessment was performed using tolerance level residues for all crops whereas the chronic dietary assessment included average field trial residue levels for all crops. Both acute and chronic assessments assumed 100% crop treated and incorporated empirical or default processing factors. The dietary exposure assessment also assumed that all drinking water will contain fluopyram at the highest EDWC levels modeled by the Agency for ground or surface water. Residential exposures are not expected. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluopyram in drinking water. These assessments will not underestimate the exposure and risks posed by fluopyram.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fluopyram will occupy 8.8% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluopyram from food and water will utilize 13% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for fluopyram.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no short-term adverse effect was identified; fluopyram is not expected to pose a short-term risk.

A short-term adverse effect was identified; however, fluopyram is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for fluopyram.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no intermediate-term effect was identified, fluopyram is not expected to pose an intermediate-term risk. An intermediate-term adverse effect was identified; however, fluopyram is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluopyram.

5. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in this unit for the cancer risk assessment, EPA has concluded that exposure to fluopyram from food and water will result in a lifetime cancer risk of 2.9×10^{-6} for the general U.S. population. EPA generally considers cancer risks in the range of 1 in 1 million (1×10^{-6}) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the log scale; for example, risks falling between

3×10^{-7} and 3×10^{-6} are expressed as risks in the range of 10^{-6}. Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of 10^{-6} until the calculated risk exceeds approximately 3×10^{-6}. This is particularly the case where some conservatism is maintained in the exposure assessment.

Although the fluopyram exposure risk assessment is refined, it retains some conservatism due, among other things, to the use of field trial data to estimate residues in food and the use of high-end assumptions to estimate residues in water. Accordingly, EPA has concluded the cancer risk from aggregate exposure to fluopyram falls within the range of 1×10^{-6} and is thus negligible.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluopyram residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The German multiresidue method DFG Method S 19, a gas chromatography with mass selective detection (GC/MSD) method, has been proposed for the enforcement of tolerances for fluopyram residues in or on crop commodities, and a high performance liquid chromatography method with tandem mass spectrometry detection (HPLC/MS/MS), Method 01079, has been proposed for the enforcement of tolerances for residues of fluopyram and its metabolite, AE C656948-benzamide, in livestock commodities. The validated limit of quantitation (LOQ) is 0.01 ppm for each analyte in each matrix. The proposed enforcement method for plant commodities (DFG Method S19) and livestock commodities (Method 01079) are deemed adequate as enforcement methods. Adequate HPLC/MS/MS methods were used for data collection for crop and livestock commodities. The FDA multiresidue methods of PAM Vol. I are suitable for the determination of fluopyram in non-fatty matrices (using Section 302), but are not suitable for detection of AE C656948-benzamide residues. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex Maximum Residue Limits (CXLs) have been established for grape at 2 ppm and dried grapes (raisins) at 5 ppm; milk at 0.07 ppm; mammalian meat at 0.1 ppm, and edible offal mammalian (meat byproducts) at 0.7 ppm. For the purpose of international harmonization, EPA is establishing U.S. tolerances for wine grape at 2.0 ppm (raised from 1.4 ppm); milk at 0.07 ppm (raised from 0.06 ppm); and hog meat byproducts at 0.70 ppm (raised from 0.45 ppm).

The Codex MRL for grapes is based on field trials conducted in Europe, and is calculated by rounding up of the statistically determined 1.3 ppm to 2 ppm. A U.S. tolerance for dried grapes (raisins) is not needed as the tolerance request is for wine-type grapes only, which are not converted to raisins.

Harmonization of recommended U.S. tolerances for meat and meat byproducts (other than hog) with Codex MRLs cannot be achieved. The Codex MRL for livestock is calculated on the basis of the diets listed in Annex 6 of the 2009 JMPR Report (OECD Feedstuffs Derived from Field Crops) and the use of a reasonable worst case diet/feed approach (RWCF). The dietary burden was calculated using only grape pomace residue and 20% contribution to the Australian dairy and beef cattle diets. The U.S. tolerance was based on guidance ''Revisions of Feedstuffs in (Table 1) OPPTS Test Guideline 860.1000'' and ''Guidance on Constructing Maximum Reasonably Balanced Diets (MRBD)''. Based on the U.S. livestock diets (which does not include grape pomace) and the cattle feeding study, the meat byproduct (cattle, goat horse, sheep) tolerances need to be set at 1.1 ppm, a higher level than the 0.7 Codex MRL for edible offal. Similarly, the U.S. meat tolerances for these animals need to be set higher than the Codex MRL (0.15 versus 0.1 ppm).

C. Revisions to Petitioned-For Tolerances

Because the Agency's preliminary risk assessment of fluopyram determined that aggregate exposure to fluopyram potentially exceeded safe levels, the petitioner withdrew tolerance proposals and registration requests for the following crops: Crop Group 1B Root vegetable; 1C Tuberous and corm vegetable (except potatoes and sugarbeet); Crop Group 2 Leaves of root and tuberous vegetables, Crop subgroups 3–07A and B Bulb vegetables; Crop Group 4 Leafy vegetables; Crop Group 5 Brassica; Crop Group 6A Edible legumes; Crop Group 6B Succulent beans and peas; Crop Group 6C (part) Dried peas and some dried beans, (except soybeans); Crop Group 7 Foliage of legume vegetables; Crop Group 8 Fruiting vegetables; Crop Group 10 Citrus; Crop Group 11 Pome fruit (except apple); Crop subgroups 13–07A and B Caneberries and Bushberries; Crop subgroup 13–07F Vine fruit (except wine grapes); Crop subgroup 13–07G Low growing berries (except strawberry); Crop Group 15 Cereal Grains (except for rotational purposes); Crop Group16 Forage Cereals (except for rotational purposes); Crop Group17 Grasses grown for forage or seed; Crop Group18 Non grass animal feeds; Crop Group19 Herbs and Spices; Crop Group 20 Oilseeds (except canola); Hops; Globe artichoke; Christmas Trees; Turf; and Ornamentals.

The petitioner subsequently, submitted a revised registration specifying uses only on the following crops: Apple; banana (no U.S. registration); bean, dry; beet, sugar, root; cherry (sweet and tart); grape, wine; nut tree crop group 14; peanut; pistachio; potatoes; strawberry; and watermelon. Based on the available field trial data, and NAFTA tolerance calculation procedures, the Agency recommended appropriate tolerance levels for individual commodities as opposed to levels proposed for crop groups. However, although the petitioner proposed a tolerance for ''nut, tree, group 14 (including pistachio)'' at 0.05 ppm, EPA determined that separate tolerances must be established for the tree nut crop group and pistachio because pistachio is not at this time included in crop group 14. The available data indicate that 0.05 ppm is an appropriate level for these tolerances.

The petitioner has proposed tolerances for combined residues of fluopyram and AE C656948-benzamide in egg; milk; the fat, meat, and meat byproducts of poultry; and the fat, liver, meat, and meat byproducts (except liver) of cattle, goat, hog, horse, and sheep. The estimated livestock dietary burden and available feeding study data indicate that most of the proposed tolerances for livestock commodities are too low. In addition, EPA no longer establishes separate tolerances for liver (it is accounted for in the meat byproducts of livestock animals). Based on the NAFTA calculator, the Agency recommended higher tolerances.

The revised registration permits crop rotation to alfalfa, cotton, canola, cereal grains (except rice), and soybean with certain restrictions. However, extensive field rotational crop data for these crops are not available. In the absence of sufficient rotational crop data, highly conservative target crop residue data were used for setting tolerance for rotational crops. The preference was to select an intermediate level between the confined accumulation/limited field rotational crop data and primary crop data for the target rotated crops so as to discourage potential misuse (i.e., direct foliar application) and provide adequate maximum residue levels for legal uses according to label instructions. Thus, pending extensive field rotational crop data, EPA recommends interim rotational crop tolerances be set at half of the calculated primary crop tolerances with a PBI of 30 days.

In addition, the Agency determined tolerances were not required for the following petitioned commodities: Beet, sugar, tops; corn, sweet, kernel plus cob with husk removed; grain, cereal, forage, fodder and straw, group 16, except rice, aspirated fractions; and soybean hulls, thus, these tolerances have been removed. Tolerances were not needed for the following reasons: the tolerance for the commodity corn, sweet, kernel plus cob with husk removed is covered under grain, cereal, group 15, except rice; Bayer withdrew their requests for tolerances for grain, cereal, forage, fodder and straw, group 16, except rice; aspirated fractions and soybean, hulls; and the sugar beet top tolerance was withdrawn because sugar beet tops are no longer considered a major livestock commodity.

Moreover, EPA is revising certain crop definitions (as proposed) for the following: almond, hulls; beet, sugar, roots; eggs; grain, cereal, group 15, except rice and sweet corn. The correct commodity terminology are almond, hull; beet, sugar, root; egg; and grain, cereal, group 15, except rice, respectively.

V. Conclusion

Therefore, tolerances are established for residues of fluopyram, in or on multiple commodities as shown in the codified text below.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 2, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.661 is added to subpart C to read as follows:

§ 180.661 Fluopyram; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide Fluopyram, *N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide, including its metabolites and degradates in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be

determined by measuring only fluopyram in or on the commodity.

Commodity	Parts per million
Almond, hull	8.0
Apple	0.30
Apple, wet pomace	0.60
Banana [1]	1.0
Bean, dry	0.09
Beet, sugar, root	0.04
Cherry	0.60
Grape, wine	2.0
Nut, tree, group 14	0.05
Peanut	0.02
Pistachio	0.05
Potato	0.02
Potato, processed potato waste	0.08
Strawberry	1.5
Watermelon	1.0

[1] There are no U.S. registrations.

(2) Tolerances are established for residues of the fungicide fluopyram, *N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide, including its metabolites and degradates. Compliance with the tolerance levels specified in the table below is to be determined by measuring only the sum of fluopyram and its metabolite, 2-(trifluoromethyl)benzamide, calculated as the stoichiometric equivalent of fluopyram, in or on the commodity.

Commodity	Parts per million
Cattle, fat	0.11
Cattle, meat	0.15
Cattle, meat byproducts	1.1
Egg	0.25
Goat, fat	0.11
Goat, meat	0.15
Goat, meat byproducts	1.1
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.70
Horse, fat	0.11
Horse, meat	0.15
Horse, meat byproducts	1.1
Milk	0.07
Poultry, fat	0.20
Poultry, meat	0.15
Poultry, meat byproducts	0.60
Sheep, fat	0.11
Sheep, meat	0.15
Sheep, meat byproducts	1.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* It is recommended that tolerances be established for indirect or inadvertent residues of fungicide fluopyram, *N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only fluopyram in or on the commodity.

Commodity	Parts per million
Alfalfa, forage	0.45
Alfalfa, hay	1.1
Canola, seed	1.8
Cotton, gin byproducts	0.05
Cotton, undelinted seed	0.01
Grain, cereal, forage, fodder and straw, group 16, except rice; forage	4.0
Grain, cereal, forage, fodder and straw, group 16, except rice; hay, straw and stover	7.0
Grain, cereal, group 15, except rice	1.5
Soybean, forage	4.0
Soybean, hay	15
Soybean, seed	0.10

[FR Doc. 2012–4321 Filed 2–23–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Technical Amendment

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

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective Date:* February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–8384; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

○ *252.212–7001* Revises the clause date and makes conforming changes to the dates of the DFARS clauses referenced in paragraphs (b)(20) and (c)(2) of the clause.

○ *252.227–7013* Revises the clause date and corrects paragraph numbers referenced in paragraphs (b)(2)(i)(A), (b)(4), and (b)(6) of the clause.

○ *252.227–7014* Revises the clause date and corrects paragraph numbers referenced in paragraphs (b)(4)(i) and (b)(6) of the clause.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended by removing the clause date ''(JANUARY 2012)'' and adding ''(FEB 2012)'' in its place, in paragraph (b)(20), removing ''(SEP 2011)'' and adding ''(FEB 2012)'' in its place, and in paragraph (c)(2), removing ''(SEP 2011)'' and adding ''(FEB 2012)'' in its place.

252.227–7013 [Amended]

■ 3. Section 252.227–7013 is amended by removing the clause date ''(SEP 2011)'' and adding ''(FEB 2012)'' in its place, in paragraph (b)(2)(i)(A), removing ''as provided in paragraphs (b)(ii) and (b)(iv) through (b)(ix) of this clause'' and adding ''as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause'' in its place, in paragraph (b)(4), removing ''enumerated in paragraph (a)(13) of this clause'' and adding ''enumerated in paragraph (a)(14) of this clause'' in its place, and in paragraph (b)(6), removing ''in accordance with paragraph (a)(13)'' and adding ''in accordance with paragraph (a)(14)'' in its place.

252.227–7014 [Amended]

■ 4. Section 252.227–7014 is amended by removing the clause date ''(MAR 2011)'' and adding ''(FEB 2012)'' in its place, in paragraph (b)(4)(i), removing ''enumerated in paragraph (a)(14) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(13)'' and adding ''enumerated in paragraph (a)(15) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(14)'' in its place, and in paragraph (b)(6), removing ''made in accordance with paragraph (a)(14)'' and adding ''made in

accordance with paragraph (a)(15)'' in its place.

[FR Doc. 2012–4319 Filed 2–23–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301205–0289–02]

RIN 0648–XA971

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Sub-Annual Catch Limit (ACL) Harvested for Management Area 1B

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that, effective 0001 hr, February 24, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Management Area 1B per calendar day until January 1, 2013, when the 2013 sub-ACL for Area 1B becomes available, except when transiting as described in this notice. This action is based on the determination that the revised Atlantic herring sub-ACL limit allocated to Area 1B for 2012 has been exceeded as of February 24, 2012.

DATES: Effective 0001 hr local time, February 24, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, (978) 675–2179.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring (herring) fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing limit, acceptable biological catch, ACL, optimum yield, domestic harvest and processing, U.S. at-sea processing, border transfer and sub-ACLs for each management area. The 2012 Domestic Annual Harvest was set as 91,200 metric tons (mt); the sub-ACL allocated to Area 1B for the 2012 fishing year (FY) was 4,362 mt and 0 mt of the sub-ACL was set aside for research in the 2010–2012 specifications (75 FR 48874, August 12, 2010). However, due to an over-harvest in Area 1B in 2010, the FY 2012 sub-ACL in Area 1B was revised to 2,723 mt through a final rule published concurrent with this action.

The regulations at § 648.201 require the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor the herring fishery in each of the four management areas designated in the Fishery Management Plan (FMP) for the herring fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95-percent of the management area sub-ACL. When such a determination is made, NMFS is required to publish notification in the **Federal Register** and prohibit herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 1B with more than 2,000 lb (907.2 kg) of herring on board is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information that the revised herring sub-ACL allocated to Area 1B for FY 2012 has been exceeded. As of February 15, 2012, herring harvest in Area 1B was 74-percent of the FY 2012 Area 1B sub-ACL. However, due to an over-harvest in Area 1B in FY 2010, a reduction to the sub-ACL in Area 1B from 4,362 mt to 2,723 mt was implemented in a final rule to adjust the FY 2012 herring ACL published elsewhere in this issue. As of February 15, 2012, herring harvest is Area 1B was 118-percent of the revised 2012 Area 1B sub-ACL. Therefore, this action reducing the herring possession limit in Area 1B is published concurrently with final rule implementing the revised FY 2012 herring sub-ACLs in Area 1B and 1A to minimize any further harvest of herring from Area 1B.

Effective 0001 hr local time, February 24, 2012, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring in or from Area 1B per calendar day through December 31, 2012. Vessels transiting Area 1B with more than 2,000 lb (907.2 kg) of herring on board may land this amount, provided such herring was not caught in Area 1B and provided all fishing gear aboard is stowed and not available for immediate use as required by § 648.23(b). Effective February 24, 2012, federally permitted dealers are also advised that they may not purchase herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 1B through 2400 hr local time, December 31, 2012.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This action closes the Atlantic herring fishery for Management Area 1B until January 1, 2013, under current regulations. The regulations at § 648.201(a) require such action to ensure that Atlantic herring vessels do not exceed the 2012 sub-ACL allocated to Area 1B. The Atlantic herring fishery opened for the 2012 fishing year on January 1, 2012. However, due to an over-harvest in Area 1B in FY 2010, a reduction to the sub-ACL in Area 1B from 4,362 mt to 2,723 mt was implemented in a final rule published elsewhere in this issue. As of February 15, 2012, herring harvest is Area 1B was 118-percent of the revised 2012 Area 1B sub-ACL. Therefore, this action reducing the herring possession limit in Area 1B will be published concurrent with a final rule implementing the revised FY 2012 herring sub-ACLs in Area 1B and 1A to minimize any further harvest of herring from Area 1B.

Because herring catch in Area 1B has already exceeded 95 percent of the revised 2012 sub-ACL (2,587 mt), triggering the need to implement a 2,000-lb (907.2-kg) possession limit in that area, if implementation is delayed to solicit prior public comment, then it will likely cause catch to further exceed the reduced Area 1B sub-ACL. Due to the high volume nature of the herring fishery, and the amount of herring already caught in Area1B for FY 2012, if implementation of this action is delayed, the reduced FY 2012 sub-ACL for Area 1B could be exceeded by a large amount. Any delay in this action's effectiveness would therefore, be contrary to the conservation objectives of the MSA and the Herring FMP.

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

Dated: February 21, 2012.

James P. Burgess,

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

[FR Doc. 2012–4356 Filed 2–21–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111207734–2119–02]

RIN 0648–BB50

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to 2012 Annual Catch Limits

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

ACTION: Final rule.

SUMMARY: This action reduces the 2012 annual catch limits (ACLs) for the Atlantic herring (herring) fishery to account for catch overages in 2010 and to prevent overfishing.

DATES: Effective February 24, 2012, through December 31, 2012.

ADDRESSES: Copies of supporting documents, the 2010–2012 Herring Specifications and Amendment 4 to the Herring Fishery Management Plan (FMP), are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. These documents are also accessible via the Internet at *http://www.nero.nmfs.gov.*

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic herring harvest in the United States is managed under the Herring FMP developed by the New England Fishery Management Council (Council), and implemented by NMFS, in 2000. The Council developed herring specifications for 2010–2012, which were approved by NMFS on August 12, 2010 (75 FR 48874). Although herring is not overfished and is not experiencing overfishing, the herring annual acceptable biological catch for fishing years 2010–2012 (106,000 mt) was reduced from previous years (145,000 mt in 2009) due to concerns about a retrospective pattern in the 2009 herring stock assessment that over-estimates biomass.

The stock-wide herring ACL (91,200 mt) is divided among three management areas, one of which has two sub-areas. Area 1 is located in the Gulf of Maine (GOM) and is divided into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank (GB). The herring stock complex is considered to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater control of the fishing mortality on each stock component. While the stock-wide herring ACL for 2010–2012 was not reduced below the 2008 catch level, the management area sub-ACLs were reduced from 2009 levels by 20 to 60 percent. The management area sub-ACLs established for 2010–2012 were: 26,546 mt for Area 1A, 4,362 mt for Area 1B, 22,146 mt for Area 2, and 38,146 mt for Area 3.

Amendment 4 to the Herring FMP (Amendment 4) (76 FR 11373, March 2, 2011) revised the specification-setting process, bringing the Herring FMP into compliance with ACL and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Under the FMP, if NMFS determines catch will reach 95 percent of the sub-ACL allocated to a management area or seasonal period, then NMFS prohibits vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip from that area or period. This AM slows catch to prevent or minimize catch in excess of a management area or seasonal period sub-ACL. As a way to account for ACL overages in the herring fishery, Amendment 4 established an AM requiring overage deductions. If the catch of herring in any given fishing year exceeds any ACL or sub-ACL, the overage will be deducted from the corresponding ACL/sub-ACL in the next full fishing year (e.g., an overage in FY 2010 will be deducted from the ACL/sub-ACL in 2012).

Fishing year 2010 was the first year that NMFS monitored herring catch against the recently reduced management area sub-ACLs. NMFS experienced difficulty determining when to implement the 2,000-lb (907.2-kg) possession limit in Area 1B because of a pulse of fishing effort in that area. NMFS had similar difficulties determining when to implement the reduced possession limit in Area 1A because catch rates were highly variable. Ultimately, catch from Areas 1B and 1A exceeded their allocations by 1,639 mt and 1,878 mt, respectively. These experiences demonstrated that more timely catch reporting was needed to better monitor catch against sub-ACLs and to allow catch to achieve, but not exceed, management area sub-ACLs. Therefore, in September 2011, NMFS revised vessels reporting requirements to obtain more timely catch reports (76 FR 54385, September 1, 2011). As a result of that rulemaking, limited access herring vessels are required to report herring catch daily via vessel monitoring systems, open access herring vessels are required to report catch weekly via the interactive voice response system, and all herring-permitted vessels are required to submit vessel trip reports (VTRs) weekly.

Final Adjustment to the 2012 Annual Catch Limits

In accordance with regulations at § 648.201(a)(3), this action deducts the 2010 overages from 2012 catch limits. Therefore, in 2012, the sub-ACL for Area 1A is revised to 24,668 mt (reduced from 26,546 mt) and the sub-ACL for Area 1B is 2,723 mt (reduced from 4,362 mt). The sub-ACLs for Areas 2 and 3 remain unchanged at 22,146 mt for Area 2 and 38,146 mt for Area 3. The methods for determining the final 2010 catch rates and subsequent 2012 adjustments were discussed in detail in the proposed rule and are not repeated here (76 FR 79610, December 22, 2011).

Comments and Responses

Six comment letters were received on the proposed rule for this action from the following: The Cape Cod Commercial Hook Fishermen's Association (CCCHFA); Cape Seafoods Inc./Western Sea Fishing Company; O'Hara Corporation/Starlight Inc. (a herring fishing organization); a fishing/environmental organization (CHOIR Coalition), the Herring Alliance (an environmental advocacy group); and a member of the public.

Comment 1: The CCCHFA supports reducing 2012 herring sub-ACLs in Areas 1A and 1B to account for catch overages in those areas in 2010, but it believes that the reductions should have been implemented in a timelier manner.

Response: The timing of this rulemaking is consistent with the overage deduction AM implemented in Amendment 4 that once the total catch of herring for a fishing year is determined, using all available information, any ACL or sub-ACL overage results in a reduction of the corresponding ACL/sub-ACL the following year. Therefore, the catch overages in Areas 1A and 1B in 2010, are being deduced from the 2012 Area

1A and 1B sub-ACLs. The proposed rule explained that both Federal and state dealer data are used to compile final catch; final state data became available in September, and 2010 herring data were finalized November 25, 2011; this action deducts 2010 overages as soon as is possible.

Comment 2: The Herring Alliance and CHOIR Coalition both expressed support for reducing 2012 herring sub-ACLs in Areas 1A and 1B to account for 2010 catch overages in those areas. However, CHOIR Coalition and the Herring Alliance believe 2010 overages should have been deducted from 2011 sub-ACLs, rather than waiting until 2012, and that this action is only a step toward bringing accountability to the herring fishery. Additionally, the Herring Alliance, CHOIR Coalition, and CCFHA commented that overages accrued in 2010, underscore the need for a more comprehensive catch monitoring and reporting system, including a third party monitoring system, evident by sub-ACLs overages and data issues with the herring landings reported by vessels and dealers (e.g., missing VTRs, missing dealer reports, discrepancies between vessel and dealer reports).

Response: As explained in the proposed rule, 2010 herring data were not finalized until November 25, 2011. Given the timing of data availability and the need to provide the herring industry with notice of catch limit changes, this action deducts 2010 overages as soon as is possible. While the sub-ACLs for Areas 1A and 1B were exceeded, total herring catch in 2010 (72,852 mt) did not exceed the stock-wide ACL of 91,200 mt. According to the MSA, ACLs must be set at a level that prevents overfishing. The sub-ACLs overages in 2010 did not result in overfishing, therefore, the current AMs are sufficient. As NMFS reviewed the 2010 herring data, and compared individual VTRs with individual dealer reports, it resolved data errors resulting from misreporting. Because the quality of inseason data could be affected by misreporting, NMFS strongly encourages vessel owner/operators and dealers to double check reports for accuracy and ensure reports are submitted on a timely basis. However, because NMFS resolved data reporting issues as part of the 2010 review, data issues did not negatively affect 2010 data. For these reasons, NMFS does not believe there is a significant failure of the current catch reporting system, and that the current catch reporting system fulfills the requirements of the MSA. Additionally, the Council is considering changes to catch reporting and monitoring for the herring fishery in Amendment 5 to the Herring FMP (Amendment 5), currently scheduled for implementation in 2013, and those changes have the potential to further improve the catch monitoring system for the herring fishery.

Comment 3: The Choir Coalition urged NMFS to ensure that Amendment 5 implements a third-party monitoring system for the herring fishery.

Response: While the Council did consider third-party monitoring of herring catch in developing Amendment 5, that alternative was ultimately rejected by the Council and is no longer under consideration in Amendment 5.

Comment 4: The Herring Alliance criticized the methodology used by NMFS to calculate a discard estimate for the herring fishery. The Herring Alliance believes that discards coded as ''fish not known (fish nk)'' contain substantial amounts of herring, while acknowledging that these discards also likely contain fish other than herring. When calculating a herring discard estimate, the Herring Alliance recommended that NMFS assume all ''fish nk'' discarded from limited access herring vessels are herring and that the fleet-wide estimate of discarded ''fish nk'' should be added to the discard estimate of herring to calculate total herring discards in 2010.

Response: NMFS calculated 2010 herring discards by dividing the amount of observed herring discards (''herring'' and ''herring not known (herring nk'')) by the amount of all observed fish landed. That discard ratio was then multiplied by the amount of all fish landed for each trip to calculate total amount of herring discards in 2010. If an observer verifies that fish are Atlantic herring, those fish are coded as ''herring.'' If an observer verifies that fish are a type of herring but cannot verify species of herring, those fish are coded as ''herring nk.'' If an observer cannot verify species identification on catch that is discarded, that discard event is coded by observers as ''fish nk.'' Because the discards coded as ''fish nk'' likely contain species other than herring, NMFS believes it is not appropriate to count those discards against herring management area sub-ACLs. When developing the discard methodology, NMFS consulted with the Council's Herring Plan Development Team (PDT), which concurred that the discard estimate for the herring fishery should be calculated based on the amount of observed ''herring'' and ''herring nk'' and that it should not include discards coded as ''fish nk.'' In accordance with Amendment 4, NMFS will be annually determining catch (landings and discards) in the herring fishery and evaluating that catch against management area sub-ACLs. Additionally, the Council is considering changes to catch reporting and monitoring for the herring fishery in Amendment 5. As more information is known about catch in the herring fishery, the methodology to calculate herring landings and discards can be revised, as appropriate.

Comment 5: The herring fishing organizations (Cape Seafoods Inc./Western Sea Fishing Company, O'Hara Corporation/Starlight Inc.) raised concerns about the common vessel and dealer reporting errors described in the proposed rule. They expressed frustration that they make every effort to report accurately and wondered why NMFS is not doing more to resolve reporting errors.

Response: NMFS reviews vessel and dealer data inseason and works to resolve reporting errors as soon as possible by comparing vessel and dealer data and contacting either the vessel or the dealer if data are questionable. The list of common reporting errors was included in the proposed rule to help make industry aware of the reporting issues that NMFS is seeing in the data and, ultimately, to minimize the number of reporting errors that need to be resolved. NMFS will continue to work with herring industry members to ensure that herring catch information is being accurately reported and any data errors are corrected in a timely manner.

Comment 6: The herring fishing organizations also both disagreed with NMFS's conclusion that the economic effects of this action are anticipated to be minimal because the reduction is relatively minor and herring vessels generate most of their revenue in other fisheries. The commenters stated that, while some vessels with herring permits generate most of their income from other fisheries, most of the herring harvest is caught by only a few vessels that rely on herring revenue as the primary, and sometimes only, source of fisheries revenue.

Response: As described in the proposed rule, Amendment 4 analyzed the effects of deducting overages. Since deductions are the same magnitude as the overages, there is no overall change to the amount of fish available for harvest. Therefore, if participants are active in the fishery during the overage year and the deduction year, the total economic impact on participants is neutral across years. Additionally, NMFS reviewed 2010 economic data to further evaluate the economic effect of this action. In 2010, herring revenue averaged 20 percent of total fisheries

revenue for limited access vessels (44 percent for Category A vessels, 13 percent for Category B vessels, 3 percent for Category C vessels) and less than 1 percent of total fisheries revenue for open access vessels. Total herring revenue in 2010 equaled approximately $18.8 million for limited access vessels, and $150,000 for open access vessels. Absent the sub-ACL reductions in Areas 1A and 1B, the total potential herring revenue in 2012 is estimated to be $26.4 million. The sub-ACL reductions in Areas 1A and 1B would reduce the total potential herring revenue by 4 percent in 2012. While this action reduces the amount of fish available for harvest, both the fishery-wide and individual-vessel economic effects are anticipated to be minimal, because the reduction is relatively minor and the majority of herring vessels generate most of their revenue participating in other fisheries. There are a small number of herring vessels that generate a large percentage of their revenue from herring catch, and the herring fishing organizations are correct in that fishery participants who typically harvest a large percentage of the herring ACL may be more affected than others by the 2012 reductions. However, since the reduction in the ACL for FY 2012 is relatively small on an individual vessel basis, the economic impacts of this reduction will not be significant, nor will it affect a substantial number of small entities.

Comment 7: A member of the public supports reducing the 2012 herring sub-ACLs, but believes NMFS is not doing enough to protect marine fish stocks.

Response: For the reasons explained in this rule, NMFS has reduced the herring sub-ACLs in Areas 1A and 1B for the 2012 fishing year.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the herring fishery and that it is consistent with the MSA and other applicable law.

The National Environmental Policy Act (NEPA) analysis to support this action was completed in Amendment 4 (76 FR 11373, March 2, 2011). A copy of the NEPA analysis is available upon request (see **ADDRESSES**).

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this rule and establish the date of publication in the **Federal Register** as the effective date for this action because delaying the effectiveness of the rule is contrary to the public interest and impracticable. This action reduces the 2012 herring sub-ACLs in Areas 1A and 1B account for catch overages in 2010 and to prevent overfishing. The 2012 herring fishing year began on January 1, 2012, and sub-ACLs for each management area were already in place as specified by the 2010–2012 herring specifications. The regulations at § 648.201(a) require implementing a 2,000-lb (907.2-lb) possession limit in a management area if herring catch in that area is projected to reach 95-percent of that area's sub-ACL. This accountability measure helps ensure that herring catch does not exceed a management area sub-ACL. As of February 1, 2012, herring catch in Area 1B is 2,932 mt, which is 67-percent of the original sub-ACL specified for Area 1B, and 107-percent of the reduced 2012 sub-ACL. Because herring catch in Area 1B has already exceeded 95 percent of reduced 2012 sub-ACL (2,587 mt) implemented in this action, triggering the need to implement a 2,000-lb (907.2-kg) possession limit in that area, any delay in this action will likely cause catch to further exceed the reduced Area 1B sub-ACL. Due to the high volume nature of the herring fishery, and the amount of herring already caught in Area 1B for the 2012 fishing year, if implementation of this action is delayed, the reduced 2012 sub-ACL for Area 1B could be exceeded by a large amount, thereby undermining the purpose and focus of the rule, which seeks to prevent overfishing as required by the MSA. Accordingly, any delay in the rule's effectiveness would be contrary to the conservation objectives of the MSA and the Herring FMP.

This final rule has been determined to be not significant for purposes of Executive Orders 12866 and 13563.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS received two comments on this certification. The comments are addressed in the response to comments section above, and the certification remains unchanged from the proposed rule. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

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

Dated: February 21, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administratorv for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–4358 Filed 2–21–12; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 77, No. 37
Friday, February 24, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Parts 211 and 235

RIN 0584–AD96

Fresh Fruit and Vegetable Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the basic requirements for the operation of the Fresh Fruit and Vegetable Program (FFVP) in conformance with the Richard B. Russell National School Lunch Act. It would set forth administrative and operational requirements for FFVP operators at the State and local levels. The intent of these provisions is to ensure that the FFVP encourages the consumption of fresh fruits and vegetables by elementary school children, thus improving their dietary habits and long-term health.

DATES: To be assured of consideration, comments on this proposed rule must be received by the Food and Nutrition Service on or before April 24, 2012.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302, (703) 703–305–2590.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identities of the individuals or entities submitting the comments will be subject to public disclosure. All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jim Herbert, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302; telephone: (703) 305–2572.

SUPPLEMENTARY INFORMATION:

Background

The FFVP began as a pilot program funded by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) to determine the best practices for increasing fruit (both fresh and dried) and fresh vegetable consumption in schools. The pilot program limited participation to a maximum of 25 schools per state. Selected primary and secondary schools in Indiana, Ohio, Michigan, Iowa and the Zuni Tribe of New Mexico participated in the pilot and were provided funds to purchase and serve free fruits and vegetables during school year 2002–2003. An evaluation conducted after the first year of operation disclosed that schools considered the pilot to be a success and wanted to continue the Program beyond the pilot if funding were provided. The pilot demonstrated student acceptance and interest in fresh fruit and vegetable consumption.

The pilot's success led to expansion of the FFVP. Congress viewed the continuation and expansion of the pilot as a positive step to combat childhood overweight and obesity. The Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) added Pennsylvania, North Carolina, Mississippi, and Washington, and two Indian Tribal Organizations in South Dakota and Arizona starting in school year 2004–2005. In addition, the Reauthorization Act of 2004 permanently authorized the FFVP in those States by adding section 18(g), the Fresh Fruit and Vegetable Program, to the Richard B. Russell National School Lunch Act (NSLA). Section 18(g) required, to the maximum extent practicable, the selection of low-income schools and established the statutory requirements for FFVP operation.

In 2006, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act (Pub. L. 109–97), provided one-time funding to further expand the FFVP to Utah, Wisconsin, New Mexico, Texas, Connecticut and Idaho for one year. Subsequently, the Consolidated Appropriations Act of 2008 (Pub. L. 110–161) provided one time funding to expand the FFVP to add non-participating States, allowed FNS to reallocate recovered FFVP funds from previous years and for the first time provided funds for the Federal administration of the FFVP.

The Food, Conservation and Energy Act of 2008 (Pub. L. 110–234), also known as the Farm Bill, continued the Program and, most significantly, permanently authorized the FFVP as a nationwide program. In addition, other important changes were also made to the FFVP. It eliminated references to the FFVP in section 18(g) of the NSLA and transferred the program authorization and all operational procedures to section 19 of the NSLA. It established selection criteria, requiring State agencies to conduct outreach to schools serving low income students and to select those schools with the highest number of students certified for free or reduced-price meals for participation in the FFVP. It also provided a significant funding increase, established a funding formula, and, for the first time, provided funds for States to administer the FFVP. The statute also made dried fruit ineligible to be served in the Program. Prior to the 2008 Farm Bill, the FFVP was available to secondary schools. The 2008 Farm Bill limited program participation to elementary schools beginning in school year 2010–2011. Additionally, the number of schools that a State agency can select to participate in the FFVP is no longer limited to 25 schools per state as was required in the pilot program and subsequent legislation. The Program continues to operate on a reimbursement basis and many of the responsibilities of the State agencies remain the same.

Based upon the record of continued support and expansion of the FFVP, the Program is highly regarded by Members of Congress, nutrition advocates, the health care community, parents and students. It is perceived as an effective strategy to help school children develop positive dietary habits during their

formative years. The Program is also of interest to farm to school advocates because it provides opportunities to link schools with local farms and increase children's access to fresh fruit and vegetables in schools. Most children do not achieve the recommended intakes of fruits and vegetables. Fruits and vegetables provide a variety of micronutrients and fiber and, therefore, are one of the key food groups emphasized by the 2010 Dietary Guidelines for Americans to maintain overall health and reduce the risk of chronic diseases, overweight and obesity.

The Farm Bill directed FNS to conduct an evaluation of the FFVP. The principle objectives of this evaluation are to determine whether children increase consumption of fruits and vegetables as a result of their participation in the FFVP and experience other dietary changes, such as a decrease in the consumption of less nutritious foods, as a result of their FFVP participation. Additionally, the evaluation will look at FFVP implementation and assess the role that additional factors—such as characteristics of schools selected for the program, method of fruit and vegetable distribution, level and role of nutrition education, etc.—may have with regard to the FFVP's impact on the dietary intake of participating children. An interim evaluation report was delivered to Congress in September.[1] That report finds that students consume an additional ¼ cup of fruits and vegetables, on average, on days when the program is operating. That is nearly 15 percent higher than average fruit and vegetable consumption of children in non-FFVP schools. In addition, the report finds no statistically significant increase in total calorie consumption by program participants. That finding suggests that fruits and vegetables are replacing other foods in the diets of participating children, rather than adding excess calories. The report is available on the FNS Web site at *http://www.fns.usda.gov/ora/MENU/Published/CNP/cnp.htm.*

Major Provisions of the Proposed Rule

This proposed rule reflects the statutory requirements found in section 19 of the NSLA and the policy memoranda issued by FNS to implement the changes prompted by the 2008 Farm Bill. Although the statutory requirements are already implemented, this proposed rule would set forth the regulatory requirements which will be codified upon adoption of a final rule. This preamble also discusses a few additional parameters established by FNS to ensure that the FFVP is administered similarly to the National School Lunch Program (NSLP) and School Breakfast Program (SBP), when appropriate, and in accordance with applicable Federal requirements.

This proposed rule would establish requirements for the administration and operation of the FFVP consistent with section 19 of the NSLA. FNS is seeking public comments that will help the agency establish regulatory requirements that reflect the intent of the law and are feasible for States and local program operators. Following the public comment period, FNS will issue a final rule to codify the program requirements in Title 7, Part 211 of the Code of Federal Regulations. While the rulemaking process is underway, State and local operators must continue to follow implementation memoranda and guidance materials issued by FNS based on section 19 of the NSLA.

Program Administration

Addendum to the Federal/State Agreement

The FFVP is administered by FNS in collaboration with the State agencies responsible for the NSLP. In cases in which the State agency is not permitted by their State law to disburse funds paid to it under the Richard B. Russell National School Lunch Act (42 U.S.C. 1759), administration of the Program shall be in accordance with § 210.3 of the NSLP regulations. Section 211.3(b) of this proposed rule would require each State agency to amend its permanent Federal/State agreement to include administration of the FFVP. State agencies may use the prototype addendum in FNS memorandum SP 31–2008, which was issued to the State agencies on July 11, 2008. The FFVP would be administered by the State agencies as the NSLP and the SBP are administered. Unlike the pilot, during which State agencies worked directly with participating schools, this proposed rule requires that the State agencies work with School Food Authorities (SFAs) that are charged with administering the FFVP in the State. SFAs would be responsible for administering the program in their participating schools, including training such schools in the requirements of the Program as well as approving, consolidating and submitting monthly reimbursement claims to the State agency for all participating schools, as they do in the NSLP and the SBP.

Funding

Program funding is available to all State agencies on a school year basis to reimburse school food authorities for the service of fresh fruit and vegetables in selected elementary schools. Section 19 of the NSLA provides funding as follows: $101 million for school year 2010–2011; and $150 million for school year 2011–2012. For the subsequent school years, funding is based on the amount received in the preceding year, adjusted to reflect changes in the Consumer Price Index for the 12-month period ending the preceding April 30. Funds for Federal administration of the Program ($500,000) are deducted from the available funding before allocating funds to each State agency.

The amount received by each State agency is based on the funding formula established in section 19 of the NSLA, which provides a minimum annual grant of 1 percent of the available funds to each State and the District of Columbia. Remaining funds are allocated to each State, the District of Columbia, Guam, Puerto Rico and the Virgin Islands based on the percentage of their population in relation to the United States total population. In States in which FNS administers the program in some or all schools, FNS shall have available applicable funds to administer and operate the program. In terms of administrative funds, it is proposed that for FNS Regional Office Administered Programs (ROAPs), funding for the FFVP would be determined by the proportion of the number of schools participating in the FFVP administered by the State agency compared to the number of schools participating in the FFVP administered by the FNS Regional Office. The funding provisions are in § 211.4 of the proposed regulatory text.

Under the proposed rule, each State agency would determine how to administer the FFVP within its existing personnel structure, workload, and other factors. A State agency would be allowed to set aside a portion of their total annual grant to cover the cost of State agency administration of the Program. As stated in § 211.6 of the proposed regulatory text, such an amount would be the lesser of 5 percent of the State agency's total FFVP funding for the school year *or* the amount required to pay the cost of one full-time coordinator for the Program, as included in the language of the Farm Bill. These options are intended to assist the State agency in developing a reasonable estimate for State agency costs of administering the FFVP. However, the

[1] Lauren Olsho, Jacob Klerman, and Susan Bartlett, *Food and Nutrition Service Evaluation of the Fresh Fruit and Vegetable Program (FFVP): Interim Evaluation Report.* Abt Associates, September 2011. *http://www.fns.usda.gov/ora/MENU/Published/CNP/cnp.htm.*

statute does not require that the State agency employ a full-time program coordinator. The amount of funds required for State administrative costs would have to be determined prior to selecting schools or allocating FFVP funds for schools. A State agency would also have the option of retaining no FFVP funds for State administrative costs, or may retain less State administrative funding than the formula allows, in order to increase the availability of Program funds for the purchase of fresh fruits and vegetables by the schools. In addition, this rule proposes to amend 7 CFR part 235, State Administrative Expense Funds, to allow the use of SAE funds for the administration of the FFVP. The FFVP is an eligible program, since it is authorized under the NSLA. If such funds are used for the administration of the FFVP, all necessary requirements for the use of such funds shall be followed in accordance with 7 CFR part 235.

To enable State agencies to administer the Program on a fiscal year basis, like other Child Nutrition Programs, FNS would provide Program funds in two allocations on or around July 1st and October 1st of each year. The July allocation would be a small portion of each State's total allocation and would reflect what the State and schools anticipate that they will expend or obligate for the first quarter of the school year. The October allocation would consist of the remaining balance of the State's grant. States would be required to expend or obligate the July and October allocations by the following September 30. For example, funds allocated to the States on July 1, 2011 would have to be obligated or expended by September 30, 2011 (the following September 30). Subsequent funds allocated in October of 2011 shall be obligated or expended by the following September 30, 2012. A state's unobligated funds would be returned to the Program and reallocated at a later date. . The provisions on funding allocation are found in § 211.5 of the proposed regulatory text.

As provided by statute, each State agency will determine the distribution of funds to each school and provide Program funding to those schools through the SFAs. Each school selected to participate in the FFVP would be allotted funds based on a per-student amount. As required by the statute, funding for participating schools must equal an amount of no less than $50 and not more than $75 per child per school year. Schools would be required to submit expenditure data to the SFA. SFAs would be required to consolidate school expenditure information and submit their claims for reimbursement to the State agency on a monthly basis.

As provided in § 211.5(a)(1)(iii) and § 211.5(a)(2)(ii), respectively, participating SFAs must ensure that funds are allocated to participating schools for the school year and any unobligated or unspent funds will be recovered for reallocation in a future school year.

Outreach to Schools Serving Low Income Children

Prior to selecting schools for participation in the Program, section 19 of the NSLA requires that each State agency conduct outreach to schools serving the highest percentage of children certified for free and reduced price meals. Outreach would be conducted on a schedule that would enable the school application and selection processes to be completed in a timely manner to ensure that the selected schools are able to offer the Program at the start of the school year.

It is recognized that available funding may not be sufficient to institute the FFVP in each of the schools that have a student population where at least 50 percent of the enrolled students are certified eligible for free or reduced price school meals. Since the statute requires that participation priority be given to schools serving the highest percentage of free and reduced price certified students, State agencies should rank their schools starting with those at which 100 percent of the students are certified for free and reduced-price meals down to those in which 50 percent of the students are certified for free and reduced-price meals in order to actively target the most needy schools. In States in which FNS operates Regional Office Administered Programs (ROAPs), it is proposed that the State agency coordinate the ranking of schools with FNS to determine the number of ROAP schools that may be eligible for the FFVP in the State and for which outreach activities shall be targeted. States may actively target those elementary schools with the highest need to encourage participation in the Program. States that have more low-income elementary schools than could possibly be funded may choose to contact only those schools with the highest documented need. Schools with fewer than 50 percent of their students certified for free and reduced-price meals that meet the other FFVP eligibility criteria would only be considered for participation in the Program after all schools with higher documented percentages of free and reduced price student populations that applied for FFVP have been selected for participation in the Program. Section 211.10(c)(2) proposes that such schools must be ranked in order of the percentage of free and reduced price certified students that they serve and be selected for participation in the FFVP on that basis.

Targeting schools with the highest need is one of the key statutory requirements in section 19 of the NSLA. Compliance with this requirement is nondiscretionary. This statutory requirement cannot be waived to give all schools in a State an equal chance to participate in the Program or to avoid restricting the Program to a few areas. Requiring outreach to schools that serve low income children is feasible because State agencies have access to the free and reduced-price data from all participating SFAs and should be able to easily target the elementary schools with the highest need. The SFAs may assist the State agencies with this outreach process. The outreach provision is found in § 211.10 of the proposed regulatory text.

School Selection

The intent of Congress to target Program participation to those elementary schools that serve the highest percentage of low income students precludes the use of a competitive process for selecting schools for participation in the FFVP. State agencies would be required to use the criteria specified in § 211.10 to select schools for participation in the Program. An inadequate or incomplete application from a school with a high free and reduced price certified enrollment may not be a reason to reject an application from such a school. As part of the outreach effort, a State agency would be required to assist eligible schools in meeting the application requirements for participation. However, SFAs or schools that have been documented as being deficient in managing FNS programs or there have been administrative findings documenting violations of the requirements of any FNS programs shall not be authorized to operate the FFVP.

Each State agency would be responsible for ensuring that the FFVP reaches elementary schools with the highest percentage of students certified as eligible for free and reduced-price meals. This is a key, nondiscretionary selection criterion that ensures that Program benefits are targeted in accordance with Congressional intent.

In order to determine the number of elementary schools that can be funded each year, section 19 of the NSLA requires State agencies to establish a per-student allocation. As required by

law, the per-student allocation shall not be less than $50 or more than $75 per school year. The State agency would be allowed to set a different per-student allocation for participating schools provided that the amount allotted per student is within the $50–$75 range established by law and the rationale for the differing allocations can be provided. In States in which FNS administers the program, ROAP schools in the State must be included when establishing such per-student funding allocations.

In summary, a State agency would need to consider the following criteria when selecting schools for participation in the Program:

- Only elementary schools that offer the NSLP may participate in the FFVP;
- Eligible schools must have at least 50 percent or more of their students certified as eligible for free and reduced-price school meals, except for those situations provided for in § 211.10(c)(2);
- Priority must be given to elementary schools with the highest need based upon the percentage of free and reduced-price children;
- Schools must submit an application for participation in the FFVP; and
- Schools must not have been documented as being deficient in managing any FNS program or there are no outstanding administrative findings documenting violations of the requirements of any FNS program.

Claims for Reimbursement

Prior to submission of a consolidated claim for reimbursement to the State agency, the SFA would review the FFVP expenditure information submitted to them by the participating schools to ensure that the FFVP expenses submitted by the schools are allowable. SFAs are required to maintain appropriate records to substantiate the claims submitted for reimbursement. As stated in § 211.9 of the proposed regulatory text, upon review, the State agency would be able to disallow payment for unallowable costs or disallow any claim that is otherwise inconsistent with the Program requirements.

Program Assistance and Monitoring

Other State agency functions would involve standard procedures found in all Child Nutrition Programs designed to ensure efficiency and integrity. As stated in § 211.14 of the proposed regulatory text, the State agency would be required to provide training and technical assistance to enable schools to operate the Program correctly. The State agency would review a participating school in conjunction with any administrative review or oversight activity they may conduct under the NSLP or SBP. FNS intends to provide guidance to facilitate State agency reviews of the FFVP.

Since the FFVP is a relatively simple program and FNS has already provided ample technical assistance and guidance through memoranda, conference calls, webinars and annual conferences, we expect minor need for corrective action and anticipate that technical assistance will suffice in most cases. However, this proposed rule would give the State agency authority to withhold payment and to suspend or terminate a school's participation in the FFVP due to repeated failure to meet Program requirements. See § 211.15 and § 211.16 of the proposed regulatory text.

Reporting and Recordkeeping

The State agency would be required to submit an annual report disclosing the number of schools that applied and the number of schools selected, the enrollment and percentage of free and reduced-price participation for each selected school as well as the per student allocation being made to each selected school. In addition, the State agency must provide the number of schools that applied for participation and were not selected and the percentage of certified free and reduced price eligible students served by such schools. This information would demonstrate that the Program is reaching schools with the highest need. The State agency would also be required to submit a quarterly financial status report (currently the SF–425) via the Food Programs Reporting System (FPRS). The SF–425 has been designated in FPRS for the FFVP. A final financial status report (SF–425) would also be submitted for each fiscal year. State agency recordkeeping retention requirements would be for the same period of time required in the NSLP, i.e., a minimum of three years. The proposed reporting and recordkeeping provisions are in § 211.11 of the proposed regulatory text.

Program Operation

Agreement With State Agency

An SFA is responsible for the operation of the FFVP in schools within its jurisdiction. SFAs would enter into a written agreement, or amend an existing written agreement, with the State agency to offer the FFVP in the selected schools in conformance with the requirements established by law, regulations and FNS guidance that reflects current program operations. As part of the agreement, the SFA would commit to using funds primarily for the purchase of fresh fruits and vegetables, offering the Program separately from the NSLP and SBP at a minimum of twice a week, but as frequently as possible during the school week and integrating the Program with other wellness activities. These and other responsibilities that would be included in the agreement are listed in § 211.10 of the proposed regulatory text. The State agency would have authority to amend, suspend or terminate the agreement if an SFA or a school repeatedly fails to operate the Program in accordance with the provisions of the agreement and/or the requirements of this part.

School Application

Eligible schools that wish to participate in the Program would be required to submit an application through the SFA. Such applications shall be submitted by the SFA to the State agency for FFVP approval. At a minimum, the application submitted to the State agency shall contain the following information for each school applying for Program participation:

- The total number of students enrolled in the school and the percentage of those students certified as eligible for free and reduced-price meals;
- A certificate of support for participation in the FFVP signed by all of the following: (1) The school food manager, (2) the school principal, and (3) the district superintendent (or equivalent position); and
- A program implementation plan that includes efforts to integrate the FFVP with other efforts to promote children's health, nutrition and physical activity, and to reduce overweight and obesity in children.

In addition, as a part of the implementation plan, each school would be encouraged to include a description of partnership activities undertaken or planned to enhance the operation of the FFVP in the school. FNS has developed an on-line FFVP Toolkit for States to submit ''Best Practices''. Both the toolkit and the FFVP Handbook may be found at *http://www.fns.usda.gov/cnd/FFVP/toolkit.htm* and at *http://www.fns.usda.gov/cnd/FFVP/handbook.pdf*.

Schools are encouraged to develop partnerships with one or more entities that can provide non-Federal resources to the FFVP operating in the school. Such entities could include representatives of the fruit and vegetable industries, grocery stores, local colleges and universities and local health

promotion resources. The FFVP handbook specifically encourages schools to use training materials and develop partnerships with all entities to promote the goals of program.

SFAs submitting information on behalf of schools reapplying to the Program based on their continued high need would be allowed, at the discretion of the State agency, to simply update the information the State agency has on file rather than submit a complete application package. This would simplify the application process for the SFA, the returning school and the State agency. However, SFAs wishing to add new schools to the Program would be required to submit a complete application for such schools that include all of the required elements noted above.

Schools that demonstrate both compliance with the FFVP requirements outlined in the regulations and continue to meet the Program eligibility requirements may be reapproved to continue FFVP participation. However, this does not eliminate the need for the State agency to evaluate FFVP eligibility priority for schools on an annual basis to ensure that schools serving the highest percentage of free and reduced price certified students are provided the opportunity to participate in the FFVP, in accordance with the eligibility criteria established by statute.

Publicizing the FFVP in School

Once selected for participation, a school would be responsible for announcing the availability of free fresh fruits and vegetables to children within the school. If the school has a Head Start program, a split-session kindergarten class, or a child care center, the school would notify these groups as well. When publicizing the Program, it is important that schools note that the FFVP is *not* intended to serve teachers, parents or other adults who are in the school. The only exception to this prohibition against serving FFVP components to adults who are in the school concerns specific teachers. It is proposed that it be acceptable for teachers who are in the classroom with the children during the FFVP service to partake of the fruit or vegetable being served to the children in order to reinforce the nutrition education message of the FFVP. Anecdotal information acquired through the operation of the FFVP indicates that teachers provide a positive role model if they consume fruits and vegetables with their students. However, no additional funding for the service of such components may be claimed for reimbursement by the SFA or participating schools.

Program Operation

Each school selected to participate in the FFVP would have the flexibility to operate the Program within the basic statutory and regulatory requirements and FNS guidance. Each school would decide when, where, and how to serve the fresh fruit and vegetables, what mix of fresh fruits and vegetables to serve, how to involve teachers, parents and community members, how to incorporate nutrition education, how to publicize the availability of free fruits and vegetables, and other Program logistics. The actual operation of the Program would have to be consistent with the agreement between the SFA and the State agency, as described in § 211.10 of the regulatory text.

Although Congress funded the FFVP on a school year basis, we expect that the actual service of fresh fruits and vegetables in schools will begin when school begins for the students and end by June 30th. Schools would be expected to offer the Program during the entire school year (first to last day of school) to effect a positive change in the dietary habits of participating students. Schools that operate year-round may participate in the FFVP during their entire ''school year''. However, schools are not allowed to offer the Program during scheduled holidays, summer school sessions or when the Summer Food Service Program or the Seamless Summer option of the NSLP is in operation at the school.

Participating schools would be required to make the fresh fruits and vegetables available during the school day, separate and distinct from the NSLP and SBP meal service, at one or more locations in the school. This rule also proposes that such a food service would occur in each participating school at least twice a week. The Program would not operate before or after school hours. The school would also need to consider the time and place available to eat the fruits and vegetables and other logistical issues. The FFVP tool kit (*http://www.fns.usda.gov/cnd/FFVP/toolkit.htm*) encourages the collection of ''Best Practices'' and the FFVP manual (*http://www.fns.usda.gov/cnd/FFVP/handbook.pdf*) provides a number of suggestions in this area.

Food Eligible To Be Served in the FFVP

The purpose of the Program is to encourage the increased consumption of fresh fruits and fresh vegetables in elementary schools serving low income students. Schools participating in the Program would provide access to fresh fruits and fresh vegetables that are appropriate for the grade levels of the enrolled children and that represent a variety of whole or pre-cut fresh fruits and vegetables. Frozen, canned, dried, certain types of vacuum packed and other types of processed fruits and vegetables would be prohibited from being served in the FFVP. In addition, schools would be required to limit the service of cooked fresh vegetables to a maximum of one service per week as part of a nutrition education lesson. Other ingredients of the cooked fresh vegetable dish would not be reimbursable under the Program. Low fat or non-fat dip for fresh vegetables is permitted in the Program in order to encourage consumption and enhance acceptability. Many vegetables may otherwise not be palatable to students. However, fruit is acceptable on its own and does not need to be enhanced for acceptability. Since fruit has naturally occurring sugar, we determined that dips for fruit will increase not only sugar but fat in children's diets and would be counterproductive to the goals of the Program.

The definition of the term ''Fresh fruits and vegetables'' as proposed in this rule has been based upon the definition of the term ''fresh'' included in § 101.95(a) of Title 21 Part 101 of the Food and Drug Administration Food Labeling regulations as well as an adaptation of FNS' approach to defining ''unprocessed'' agricultural products appropriate to the FFVP. We believe that this proposed definition best represents the types of fresh fruits and vegetables that Congress intended to be served to children enrolled in this Program. The proposed definition is included in § 211.2.

As required in § 211.21 of this proposed rule, the requirements found in § 210.10(g) of the NSLP regulations regarding accommodations for children with disabilities also exists in the FFVP. Schools must consider how this accommodation requirement may be applied in the operation of the FFVP. For example, in providing accommodations for the FFVP, schools may have to provide texture modifications. In doing so, it is recommended that schools consider starting with fresh fruit or vegetable products and avoid puréeing canned, frozen and vacuum packed fruits and vegetables and those in jars, including baby foods. In most instances, fresh fruits can be easily puréed; however, we recognize that this is not the case for most vegetables. Fresh vegetables may be used, but in most circumstances, will need to be cooked, then puréed.

The puréeing of fresh produce for these students must be done within the constraints of their medical requirements as allowed by their physician. However, schools should make sure that both the parent and the child's doctor are aware of the program and its intent to provide fresh produce in order to determine if the fresh items are acceptable choice for texture modifications.

Geographic Preference

Section 4302 of Public Law 110–246, the Food, Conservation, and Energy Act of 2008, amended section 9(j) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(j)) to require the Secretary of Agriculture to encourage institutions operating all Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. We initially implemented the provisions through policy memoranda and explanatory question and answer communications dated January 9, 2009, July 22, 2009 and October 9, 2009. Most recently, a final rule entitled ''Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs'', was published at 76 FR 22603 on April 22, 2011.

The geographic preference procurement option is applicable to purchases made in the FFVP. However, this provision shall only be applied within the context of the FFVP requirement that produce utilized in the program be *fresh.* The definition of ''unprocessed agricultural products'' in this proposal has been modified from the definition used for the rest of the Child Nutrition Programs since the geographic preference provisions of the Food, Conservation, and Energy Act of 2008 do not change the basic regulatory and statutory requirement that only *fresh* produce is allowed to be purchased in the FFVP. This definition may be found in § 211.13(b).

By utilizing the statutorily established geographic preference option in Child Nutrition Programs, purchasing institutions, such as States and SFAs, may specifically identify the geographic area within which unprocessed locally raised and locally grown fresh fruits and vegetables will originate. These procurements may be accomplished through informal or formal procurement procedures, as required by the FFVP regulations, which are consistent with the regulations of the other Child Nutrition Programs.

Should SFA's choose to exercise the geographic preference option, it basically allows schools operating the FFVP to specifically define geographic areas from which they will seek to procure unprocessed local fresh fruits and vegetables. It is up to each school or SFA to determine how to define the geographic area from which such products will be procured. As previously stated, utilizing a geographic preference is an option that may or may not be utilized when procuring fresh fruits and vegetables for the Program.

Other Requirements

To ensure that the fresh fruits and vegetables are safe for consumption by the students, schools must follow the applicable sanitation and health standards established under State and local law and regulations, as well as the school's food safety program. Food safety requirements for schools are already in place under § 210.13 and § 220.7, respectively, of this chapter for schools participating in the school lunch and breakfast programs.

Section 19(d)(1)(E) of the statute encourages schools to submit a plan for implementation that includes partnerships with one or more entities that will provide non-Federal resources to the Program such as promotional materials, speakers, etc. Schools would also be expected to encourage the involvement of parents and the community in activities that enhance the Program such as seeking program partners and speakers, and other activities in support of the FFVP and nutrition education efforts.

Use of Program Funds

Schools shall use the majority of the Program funds for the purchase of fresh fruits and vegetables, including services for produce to be pre-cut and for the production of ready-made produce trays. FNS expects that the resources of the school foodservice operation would be available for the FFVP. However, FNS acknowledges that participating schools may have some additional expenses in connection with the Program such as buying new equipment to maintain food safety. As stated in § 211.6 of the proposed regulatory text, schools would be allowed to use no more than 15 percent of a school's total grant for non-food costs necessary to operate the Program. Such non-food costs would include, for example, the purchase of disposable supplies, equipment leases and purchases, and salaries and fringe benefits for employees that wash and cut produce, prepare food trays, distribute produce to classrooms, set up kiosks, restock vending machines, and clean up after the food service. Based on previous experience and information on the FFVP operations, the 15 percent limitation on non-food costs seems reasonable and appropriate. However, we invite comments on this proposed limitation.

All FFVP expenditure information submitted to the SFA by a school for reimbursement would be reviewed by the SFA to ensure that such costs are allowable and reasonable given the number of children benefiting from the Program. The SFA claim for reimbursement submitted to the State agency must be signed by an SFA official and must be supported by records maintained by the SFA.

Non-reimbursable costs would include any food items that do not meet the definition of fresh fruits and vegetables included in § 211.2, such as processed or preserved fruits and vegetables (i.e., canned, frozen, dried and certain types of vacuum packed products), dip for fruit, fruit leather, jellied fruit, trail mix, nuts, fruit or vegetable pizza, fruit smoothies, promotional items such as posters and buttons, and nutrition education materials.

A variety of free nutrition education materials, both printed and online, are available from State and federal partners identified in the FFVP page of the Child Nutrition Programs public Web site, *http://www.fns.usda.gov/cnd/FFVP/FFVPResources.htm* as well as the FNS Team Nutrition site. Local partners, such as food retailers, health departments, and the USDA Extension Service, are also good sources for nutrition education and promotional materials that may be used in the Program.

The fruits and vegetables offered in the Program are intended to be consumed by children enrolled in the participating school during the school day at school, where there is the opportunity to monitor the distribution of the food and talk about the link between nutrition and health, as well as the importance of good hygiene before and during meals. Schools are not allowed to give children fruits and vegetables to take home.

Claims for Reimbursement

Each participating school would submit monthly expenditure information to the SFA in order to enable the SFA to submit the monthly claim for reimbursement to the State agency for the purchase of fresh fruits and vegetables and for allowable non-food costs in conformance with § 211.9 of the proposed regulatory text. Schools would be required to submit supporting documentation and would be required to maintain such information for review

for a period of three years after the date of submission of the final Financial Status Report. Purchase orders that commingle orders placed for fresh fruit and vegetables used in the FFVP as well as in other school meal programs would have to indicate which fresh produce is for the use in the FFVP.

It is proposed that expenditure information submitted by each participating school would be reviewed by the SFA to ensure that the school expenditures are appropriate to be claimed and are correct. The SFA would then consolidate the information submitted by the participating schools into a single claim for reimbursement for submission to the State agency. Such monthly claims for reimbursement shall be submitted by the SFAs to the State agency not later than 60 days following the last day of the full month covered by the claim in accordance with § 211.9 of the proposed rule. The State agency maintains responsibility to ensure the claims are accurate and reasonable.

I. Procedural Matters

A. Executive Order 12866 and Executive Order 13563

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

B. Regulatory Impact Analysis

The following summarizes the conclusions of the regulatory impact analysis.

Need for Action

This proposed rule seeks to establish the regulatory requirements for the administration and operation of the FFVP, a new program which began as a pilot in a small number of schools in the year 2002 and is now available to over 4,640 selected schools nationwide. Given the incremental funding process, FNS expects that the Program will continue to grow. Currently, FFVP operators at the State and local levels follow policy memoranda and practical guidance.

Benefits

The intent of the proposed rule is to encourage the consumption of fresh fruits and vegetables by elementary school children. The *2010 Dietary Guidelines for Americans*[2] discusses the importance of fruits and vegetables to a healthful diet. Most current consumption patterns of children and adults do not achieve the recommended intakes of many varieties of fruits and vegetables. The program is expected to be successful in introducing school children to a variety of produce that they otherwise might not have the opportunity to sample. By providing increased access to fruits and vegetables, the FFVP will address a key inconsistency between the diets of elementary school children and the *2010 Dietary Guidelines.*

The September 2011 interim evaluation of the FFVP finds that students are consuming more fruits and vegetables, an additional ¼ cup of fruits and vegetables on average, on days when the program is operating.[3] That is nearly 15 percent higher than average fruit and vegetable consumption of children in non-FFVP schools. The report also finds no statistically significant increase in calorie consumption among program participants. That important finding indicates that fruits and vegetables are replacing other foods rather than adding calories to the diets of participants and increasing the risk of weight gain.

This proposed rule would help FNS develop regulatory requirements in consultation with stakeholders and the public. The rulemaking process also provides the opportunity to consolidate all the FFVP requirements into Title 7, part 211 of the Code of Federal Regulations.

Costs

Although this proposed rule has been designated significant, the costs associated with implementing the proposed regulatory requirements are not expected to significantly add to current program costs at the State and local levels. The total cost of the proposed rule is projected to be $778 million for FY2011–2015. One half million dollars per fiscal year is retained by USDA for the administration of the program. The rest of the funds are distributed to the States for the purchase of fresh fruit and vegetables, served free to all children enrolled in selected elementary schools, and administration of the program at the State and local levels. This cost is estimated as $776 million for FY2011–2015. From this statutory grant, funds are made available to offset the costs incurred by State agencies, SFAs and schools for administration of the program, including required reporting and recordkeeping, and for other allowable non-food costs.

The key responsibilities of the State agency would be: (1) Disseminate information about the Program to low-income schools; (2) solicit applications from eligible schools and select those with the highest percentage of free and reduced-price participation; (3) provide training and technical assistance to new schools and monitor program operation: and (4) submit quarterly financial reports and an annual report to FNS. These activities are not expected to be time consuming because the FFVP is a relatively simple program. FNS anticipates that many of these activities, including monitoring, would be conducted in conjunction with activities required under the NSLP. In addition, FNS has issued implementation memoranda and provided technical assistance through conference calls, online webinars, regional and state conferences, and workshops at the School Nutrition Association annual conference. The total State agency administrative 5-year cost (FY2011–2015) is estimated as $23 million.

At the local level, schools are reimbursed for the food and allowable non-food costs. Schools would be required to submit expenditure data to the SFA and keep supporting records for three years. We expect that the staff, facilities and equipment used for the lunch program will be available to the FFVP. Food preparation (e.g., washing, peeling and cutting fruits and vegetables) may occasionally be necessary and could result in an added cost to the school. Other possible costs would include purchases of additional equipment and disposable supplies for the FFVP. For FY2011–2015, the total SFA and school administrative cost and allowable non-food cost is estimated as $113 million. The total State agency, SFA and school administrative cost and allowable non-food 5-year cost is estimated as $136 million.

C. Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612). Pursuant to that review it has been certified that this rule would not have a significant impact on a substantial number of small entities. The administrative and operational requirements of the Program are simple. The Federal government provides funds for the purchase of fresh fruit and vegetables and general administration of the Program.

[2] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2010.* 7th Edition, Washington, DC: US Government Printing Office, December 2010.

[3] Lauren Olsho, Lauren, Jacob Klerman, and Susan Bartlett, *Food and Nutrition Service Evaluation of the Fresh Fruit and Vegetable Program (FFVP): Interim Evaluation Report.* Abt Associates, September 2011. *http://www.fns.usda.gov/ora/MENU/Published/CNP/cnp.htm.*

Therefore, FNS does not expect that the proposed rule will have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that would result in expenditures for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The FFVP is listed in the Catalog of Federal Domestic Assistance Programs under 10.582. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Child Nutrition Programs are federally funded programs administered at the State level. FNS headquarters and regional office staff engage in ongoing formal and informal discussions with State and local officials regarding program operational issues. This structure of the Child Nutrition Programs allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other rules.

F. Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

1. Prior Consultation With State Officials

FNS headquarters and regional offices have formal and informal discussions with State agency officials on an ongoing basis regarding the Child Nutrition Programs and policy issues. Prior to drafting this proposed rule, FNS held several conference calls and meetings with the State agencies to discuss the statutory requirements addressed in this proposed rule. In response, FNS received a number of questions which were summarized in practical guidance distributed to the State and local program operators. FNS also discussed the FFVP statutory requirements with program operators at national, regional and state conferences and received input which has been considered in drafting this proposed rule.

2. Nature of Concerns and the Need To Issue This Rule

State agencies requested clarification on school applications and selection, allowable foods, and general program operation. These and other requirements are based on section 19 of the National School Lunch Act and FNS policy memoranda are discussed in the preamble.

3. Extent to Which the Department Meets Those Concerns

FNS has considered the impact of this proposed rule on State and local operators. We have attempted to balance the goal of increasing the opportunities for low-income children to consume fresh fruits and vegetables against the need to establish basic regulatory requirements for a new program. At the State agency level, seeking applications from low-income schools could require persistence and assistance from the school food authorities. For schools, adequate staff resources to wash, cut, and serve the fresh fruits and vegetables could pose an occasional challenge. FNS has provided and continues to provide guidance and technical assistance to program operators, and expects that schools will only have minor difficulties in meeting the proposed requirements.

G. Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, appeal procedures in § 210.18(q) and § 235.11(f) of this chapter must be exhausted.

H. Executive Order 13175

E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country. We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commentors address any concerns in this regard in their responses.

I. Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule's intent and provisions revealed that this rule is not intended to reduce children's ability to participate in the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, or Special Milk Program.

J. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS has submitted an information collection under 0584–NEW, which contains the burden information in the proposed rule for OMB's review and approval.

Comments on the information collection in this proposed rule must be received by April 24, 2012. Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Lynn Rodgers-Kuperman, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302. For further information, or for copies of the information collection requirements, please contact Lynn Rodgers-Kuperman at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Fresh Fruit and Vegetable Program (FFVP).

OMB Number: [Not Yet Assigned] 0584–XXXX.

Expiration Date: [Not Yet Determined].

Type of Request: New Collection.

Abstract: Section 120 of the Child Nutrition and WIC Reauthorization Act of 2004 amended the Richard B. Russell National School Lunch Act, 42 U.S.C. 1769(g) to authorize the Fresh Fruit and Vegetable pilot as a permanent program effective July 1, 2004. The Food, Conservation, and Energy Act of 2008 expanded the Program and significantly increased funding.

The purpose of the Program is to encourage increased consumption of fresh fruits and vegetables by children enrolled in elementary schools that serve low-income students. Schools interested in participating in the Program must submit an application annually. Participating schools must submit monthly expenditure data to their school food authority (SFA) for the purchase of fruits and vegetables. SFAs must review, approve, and forward the consolidated claims to the State agency (SA) for payment. Program violations identified in any review conducted by the SA and/or SFA must be documented. As necessary, schools or SFAs must document any required corrective action.

SAs must submit financial reports on FFVP expenditures to FNS five times per year to include four quarterly reports and one final report. In addition, SAs must submit an annual report to FNS disclosing program data such as the number of schools that apply, the number that are selected for participation, their total enrollment, the percentage of students eligible for free and reduced-price meals to ensure that the Program is reaching low-income schools with the highest need and the per student allocation provided to each school.

The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Estimated Annual Burden for 0584–New, Fresh Fruit And Vegetable Program, 7 CFR 211

Recordkeeping: Estimated Annual Burden for 0584–NEW, Fresh Fruit and Vegetable Program, 7 CFR 211

Respondents for This Proposed Rule: State agencies, School Food Authorities, Schools.

Estimated Number of Respondents for This Proposed Rule: 54 Stage agencies; 4,983 School Food Authorities; 4,983 Schools.

Estimated Number of Responses per Respondent for This Proposed Rule: 5.5.

Estimated Total Annual Responses: 55,515.

Estimated Total Annual Recordkeeping Burden on Respondents for This Proposed Rule: 264,413 hours.

RECORDKEEPING

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
SA must maintain records as necessary to support reimbursement to SFAs and reports submitted to FNS.	7 CFR 211.8(b)	54	9.0	486	0.25	121.50
SA maintains Claims for Reimbursement and records pertaining to financial action/compliance.	7 CFR 211.9(g) and 211.11(b).	54	1.0	54	0.33	17.82
SA maintains applications for participation.	7 CFR 211.10(d)	54	1.0	54	2.66	143.64
SA maintains on file evidence of investigations and actions.	7 CFR 211.14(b) and 211.14(d).	54	1.0	54	0.25	13.50
SA maintains records pertaining to claims against schools.	7 CFR 211.19(c)	54	1.0	54	0.33	17.82
SFA maintains monthly Claim for Reimbursement submitted by schools and supporting documentation.	7 CFR 211.9(a) and 211.11(b).	4,983	9.0	44,847	5	224,235.00

RECORDKEEPING—Continued

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
SFA maintains records to ensure school is conducting program accordingly (review conducted in conjunction with on-site review required under § 210.8).	7 CFR 211.14(b)	4,983	1.0	4,983	3	14,949.00
Schools must maintain all records pertaining to the Program for 3 years after the end of the fiscal year..	7 CFR 211.10(e)(15)	4,983	1.0	4,983	5	24,915.00
Total Recordkeeping for Proposed rule.	.....	10,020	5.5	55,515	4.76	264,413.28
Total Existing Recordkeeping Burden for Part 211.	.....	n/a	n/a	n/a	n/a	n/a
Total Recordkeeping Burden for Part 211 with Proposed rule.	.....	10,020	5.5	55,515	4.76	264,413.28

Reporting: Estimated Annual Burden for 0584–NEW, Fresh Fruit and Vegetable Program, 7 CFR 211

Respondents for this Proposed Rule: State agencies, School Food Authorities, Schools.

Estimated Number of Respondents for This Proposed Rule: 54 State agencies; 4,983 School Food Authorities; 4,983 Schools.

Estimated Number of Responses per Respondent for This Proposed Rule: 9.96.

Estimated Total Annual Responses: 99,822.

Estimated Total Annual Reporting Burden on Respondents for This Proposed Rule: 111,034 hours.

REPORTING

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
SA must submit first quarter estimates by each June 1 to FNSRO to receive allocation of funds..	7 CFR 211.5	54	1	54	0.25	13.50
SA shall solicit applications for participation.	7 CFR 211.10(d)	54	1	54	1.25	67.50
SA must submit an annual FFVP report to FNS.	7 CFR 211.11(a)(1)	54	1	54	1.5	81.00
SFAs consolidate monthly claims from schools and submit claim forms to SA for reimbursement..	7 CFR 211.9(a)	4,983	9	44,847	1.5	67,270.50
SFA must submit to SA documented corrective action, no later than 30 days from the deadline for completion, for program violations identified on administrative reviews..	7 CFR 211.14(b)	4,983	1	4,983	3	14,949.00
Schools submit monthly claims for reimbursement for both food and non-food costs..	7 CFR 211.9(a) and 211.10(e)(10).	4,983	9	44,847	0.5	22,423.50
Any school interested in participating in the FFVP must complete an application including program implementation plan and description of partnership activities. All returning schools must update information on file..	7 CFR 211.10(d)	4,983	1	4,983	1.25	6,229.20
Total Reporting for Proposed rule*.	.....	10,020	9.9623	99,822	1.11232	111,034.20
Total Existing Reporting Burden for Part 211.	.....	n/a	n/a	n/a	n/a	n/a

REPORTING—Continued

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Total Reporting Burden for Part 211 with Proposed rule*.	.....	10,020	9.9623	99,822	1.11232	111,034.20

* Burden for SF–425 is captured in OMB 0348–0061.
SF–425 quarterly & annual financial report (54 respondents * 5 frequency * 1.5 hrs per response = 405 hours).

Summary of Burden (OMB 0584–NEW) 7 CFR 211	
Total No. Respondents	10,020
Average No. Responses per Respondent	15.5
Total Annual Responses	155,337
Average Hours per Response	2.417
Total Burden Hours for Part 211	375,447.48

K. E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

List of Subjects in 7 CFR Parts 211 and 235

Administrative practice and procedure, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs.

For the reasons set forth in the preamble, 7 CFR part 211 is proposed to be added as follows:

PART 211—FRESH FRUIT AND VEGETABLE PROGRAM

Sec.
211.1 General purpose and scope.
211.2 Definitions.
211.3 Administration.
211.4 Funding.
211.5 Funding availability.
211.6 Use of funds.
211.7 Payment process to States.
211.8 Reimbursement for school food authorities.
211.9 Claims for reimbursement.
211.10 Eligibility requirements.
211.11 Reporting and recordkeeping.
211.12 Special responsibilities for schools.
211.13 Procurement standards.
211.14 Program assistance and monitoring.
211.15 Withholding payments.
211.16 Suspension, termination and grant closeout procedures.
211.17 Penalties.
211.18 Management evaluations and audits.
211.19 Educational prohibitions.
211.20 Other State agency responsibilities.
211.21 Nondiscrimination.
211.22 Program information.

Authority: 42 U.S.C. 1769a.

§ 211.1 General purpose and scope.

The purpose of the Fresh Fruit and Vegetable Program is to increase fresh fruit and vegetable consumption in elementary schools to improve the diets and long-term health of the participating children and to help children understand the relationship between proper eating and good health. This Program makes free fresh fruits and vegetables available to students in selected schools in order to introduce children to fresh fruits and vegetables and to make these foods more prevalent in their diet. This part prescribes the general requirements for Program administration and participation as stated in section 19 of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1769a).

§ 211.2 Definitions.

For the purpose of this part, the term:

Act means the Richard B. Russell National School Lunch Act, as amended.

Department means the United States Department of Agriculture.

Elementary school means, under the Program, a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law.

Fiscal year means a period of 12 calendar months beginning October 1st of any year and ending with September 30th of the following year.

FNS means the Food and Nutrition Service, United States Department of Agriculture.

FNSRO means the appropriate Regional Office of the Food and Nutrition Service of the Department.

Free means provided to all children at no charge.

Free lunch means a lunch served under the National School Lunch Program to a child from a household eligible for such benefits under 7 CFR part 245 of this chapter and for which neither the child nor any member of the household pays or is required to work.

Fresh fruits and vegetables means produce in its raw state which has not been frozen or subjected to any form of thermal processing or any other form of preservation. The following processes do not preclude the food from being considered to be *fresh:* The addition of waxes, the post-harvest use of approved pesticides, the application of a mild chlorine wash or mild acid wash on produce, or the treatment of raw foods with ionizing radiation within the limits established by the Food and Drug Administration. (21 CFR 101.95, Sept. 24, 2009.) In addition, such produce may include products that have been cooled, refrigerated, peeled, sliced, diced, cut, chopped, shucked, washed, treated with high water pressure or ''cold pasteurized'', packaged (such as placing produce in cartons or vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed to ensure that the vacuum remains within the packaging) and bagged (such as placing produce in bags).

Nonprofit means, when applied to schools or institutions eligible for the Program, exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

NSLP means the National School Lunch Program, under which participating schools operate a nonprofit lunch program in accordance with this title (7 CFR part 210) and receive general and special cash assistance and donated food from the Department.

OIG means the Office of the Inspector General of the Department.

Program means the Fresh Fruit and Vegetable Program.

Reimbursement means Federal cash assistance payable to participating schools for serving fresh fruits and vegetables to children at no charge in accordance with the requirements of this part.

Reduced price lunch means a lunch served under the NSLP:

(a) To a child from a household eligible for such benefits under 7 CFR part 245 of this chapter;

(b) For which the price is less than the school food authority designated full price of the lunch and which does not exceed the maximum allowable reduced

price specified under 7 CFR part 245 of this chapter; and

(c) For which neither the child nor any member of the household is required to work.

ROAP means FNSRO Administered Programs.

School means for purposes of the Fresh Fruit and Vegetable Program:

(a) An educational institution of elementary and preprimary grades recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings which participates in the NSLP; or

(b) Any public or nonprofit private residential child care institution, or distinct part of such institution, which participates in the NSLP and serves elementary school and preprimary school children as defined by the State.

School day means calendar days in which the school is open and teaching, and encompasses the period between opening and dismissal.

School food authority means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein or be otherwise approved by FNS to operate the Program.

School week means the normal school week of five consecutive days.

School year means a period of 12 calendar months beginning July 1st of any year and ending June 30th of the following year and, for purposes of Program, includes the service of food from the first day of class until the last day of class.

Secretary means the Secretary of Agriculture.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

State agency means:

(a) The State educational agency;

(b) Any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the NSLP in schools, as specified in § 210.3(b) of this chapter; or

(c) The FNSRO, where the FNSRO administers the Program as specified in § 211.3(b).

§ 211.3 Administration.

(a) *FNS.* FNS will act on behalf of the Department in the administration of the Program;

(b) *State agencies.* The responsibility for the administration of the Program at the state level will be in the State educational agency or other State agency approved to administer the National School Lunch Program (NSLP). The FNSRO will administer the Program if it does so for the NSLP or any part of the NSLP in accordance with § 210.3(c) of this chapter. Each State agency desiring to offer the Program must amend the permanent Federal-State agreement to include administration of the Program in accordance with the applicable requirements of this part; 7 CFR parts 15, 15a, 15b, and 3016; and FNS instructions.

(c) *School food authorities.* The school food authority will be responsible for the administration of the Program in schools selected by the State agency for participation. State agencies must ensure that school food authorities administer the Program in accordance with the applicable requirements of this part; 7 CFR parts 15, 15a, 15b, and 3016 or 3019, as applicable; and FNS instructions. Each school food authority with schools selected for the Program must enter into an agreement with the State agency that addresses the administration of the Program during a specific school year in accordance with the provisions of this part, and, as applicable, 7 CFR parts 210, 235, 3016, and 3019, and with FNS Instructions.

§ 211.4 Funding.

(a) *Federal funding.* (1) Federal funds available to the Program each school year beginning July 1st will be as specified in Section 19 of the Act for school year 2010–2011 and for school year 2011–2012. For school year 2012–2013 and each school year thereafter, Program funds will be based on the amount received in the preceding year, as adjusted to reflect changes for the 12-month period ending the preceding April 30th in the Consumer Price Index for All Urban Consumers for items other than food published by the Department of Labor's Bureau of Labor Statistics. Unobligated funds from a preceding school year may be available to FNS for operation of the Program in subsequent years.

(2) No more than $500,000 of the funds made available for the Program annually may be set aside for Federal administrative costs.

(b) *State funding.* (1) The minimum grant to each of the 50 states and the District of Columbia will equal 1 percent of the funds made available to carry out the Program for a school year.

(2) Remaining funds will be allocated to each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands based on the proportion of the state population to the U.S. population. In States in which FNS administers part of the Program, funding for eligible ROAP schools shall be made available to the Regional Office administering the Program in the eligible schools in those states.

§ 211.5 Funding availability.

(a) FNS will notify each State agency of its total grant for the upcoming school year. Program funds will be provided to each State agency through two allocation distributions on or around July 1st and October 1st of each school year. The State agency will use the allocated funds to reimburse school food authorities for the purchase of fresh fruits and vegetables under the Program. The State agency must promptly notify FNS if it does not expect to obligate all the allocated funds by the dates specified in this section.

(1) *July 1 allocation.* (i) FNS will determine the July allocation for each State agency based on each State agency's estimate of the amount of funding needed to initiate and operate the Program during the first quarter of the school year. The State agency must submit a first quarter estimate to FNS by June 1st in order to receive the first allocation of funds on or about July 1st. The first quarter estimate shall include anticipated obligations for the purchase of fruits and vegetables and other reasonable expenses needed to implement the Program in the approved schools during the first quarter of the school year. The first quarter estimate may also include an amount for State administrative costs for the first quarter of the school year, as specified in § 211.6(a)(1).

(ii) All funds received and retained by the State agency for Program administration through the July allocation shall be obligated or expended by September 30th of that same school year.

(iii) Funds provided to school food authorities through the July 1st allocation shall be obligated or expended by September 30th of that same school year.

(iv) Any unobligated or unexpended funds shall be recovered by FNS and made available to the Program for reallocation at a later time.

(2) *October 1 allocation.* (i) The balance of the State agency's total Program funding for the school year will be allocated on or about October 1st of each school year. Any funds not expended or obligated by the State agency by the following September 30th of that fiscal year will be recovered by FNS and made available to the Program for reallocation at a later time. State agencies may only reallocate funds for Program costs incurred within the same

school year for which the funds were made available;

(ii) School food authorities must ensure that October 1st allocation funds made available to participating schools are expended or obligated during the period of performance for which the funds have been made available, otherwise the funds will be recovered by FNS and made available to the Program for reallocation at a later time.

(b) To stay within the assigned funds, each State agency must review the Program claims submitted by school food authorities and control Program reimbursement payments. The State agency may not advance Program funds to the school food authorities or to the schools selected to participate in the Program.

§ 211.6 Use of funds.

(a) *General.* Federal funds made available under the Program shall be used primarily for the purchase of fresh fruits and vegetables served free to all children enrolled in selected elementary schools.

(1) *State administrative costs.* Each State agency may retain a portion of its total grant to support administration of the Program. The amount that may be retained must be determined prior to determining the school allocations and must be the lesser of 5 percent of the State agency's total grant for the school year, or the amount required to pay the costs of one full-time coordinator for the Program in the State, as determined by the State agency based on the State personnel structure.

(2) *Local-level costs.* School food authorities and schools shall use Program funds primarily for the purchase of fresh fruits and vegetables. Program funds shall not be used for nutrition education or Program promotion. Costs for planning; food delivery, preparation, and service; equipment leases and purchases; and other non-food expenses in connection with the operation of the Program shall not exceed 15 percent of a school's total grant for the school year.

(3) State agencies may assess Program operations during the school year and may reallocate funds to school food authorities in the State. However, any such reallocations of funds shall only be made during the school year for which the funds became available and shall be expended or obligated during that same school year.

§ 211.7 Payment process to States.

(a) *Letter of credit.* FNS will generally make payments available by means of a letter of credit issued in favor of the State agency. The State agency will receive funds for reimbursement to participating school food authorities through procedures established by FNS in accordance with 7 CFR part 3016. The State agency must minimize the time that elapses between the drawing of funds from the letter of credit and the disbursement of those funds to pay the Claims for Reimbursement. FNS may, at its option, reimburse a State agency by Treasury check. FNS will pay with funds available in settlement of a valid claim.

(b) *Recovery of funds.* FNS will recover any Federal funds made available to the State agency under this part which are in excess of obligations reported at the end of each fiscal year in accordance with 7 CFR 3016.23, ''Period of Availability of Funds'', and 7 CFR 3016.50–3016.52, ''After-the-Grant-Requirements''. Such recoveries must be reflected by a related adjustment in the State agency's letter of credit.

§ 211.8 Reimbursement for school food authorities.

(a) Reimbursement payments to nonprofit school food service operations must be made only to school food authorities operating the Program under a written agreement with the State agency. Such payments may be made for the purchase of fresh fruits and vegetables and other allowable costs in connection with the Program.

(b) Each State agency must maintain Program records as necessary to support the reimbursement payments made to school food authorities and the reports submitted to FNS under this part. Such records must be retained for a period of 3 years.

§ 211.9 Claims for reimbursement.

(a) Schools must submit expenditure data to their school food authority providing sufficient detail and documentation to justify the monthly reimbursement claimed by the school food authority. Schools shall certify that the information is true and correct. Such expenditure data for each month must include the cost of fresh fruits and vegetables purchased for the program that month and allowable non-food costs for that month.

(b) In submitting a Claim for Reimbursement to the State agency, each school food authority must certify that:

(1) The claim is true and correct;

(2) Records are available to support the claim;

(3) The claim is in accordance with the existing agreement, and

(4) Payment has not been received. If the first or last month of Program operations for any year contains 10 operating days or less, such a month may be added to the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years.

(c) A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted.

(d) The State agency shall review all Claims for Reimbursement and discuss any discrepancies in the claim with the school food authority. The State agency may make adjustments on claims and may disallow payment of any claim, in whole or in part, that is inconsistent with the Program requirements or FNS implementation memoranda.

(e) If FNS does not concur with the State agency's action in paying a claim, FNS shall assert a claim against the State agency for the amount of such claim. In all such cases, the State agency shall have full opportunity to submit to FNS evidence or information to justify the action taken. If FNS determines the State agency's payment of a claim was unwarranted, the State agency shall promptly pay to FNS the amount of the claim.

(f) The Secretary has authority to settle and to adjust any claims arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary also has the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(g) The State agency shall maintain all records pertaining to action taken under this section for a period of three years after the date of submission of the final Financial Status Report (SF–425), except that, if audit findings have not been resolved, such records shall be retained beyond the three-year period for as long as required for the resolution of the issues.

§ 211.10 Eligibility requirements.

(a) *State agency outreach to eligible schools.* (1) Each State agency is required to conduct outreach to all elementary schools, including Native American schools, that participate in

the NSLP and have the highest proportion of students certified eligible for free and reduced price NSLP meals in the State. In cases in which FNS administers part of the Program in a State, the State agency and FNS shall coordinate outreach activities to ensure that all eligible schools are contacted. As part of the State agency's outreach requirement, such schools must be notified of:

(i) The eligibility of such schools for the Program;

(ii) That Program funding is available;

(iii) That priority is given to schools with the highest need; and

(iv) That the school would be likely to be selected to participate in the Program. At a minimum, the State agency must provide information to all elementary schools where at least 50 percent of the students are certified for free and reduced-price lunches and actively target those schools with the highest need and encourage them to participate in the Program.

(2) In cases in which there are more schools eligible for the Program than can be funded for participation, the State agency may limit outreach to only those schools with the highest percentages of free and reduced-price certified students.

(3) In situations in which a State agency does not have enough elementary schools with high percentages of students certified for free and reduced-price lunches in the NSLP, the State agency may extend Program outreach to other schools including those in which the free and reduced-price certified student population is below the 50 percent level. When soliciting such schools, priority for participation in the Program shall still be given to the schools that have the highest proportion of free and reduced price certified students.

(4) The outreach process shall be conducted prior to selecting any school for participation in the Program and may be conducted in collaboration with the school food authorities.

(b) *Per-student allocation.* State agencies shall allocate from $50 to $75 per student to operate the Program each school year. The per-student allocation for each school may vary by school within the established allocation range.

(c) *Selection criteria.* (1) Elementary schools that meet the following criteria may be selected for participation in the Program:

(i) Schools in which not less than 50 percent of the students are certified eligible for free or reduced price school lunches, except as noted in paragraph (c)(2) of this section, with priority for selection given to those schools that serve the highest percentage of free and reduced price certified students.

(ii) Schools that have submitted an application for participation in accordance with paragraph (d) of this section; and

(iii) Schools that have not been documented as being deficient in managing any FNS program or that have no outstanding administrative findings documenting violations of the requirements of any FNS program.

(2) Applicant schools in which fewer than 50 percent of the students are certified as eligible for free and reduced price meals shall only be selected to participate in the program if all of the eligible higher need schools in the State have been selected for participation in the Program and the State agency has not reached its statewide participation goal. When selecting such schools, priority shall be given to schools in descending order beginning with those schools that serve the highest percentage of free and reduced price certified students.

(3) A State agency may only impose additional selection criteria with the approval of FNS if the State agency has more schools at the same need level than can be funded, and if such criteria are not inconsistent with the provisions in paragraph (c) of this section.

(d) *Application process.* Each year, the State agency shall solicit applications for participation from the elementary schools with the highest number of children certified for free and reduced-price meals. Each school must submit the application to operate the Program in the following school year to the State agency through their school food authority. At a minimum, the school application shall include:

(1) The total number of enrolled students and the percentage certified eligible for free and reduced price meals;

(2) A certificate of support for participation in the Program signed by the school food manager, school principal and district superintendent or equivalent position, as determined by the school; and

(3) A program implementation plan that includes efforts to integrate the Program with other initiatives to promote health and nutrition, reduce overweight and obesity, or promote physical activity. It is recommended that the plan also include a description of partnership with one or more entities, such as produce, fruit and vegetable industry groups and grocery stores, local colleges and universities or other organizations that will provide non-Federal resources to the school in support of the Program's goals.

(e) *Agreement.* Each school food authority must enter into a written agreement with the State agency to offer the Program. Under such agreement, the school food authority will be responsible for the operation of the Program in schools within its jurisdiction. Such agreement may be amended, suspended, or terminated as determined by the State agency in consultation with FNS. The agreement between the State agency and the school food authority will ensure that the school food authority will require the selected schools to:

(1) Make free fresh fruit and vegetables available to all enrolled children attending the participating school;

(2) Offer the Program during the regular school year, excluding holidays and summer break;

(3) Serve fresh fruits and vegetables to students during the school day, at least twice a week, and separately from the National School Lunch Program and School Breakfast Program service times;

(4) Offer a variety of fresh fruits and vegetables as defined in § 211.2 to children. The types of fruits and vegetables and portion sizes should reflect the ages and preferences of students. Frozen, canned, dried and other types of processed fruits and vegetables are not allowed;

(5) If dip for vegetables is provided, it must be fat-free or low-fat and must be limited to a 2 ounce serving size. Dip for fruit is not allowed;

(6) Limit the service of cooked fresh vegetables to no more than once each week and only when included as part of a nutrition education lesson. Other ingredients in the cooked fresh vegetable dish must be fat-free or low-fat and are not reimbursable;

(7) Publicize the availability of free fresh fruit and vegetables for children widely within the school through use of the public address system, flyers and other usual means of communication and ensure that the only adults allowed to receive FFVP components are teachers who are in the classroom with the students during the FFVP food service;

(8) Integrate Program activities with other school efforts to promote health, nutrition, healthy weight and physical activity;

(9) Participate in Program training offered by the school food authority and/or State agency, as applicable;

(10) Use Program funds primarily for the purchase of fresh fruits and vegetables;

(11) Maintain a financial management system as prescribed by the State agency

and obligate funds on a timely manner as instructed in § 211.5 of this part;

(12) Limit allowable non-food costs to no more than 15 percent of the school's total grant;

(13) Submit timely program expenditure information to the school food authority to enable the school food authority to submit consolidated reimbursement claims for the purchase of fresh fruits and vegetables served to students and allowable non-food expenses only;

(14) Acknowledge that failure to submit accurate expenditure information will result in the disallowance of payments and may result in suspension or termination from the Program;

(15) Acknowledge that if failure to submit accurate expenditure information or claims reflects embezzlement, willful misapplication of funds, theft, or fraudulent activity, the penalties specified in § 210.26 of this chapter will apply;

(16) Comply with the requirements of the Department's regulations respecting nondiscrimination (7 CFR parts 15, 15a, and 15b);

(17) Comply with the applicable procurement requirements found at § 211.13;

(18) Follow hazard analysis and critical control point (HACCP) principles, and sanitation and health standards established under State and local law and regulations in conformance with § 210.13 and § 220.7, respectively, of this chapter for schools participating in the National School Lunch and School Breakfast Programs;

(19) Comply with all Program requirements specified in this part; and

(20) When requested, make all records pertaining to the Program available to the State agency and to FNS for audit and administrative review, at any reasonable time and place. Such records must be retained for a period of three years after the end of the fiscal year to which they pertain, except that, if audit findings have not been resolved, the records must be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

§ 211.11 Reporting and recordkeeping.

(a) *Reporting responsibilities.* Participating State agencies must submit forms and reports to FNS to demonstrate compliance with Program requirements. The reports include, but are not limited to the following:

(1) *Annual FFVP Report.* Each State agency must submit an annual report to FNS by November 1st of the current school year disclosing the total number of schools in the state eligible to participate in the program, the number of schools that applied for participation in the Program, the schools selected for the Program, the total enrollment and the percentages of students certified for free and reduced price meals in the participating schools and the per student allocation provided for each of the participating schools, the number of schools that applied for participation and were not selected and the percentage of free and reduced price certified students served by such schools.

(2) *Quarterly report.* Each State agency must submit to FNS a quarterly Financial Status Report (SF–425) on the use of Program funds. Such report must be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter;

(3) *End of year report.* Each State agency must submit a final SF–425 for each fiscal year. This final fiscal year closeout report must be postmarked and/or submitted to FNS within 120 days after the end of each fiscal year or part thereof that the State agency administered the Program. Obligations must be reported only for the fiscal year during which the obligations occur. FNS will not be responsible for reimbursing Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred. Closeout procedures are to be carried out in accordance with 7 CFR part 3016.

(b) *Recordkeeping responsibilities.* State agencies and participating school food authorities are required to maintain records to demonstrate compliance with Program requirements. School food authorities must maintain on file each monthly Claim for Reimbursement and all supporting documentation by school. Records shall be retained as specified in § 210.23(c) of this chapter. School food authorities must make this information available to the Department and the State agency upon request.

§ 211.12 Special responsibilities of schools.

(a) In addition to the requirements of § 211.10(e), schools selected to participate in the Program must comply with the following:

(1) Have an implementation plan to operate the Program as required in the agreement between the school food authority and the State agency;

(2) When possible, partner with entities that can provide non-Federal resources to the Program; and

(3) Encourage the involvement of parents and the community in activities that enhance the Program such as seeking program partners and other support activities as determined by the school.

(b) A State agency may establish additional school responsibilities with the approval of FNS if such responsibilities are consistent with the provisions of this part and support the goals of the Program.

§ 211.13 Procurement standards.

(a) *General.* In the operation and administration of the Program, State agencies and school food authorities shall comply with the requirements of 7 CFR part 210 and 7 CFR parts 3015, 3016 and 3019, as applicable, which implement the applicable Office of Management and Budget (OMB) Circulars, concerning the procurement of all goods and services with nonprofit school food service account funds.

(b) *Geographic preference.* (1) School food authorities participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised fresh fruits and vegetables. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic preference in paragraph (b)(1) of this section, ''unprocessed locally grown or locally raised fresh fruits and vegetables'' means only those agricultural products that retain their inherent character. For purposes of the FFVP, the effects of the following processes shall not be considered as changing fresh fruits and vegetables into a product of a different kind or character: cooling; refrigerating; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking: washing; packaging (such as placing fruit in cartons) and bagging (such as placing fruits or vegetables in bags or combining two or more types of vegetables or fruits in a single package).

§ 211.14 Program assistance and monitoring.

(a) *Program assistance.* Each State agency must provide training and technical assistance to the school food authorities to enable them to operate the Program successfully in selected schools. The training for new schools shall cover all Program requirements.

(b) *Program monitoring.* (1) A school food authority must review each participating school within the first year

of operation to ensure that the school is conducting the Program in accordance with the requirements of this part and FNS guidance. This general review, conducted in conjunction with the on-site review required under § 210.8 of this chapter, will ensure that the participating school has a financial system in place, including a budget and a timeline for expending Program funds, and is using Program funds as instructed by this part and FNS guidance.

(2) A State agency must review the Program performance for compliance with the provisions of this part. This review, to be conducted as specified by the Secretary in guidance, may take place in conjunction with any administrative review or Federal oversight activity required by this title.

(c) *Corrective action.* Corrective action is required for any violation cited in a Program review authorized in this section. Corrective actions may include technical assistance, training, recalculation of data to ensure the correctness of any Claim for Reimbursement that is being prepared at the time of the review, or other actions established by the State agency.

(d) *Investigations.* Each State Agency must promptly investigate complaints received or irregularities noted in connection with the operation of the Program and must take appropriate action to correct any irregularities. State Agencies must maintain on file evidence of such investigations and actions. The Office of Inspector General (OIG) of the Department must make investigations at the request of the State Agency or if FNS or FNSRO determines investigations by OIG are appropriate.

§ 211.15 Withholding payments.

In accordance with Departmental regulations at § 3016.43 and § 3019.62 of this chapter, the State agency must withhold Program payments, in whole or in part, to any school food authority that has failed to comply with the provisions of this part. Program payments must be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective action will be taken, or until the State agency terminates the grant in accordance with § 211.16 of this part. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any claims in accordance with the provisions of this part.

§ 211.16 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelines, FNS may suspend or terminate the Program or take any other action as may be available and appropriate. FNS and the State agency must comply with the provisions of 7 CFR part 3016 concerning grant suspension, termination and closeout procedures. Furthermore, the State agency must apply these provisions, or the parallel provisions of 7 CFR part 3019, as applicable, to suspension or termination of the Program in school food authorities due to repeated failure to meet Program requirements, as documented by the State agency.

§ 211.17 Penalties.

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part whether received directly or indirectly from the Department, shall, if such funds, assets, or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets, or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals, or retains for personal use or gain, funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

§ 211.18 Management evaluations and audits.

(a) Unless otherwise exempt, audits at the State and school food authority levels must be conducted in accordance with OMB Circular A–133 and the Department's implementing regulations at 7 CFR part 3052. For availability of the OMB Circular mentioned in this paragraph, please refer to 5 CFR part 1310.3.

(b) Each State agency must provide FNS with full opportunity to conduct management evaluations (including visits to schools) of any operations of the State agency under the Program and provide OIG with full opportunity to conduct audits (including visits to schools) of all operations of the State agency under the Program. Each State agency must make its records available, including records of the receipt and expenditure of funds under the Program, when FNS or OIG reasonably requests. OIG must also have the right to make audits of the records and operations of any school.

§ 211.19 Educational prohibitions.

In carrying out the provisions of the Act, the Department shall not impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

§ 211.20 Other State agency responsibilities.

(a) State agencies, or FNSROs where applicable, shall disallow any portion of a claim and recover any payment made to a school food authority that was not properly payable under this part. State agencies will use their own procedures to disallow claims and recover overpayments already made.

(b) Each State agency shall maintain all records pertaining to action taken under this section. Such records shall be retained for a period of three years after the date of the submission of the final Financial Status Report, except that, if audit findings have not been resolved, the records shall be retained beyond the three-year period for as long as required for the resolution of the issues raised by the audit.

(c) If FNS does not concur with the State agency action in paying a claim or a reclaim, or in failing to collect an overpayment FNS shall assert a claim against the State agency for the amount of such claim, reclaim or overpayment. In all such cases, the State agency shall have full opportunity to submit to FNS evidence or information concerning the action taken. If in the determination of FNS, the State agency's action was unwarranted, the State agency shall promptly pay to FNS the amount of the claim, reclaim, or overpayment.

(d) The amounts recovered by the State agency from schools may be utilized to:

(1) Make reimbursement payments for fresh fruits and vegetables served during the fiscal year for which the funds were initially available and

(2) Repay any State funds expended in the reimbursement of claims under the program and not otherwise repaid. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of 7 CFR part 210.

§ 211.21 Nondiscrimination.

(a) In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex,

or disability. State agencies and school food authorities shall comply with the requirements of Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a and 15b); and FNS Instruction 113–6.

(b) When accommodating children due to medical or special dietary needs, schools must follow the applicable provisions in § 210.10(g) of this chapter.

§ 211.22 Program information.

School food authorities and schools desiring information about the Program should contact their State educational agency or the appropriate FNS Regional Office at the address or telephone number listed on the FNS Web site (*www.fns.usda.gov/cnd*).

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42. U.S.C. 1776, 1779).

2. Section 235.1 is amended by adding the phrase ''and the Fresh Fruit and Vegetable Program (7 CFR part 211).'' to the end of the second sentence.

Dated: February 10, 2012.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2012–4181 Filed 2–23–12; 8:45 am]

BILLING CODE 3410–30–P

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; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting; correction.

SUMMARY: The U.S. Department of Energy (DOE) published a notice of proposed rulemaking on February 10, 2012, which proposed to amend DOE regulations regarding energy conservation standards for distribution transformers. It was recently discovered that values in certain tables of the proposed rule are inaccurate or absent. This notice corrects these inaccuracies as described.

DATES: DOE will accept comments, data and information regarding this correction before and after the February 23, 2012, public meeting, but no later than April 10, 2012.

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:

Background

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. The Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486, amended EPCA and directed DOE to prescribe energy conservation standards for distribution transformers. (42 U.S.C. 6317(a)) On October 12, 2007, DOE published a final rule that established energy conservation standards for liquid-immersed distribution transformers and medium-voltage, dry-type distribution transformers (72 FR 58190). 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. (42 U.S.C. 6295(y)) On February 10, 2012, DOE published a proposed rule with amended energy conservation standards for liquid-immersed, medium-voltage dry-type, and low-voltage, dry-type distribution transformers (77 FR 7282).

Need for Correction

As published, values in certain tables of the proposed rule are inaccurate or absent. DOE solicits public comment on the changes contained in this document as part of the February 10 NOPR.

Corrections

In proposed rule FR Doc. 2012–2642 appearing on page 7282 in the issue of Friday, February 10, 2012, the following corrections should be made:

1. On page 7285, Table I.5 is corrected to read as follows:

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

TABLE I.5—PROPOSED ELECTRICAL EFFICIENCIES FOR ALL LIQUID-IMMERSED DISTRIBUTION TRANSFORMER EQUIPMENT CLASSES (COMPLIANCE STARTING JANUARY 1, 2016)—Continued

Standards by kVA and equipment class			
Equipment class 1		Equipment class 2	
kVA	%	kVA	%
667	99.52	1500	99.48
833	99.55	2000	99.51
		2500	99.53

2. On page 7344, Table V.9 is corrected to read as follows:

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	98.80	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	303	187	187	−881
Median PBP (Years)	0.0	24.7	12.8	16.3	16.3	32.4

3. On page 7346, Table V.20 is corrected to read as follows:

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	13.5	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

4. On page 7363, Table V.39 is corrected to read as follows:

TABLE V.39—PROPOSED ENERGY CONSERVATION STANDARDS FOR LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

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
667	99.52	1500	99.48
833	99.55	2000	99.51
		2500	99.53

5. On pages 7363 and 7364, Table V.41 is corrected to read as follows:

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	303	187	187	−881.
Design line 7	1714	1714	1793	2270	2270	270.
Design line 8	2476	2476	2625	4145	−2812	−2812.
Consumer Median PBP (years)						
Design line 6	0.0	24.7	12.8	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 (%)	041*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.

6. The first sentence on page 7365, column 1, paragraph 7 is corrected to read as follows:

''At TSL 3, the average LCC impact ranges from $303 for design line 6 to $2,625 for design line 8. The median PBP ranges from 12.8 years for design line 6 to 4.7 years for design line 7''.

7. On pages 7379 and 7380, § 431.196, the ''%'' headings in the second row of the tables in paragraphs (a)(1) and (a)(2) are corrected to read as ''Efficiency (%)''.

8. On page 7380, § 431.196, interchange the tables in paragraphs (b)(1) and (b)(2) to read as follows:

(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	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

Single-phase		Three-phase	
kVA	Efficiency (%)	kVA	Efficiency (%)
		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.

(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	98.70	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
667	99.52	1500	99.48
833	99.55	2000	99.51
		2500	99.53

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.

9. On pages 7380 and 7381, § 431.196, interchange the tables in paragraphs (c)(1) and (c)(2) to read as follows:

(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	98.12	
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.

(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	98.13	.....
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.

Issued in Washington, DC, on February 15, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–3987 Filed 2–23–12; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG30

Small Business Size Standards: Health Care and Social Assistance

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 28 industries in North American Industry Classification System (NAICS) Sector 62, Health Care and Social Assistance. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all size standards in NAICS Sector 62 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposed rules that will review size standards of industries grouped by NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** that the ''Size Standards Methodology'' White Paper was available on its Web site at *www.sba.gov/size* for public review and comments (74 FR 53940). The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews, and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing, and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before April 24, 2012.

ADDRESSES: You may submit comments, identified by RIN 3245–AG30 by one of the following methods: (1) *Federal eRulemaking Portal: www.regulations.gov*, following the instructions for submitting comments; or (2) *Mail/Hand Delivery/Courier:* Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by email.

SBA will post all comments to this proposed rule without change on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Ph.D., Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business size definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size: average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504), and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the beginning of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (referred to as ''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures.

Over the years, SBA has received comments that its size standards have not kept up with changes in the

economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA also reviews the effect of inflation on its size standards and makes necessary adjustments to its monetary based size standards at least once every five years. SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

SBA proposed new size standards for a number of industries in NAICS Sector 62 on May 4, 1999 (64 FR 23798), when the Standard Industrial Classification (SIC) System was in use. Subsequently, effective October 1, 2000, SBA adopted NAICS as the basis for small business size standards, thereby replacing the SIC System. Therefore, when SBA issued a final rule on November 17, 2000 (65 FR 69432), the adopted size standards in the final rule were based on the NAICS. The industries that are now in NAICS Subsector 621(Ambulatory Health Care Services), NAICS Subsector 622 (Hospitals), and NAICS Subsector 623 (Nursing and Residential Care Facilities) were part of SIC Major Industry Group 80, Health Services, while industries now in NAICS Subsector 624 (Social Assistance) were part of the SIC Major Industry Group 83, Social Services.

Because of changes in the Federal marketplace and industry structure since the last comprehensive size standards review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions (Sec. 1344, Pub. L. 111–240, 124 Stat. 2545). 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 . In addition, the Jobs Act requires that SBA conduct a review of all size standards not less frequently than once every five years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA is reviewing size standards on a Sector by Sector basis. A NAICS Sector generally consists of 25 to 75 industries, except for NAICS Sector 31–33, Manufacturing, which has considerably more industries. Once SBA completes its review of size standards for industries in a NAICS Sector, it issues a proposed rule to revise size standards for those industries for which it believes currently available data and other relevant factors support doing so.

Below is a discussion of the size standards methodology for establishing receipts based size standards that SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

As stated above, SBA has developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA has 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 this proposed rule at *www.regulations.gov.* SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all features are appropriate. For example, since all industries in NAICS Sector 62 have receipts based size standards, the methodology described in this proposed rule applies to establishing receipts based size standards. However, the methodology is made available in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating, and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as whether there are other approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate; whether there are gaps in SBA's methodology because the data it uses are not current or sufficiently comprehensive; and whether there are other data, facts, and/or issues that SBA should consider. Comments on SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *www.regulations.gov,* using docket number SBA–2009–0008 and following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *www.regulations.gov.* As of December 9, 2011, SBA has received 13 comments to its ''Size Standards Methodology.'' The comments are available to the public at *www.regulations.gov.* SBA continues to welcome comments on its methodology from interested parties. SBA will not accept comments to its ''Size Standards Methodology'' submitted by email.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Specifically, Section 3(a)(3) of the Small Business Act requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' 15 U.S.C. 632(a)(3). Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure (as described below). In addition, SBA considers current economic conditions, its mission and program objectives, the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose adjustments to certain size standards in NAICS Sector 62. The rule also explains why SBA has proposed to adjust some size standards in NAICS Sector 62 but not others. This proposed rule affords the public an opportunity to

review and to comment on SBA's proposals to revise size standards in NAICS Sector 62, as well as on the data and methodology it uses to evaluate and revise a size standard. The public can also comment on those industries for which SBA did not propose changes to their size standards.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards: $7 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and today it is $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance and for most Federal programs has been 100 employees. However, the 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement the size standard for all industries in Wholesale Trade and for all industries in Retail Trade (NAICS Sector 44–45) is 500 employees under SBA's nonmanufacturer rule. *See* 13 CFR 121.406(b).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor is neither a minimum nor a maximum size standard. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, while the U.S. economy is not. Hence, absolute precision is impossible. Therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is generally appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those in the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 62 that are the subject of this proposed rule, SBA developed a second comparison group consisting of industries that have the highest levels of receipts based size standards. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts; the weighted average size standard for the group is $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary industry factors that SBA evaluates include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA evaluates, as an additional primary factor, the impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, other program factors, etc.). SBA also considers the possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standards. Below are brief descriptions of each of the five primary factors that SBA has evaluated for each industry in NAICS Sector 62 being reviewed in this proposed rule. A more detailed description of this analysis is provided in SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size.*

1. *Average firm size.* SBA computes two measures of average firm size: simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can

be a basis for establishing a size standard higher than the anchor size standard. In lieu of actual startup costs data, SBA uses average assets as a proxy to measure the capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual eStatement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with average assets that are significantly higher than those of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, an industry with average assets that are similar to or lower than those of the anchor comparison group is likely to have lower startup costs; this will support the anchor standard or one lower than the anchor.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its value for an industry under review is less than 40 percent. For industries in which the four-firm concentration ratio is 40 percent or more, SBA examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor SBA evaluates in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this generally indicates that small businesses are competitive in that industry. This can support adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This can support adopting a size standard above the anchor.

Concentration is a measure of inequality of distribution. To determine the degree of inequality of distribution in an industry, SBA computes the Gini coefficient by constructing the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry with that for industries in the anchor comparison group. If the Gini coefficient value for an industry is higher than it is for industries in the anchor comparison industry group, all else being equal, this may warrant a higher size standard than the anchor. Conversely, if an industry's Gini coefficient is similar to or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required by Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may support a size standard larger than the current size standard.

SBA considers Federal contracting trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts, and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect significant levels of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the impact of a proposed size standard revision on SBA's loan programs. For this, SBA examines the volume and number of SBA's guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or the proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that the current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standards, this factor is not considered for determining the size standard.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the 2007 Economic Census (*see www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The 2007 Economic Census data are the latest available. The special tabulation provides SBA with data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by NAICS Sector (2-digit level), Subsector (3-digit level), Industry Group (4-digit level), Industry (6-digit level). These data are arrayed by various classes of firms' size based on the overall number of employees and receipts of the entire enterprise (all establishments and affiliated firms) from all industries. The

special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA's analysis was based only on those factors for which data were available or estimates of missing values were possible.

To calculate average assets, SBA used sales to total assets ratios from the Risk Management Association's Annual eStatement Studies (*see http://www.statementstudies.org/*) from 2008 to 2010.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2008 to 2010. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008 to 2010.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in SBA's ''Size Standards Methodology'' White Paper, which is available at *www.sba.gov/size.*

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) Independently owned and operated, (2) not dominant in its field of operation, and (3) within a specific small business definition or size standard established by the SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard includes a dominant firm, SBA will consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards, for the ongoing comprehensive review of receipts based size standards, SBA has proposed to select size standards from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the beginning of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that size standards with such a large number of small variations among them are both unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

SBA proposes, therefore, to apply one of eight ''fixed'' receipts based size standards to each industry in NAICS Sector 62. All size standards in NAICS Sector 62 are based on average annual receipts. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA established these eight receipts based size standard based on the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of the current comprehensive review, the most commonly used receipts based size standards clustered around the following: $2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14 million, $25 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the size standards for agriculture and industries with receipts based on commissions (such as real estate brokers and travel agents), the $5 million size standard includes those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million at the start of comprehensive size standards review. Among the higher level size clusters, SBA has set four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because of large intervals between some of the fixed levels, SBA established two intermediate levels, namely $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519, and NAICS 811212), even though the industry data might support a distinct size standard for each industry (*see* 57 FR 27906 (June 23, 1992)). In NAICS Sector 62, currently all industries in NAICS Industry Group 6211 (Offices of Physicians), all industries in NAICS Industry Group 6213 (Offices of Other Health Practitioners), and all industries in NAICS Industry Group 6215 (Medical and Diagnostic Laboratories) have common size standards. Similarly, all industries in NAICS Subsector 622 (Hospitals) and all industries in NAICS Subsector 624 (Social Assistance) have common size standards. In this proposed rule, SBA proposes to retain common size standards for NAICS Industry Group 6211, NAICS Industry Group 6213, NAICS Subsector 622, and NAICS Industry Group 6241 (Individual and Family Services) and proposes a new common size standard for NAICS Industry Group 6232 (Residential Mental Retardation, Mental Health and Substance Abuse Facilities). Whenever SBA proposes a common size standard for closely related industries, it will provide its justification.

Evaluation of Industry Structure

SBA evaluated the structure of the 39 industries in NAICS Sector 62, Health Care and Social Assistance, to assess the

appropriateness of the current size standards. As described above, SBA compared data on the economic characteristics of each industry to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with a size standard of $7 million size and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally considered appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The level of the new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1, Average Characteristics of Receipts Based Comparison Groups, (below) shows the average firm size (both simple and weighted), average assets size, four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Average firm size ($ million)		Average assets size ($ million)	Four-firm concentration ratio (%)	Average receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the $7 million anchor size standard appropriate for that factor.

An industry factor significantly above or below the anchor comparison group will generally imply a size standard for that industry above or below the $7 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that can support a $19 million size standard. The $3.3 million level is 52.8 percent between $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7 million to estimate a size standard of $18.61 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.61 million). The final step is to round the estimated $18.61 million size standard to the nearest fixed size standard, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in SBA's ''Size Standards Methodology,'' which is available on its Web site at *www.sba.gov/size.* (However, it should be noted that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available). Table 2, Values of Industry Factors Supported Size Standards, (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple average receipts size ($ million)	*Or if* weighted average receipts size ($ million)	*Or if* average assets size ($ million)	*Or if* average receipts of largest four firms ($ million)	*Or if* Gini coefficient	*Then* implied size standard is ($ million)
<1.15	<15.22	<0.73	<142.8	<0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS—Continued

If simple average receipts size ($ million)	*Or if* weighted average receipts size ($ million)	*Or if* average assets size ($ million)	*Or if* average receipts of largest four firms ($ million)	*Or if* Gini coefficient	*Then* implied size standard is ($ million)
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
>5.71	>133.41	>3.61	>1,577.1	>0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess how successful small businesses are in getting Federal contracts under the existing size standards. For industries where the small business share of total Federal contracting dollars is 10 to 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard one level higher than their current size standard. For industries where the small business share of total Federal contracting dollars is more than 30 percent lower than the small business share of total industry receipts, SBA has designated a size standard two levels higher than the current size standard.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is more than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology for incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 39 industries in NAICS Sector 62 reviewed in this proposed rule, 13 industries averaged $100 million or more annually in Federal contracting during fiscal years 2008 to 2010. In five of those 13 industries, the Federal contracting factor was significant (i.e., the difference between the small business share of total industry receipts and small business share of Federal contracting dollars was 10 percentage points or more), and a separate size standard was derived for that factor for each of them.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3, Size Standards Supported by Each Factor for Each Industry (millions of dollars), shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many of the NAICS industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or Federal contracting factor shown on the top of the column, and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, no size standard is estimated for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor, rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

NAICS code/ NAICS industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coefficient	Federal contract factor (%)	Calculated size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
621111—Offices of Physicians (except Mental Health Specialists)	$1.8	$31.1	$0.3	4.4	$3,660.3	0.697	−14.6	$10.0	$10.0
	$10.0	$10.0	$5.0			$7.0	$14.0		
621112—Offices of Physicians, Mental Health Specialists	$0.4	$1.4	$0.1	2.5	$27.0	0.362	−8.0	$5.0	$10.0
	$5.0	$5.0	$5.0			$5.0			
621210—Offices of Dentists	$0.8	$3.9	$0.2	1.4	$330.4	0.343	−14.5	$7.0	$7.0
	$5.0	$5.0	$5.0			$5.0	$10.0		
621310—Offices of Chiropractors	$0.3	$0.5	$0.1	0.6	$14.1	0.112		$5.0	$7.0
	$5.0	$5.0	$5.0			$5.0			
621320—Offices of Optometrists	$0.6	$1.4	$0.1	1.7	$42.9	0.317		$5.0	$7.0
	$5.0	$5.0	$5.0			$5.0			
621330—Offices of Mental Health Practitioners (except Physicians)	$0.3	$1.8	$0.1	3.3	$43.0	0.468		$5.0	$7.0
	$5.0	$5.0	$5.0			$5.0			
621340—Offices of Physical, Occupational and Speech Therapists and Audiologists	$0.8	$7.8	$0.2	12.3	$546.0	0.617		$5.0	$7.0
	$5.0	$5.0	$5.0			$5.0			
621391—Offices of Podiatrists	$0.5	$1.0	$0.1	0.9	$8.5	0.261		$5.0	$7.0
	$5.0	$5.0	$5.0			$5.0			
621399—Offices of All Other Miscellaneous Health Practitioners	$0.3	$1.2	$0.1	2.1	$17.6	0.352	−23.3	$7.0	$7.0
	$5.0	$5.0	$5.0			$5.0	$10.0		
621410—Family Planning Centers	$1.3	$7.2	$0.9	17.4	$78.3	0.722		$7.0	$10.0
	$7.0	$5.0	$7.0			$10.0			
621420—Outpatient Mental Health and Substance Abuse Centers	$2.6	$7.8	$1.5	3.7	$111.1	0.651	−35.5	$14.0	$10.0
	$14.0	$5.0	$14.0			$5.0	$19.0		
621491—HMO Medical Centers	$153.2	$370.2	$58.9	88.3	$1,184.0		0.1	$30.0	$10.0
	$35.5	$35.5	$35.5		$25.5				
621492—Kidney Dialysis Centers	$25.3	$244.4	$13.1	76.5	$2,365.3	0.860		$35.5	$34.5
	$35.5	$35.5	$35.5		$35.5	$35.5			
621493—Freestanding Ambulatory Surgical and Emergency Centers	$4.4	$14.1	$2.0	13.7	$526.8	0.648		$14.0	$10.0
	$25.5	$5.0	$19.0			$5.0			
621498—All Other Outpatient Care Centers	$5.4	$28.0	$2.8	9.4	$637.7	0.763		$19.0	$10.0
	$30.0	$10.0	$25.5			$19.0			
621511—Medical Laboratories	$8.2	$67.5	$3.9	45.3	$2,587.9	0.830	−6.9	$30.0	$13.5
	$35.5	$19.0	$35.5		$35.5	$30.0			
621512—Diagnostic Imaging Centers	$3.4	$14.8	$1.7	7.4	$316.7	0.725		$14.0	$13.5
	$19.0	$5.0	$14.0			$14.0			
621610—Home Health Care Services	$2.9	$23.1	$0.9	7.4	$884.8	0.786		$14.0	$13.5
	$14.0	$7.0	$7.0			$19.0			
621910—Ambulance Services	$3.2	$25.5	$1.4	23.6	$586.4	0.764		$14.0	$7.0
	$19.0	$7.0	$14.0			$19.0			
621991—Blood and Organ Banks	$24.4	$147.2	$17.4	34.6	$770.3	0.795		$30.0	$10.0
	$35.5	$35.5	$35.5			$25.5			
621999—All Other Miscellaneous Ambulatory Health Care Services	$2.8	$24.0	$1.3	20.4	$370.6	0.805	42.1	$14.0	$10.0
	$14.0	$7.0	$10.0			$25.5			
622110—General Medical and Surgical Hospitals	$213.7	$472.3	$183.2	7.8	$12,744.3		51.8	$35.5	$34.5
	$35.5	$35.5	$35.5						
622210—Psychiatric and Substance Abuse Hospitals	$40.1	$58.3	$25.0	15.2	$653.2			$30.0	$34.5
	$35.5	$14.0	$35.5						
622310—Specialty (except Psychiatric and Substance Abuse) Hospitals	$75.9	$123.8	$49.5	24.0	$1,708.4			$35.5	$34.5
	$35.5	$30.0	$35.5						

623110—Nursing Care Facilities	$10.7	$56.7	$7.7	10.6	$2,462.0	0.691	14.1	$25.5	$13.5
	$35.5	$14.0	$35.5	.....	.....	$7.0			
623210—Residential Mental Retardation Facilities	$3.1	$18.7	$1.9	8.9	$407.6	0.717	.....	$14.0	$10.0
	$19.0	$7.0	$19.0	.....	.....	$10.0			
623220—Residential Mental Health and Substance Abuse Facilities	$2.5	$7.9	$1.7	6.8	$147.1	0.610	.....	$10.0	$7.0
	$14.0	$5.0	$14.0	.....	.....	$5.0			
623311—Continuing Care Retirement Communities	$7.2	$31.7	$12.7	10.9	$709.9	0.720	.....	$25.5	$13.5
	$35.5	$10.0	$35.5	.....	.....	$10.0			
623312—Homes for the Elderly	$1.3	$18.1	$1.7	18.6	$705.3	0.729	.....	$10.0	$7.0
	$7.0	$7.0	$14.0	.....	.....	$14.0			
623990—Other Residential Care Facilities	$2.3	$7.9	$1.7	5.4	$113.4	0.663	−20.8	$10.0	$7.0
	$14.0	$5.0	$14.0	.....	.....	$5.0	$10.0		
624110—Child and Youth Services	$1.6	$9.0	$1.2	.....	.....	0.702	.....	$7.0	$7.0
	$10.0	$5.0	$10.0	.....	.....	$7.0			
624120—Services for the Elderly and Persons with Disabilities	$1.6	$11.7	$1.0	3.6	$230.2	0.719	.....	$7.0	$7.0
	$10.0	$5.0	$7.0	.....	.....	$10.0			
624190—Other Individual and Family Services	$1.3	$9.9	$0.9	.....	.....	0.727	−9.9	$10.0	$7.0
	$7.0	$5.0	$7.0	.....	.....	$14.0			
624210—Community Food Services	$1.8	$12.3	0.8	7.2	$93.7	0.753	.....	$10.0	$7.0
	$10.0	$5.0	$7.0	.....	.....	$19.0			
624221—Temporary Shelters	$1.2	$2.9	1.6	5.9	$55.4	0.487	.....	$10.0	$7.0
	$7.0	$5.0	$14.0	.....	.....	$5.0			
624229—Other Community Housing Services	$1.8	$14.5	$3.6	21.1	$321.6	0.651	.....	$14.0	$7.0
	$10.0	$5.0	$30.0	21.1	$321.6	$5.0			
624230—Emergency and Other Relief Services	$11.3	$265.3	.....	43.0	$906.6	0.925	.....	$30.0	$7.0
	$35.5	$35.5	.....	.....	$19.0	$35.5			
624310—Vocational Rehabilitation Services	$2.5	$9.3	$1.6	5.6	$160.5	0.644	.....	$10.0	$7.0
	$14.0	$5.0	$14.0	.....	.....	$5.0			
624410—Child Day Care Services	$0.5	$9.9	0.2	11.4	$842.7	0.538	.....	$5.0	$7.0
	$5.0	$5.0	$5.0	.....	.....	$5.0			

Common Size Standards

When many of the same businesses operate in multiple industries, SBA believes that a common size standard can be appropriate for these industries even if the industry and relevant program data suggest different size standards. For instance, in past rules, SBA established a common size standard for Computer Systems Design and Related Services (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 (excluding the ''exception''), and NAICS 811212). Another example is the common size standard for certain Architectural, Engineering (A&E) and Related Services. These include NAICS 541310, NAICS 541330 (excluding the ''exceptions''), Map Drafting (an ''exception'' under NAICS 541340), NAICS 541360, and NAICS 541370 (*see* 64 FR 28275 (May 25, 1999)). More recently, SBA established a common size standard for some of the industries in NAICS Sector 44–45, Retail Trade (*see* 75 FR 61597 (October 6, 2010)). Earlier this year, SBA proposed common size standards for several industries in NAICS Sector 54, Professional, Scientific and Technical Services (*see* 76 FR 14323 (March 16, 2011)), NAICS Sector 48–49, Transportation and Warehousing (*see* 76 FR 27935 (May 13, 2011)), NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (*see* 76 FR 63510 (October 12, 2011)), and NAICS Sector 53, Real Estate and Rental and Leasing (*see* 76 FR 70680 (November 15, 2011)).

For NAICS Sector 62, SBA derives, as an alternative to a separate size standard for each industry, common size standards for industries in four NAICS Industry Groups and one NAICS Subsector, as shown in Table 4 Industry Groups for Common Size Standards. The SBA evaluated industry and Federal contracting factors and derived a common size standard for each Industry Group and Subsector using the same method as described above. The results are in Table 5, Size Standards Supported by Each Factor for Each Industry Group (millions of dollars) which immediately follows Table 4, below.

TABLE 4—INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

Industry sector/group: NAICS codes	Industry group title	Industries: 6-digit NAICS codes
6211*	Offices of Physicians	621111, 621112
6213*	Offices of Other Health Practitioners	621310, 621320, 621330, 621340, 621391, 621399
622	Hospitals	622110, 622210, 622310
6232	Residential Mental Retardation, Mental Health and Substance Abuse Facilities.	623210, 623220
6241*	Individual and Family Services	624110, 624120, 624190

* Industries in these Industry Groups currently have the common size standards. SBA proposes to retain common size standards for those industries and proposes a common size standard for two industries in NAICS Industry Group 6232 that currently have separate size standards.

TABLE 5—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY GROUP

[Millions of dollars]

NAICS code/industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coefficient	Federal contract factor (%)	Calculated size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
6211—Offices of physicians	$1.7	$30.5	$0.3	4.4	$3,663.3	0.697	−11.9	$10.0
	$10.0	$10.0	$5.0	.....	.....	$7.0	$14.0	
6213—Offices of other health practitioners	$0.4	$3.1	$0.1	4.3	$546.4	0.410	−16.3	$7.0
	$5.0	$5.0	$5.0	.....	.....	$5.0	$10.0	
622—Hospitals	$191.0	$460.6	$160.6	7.4	$12,984.0	.....	50.2	$35.5
	$35.5	$35.5	$35.5					
6232—Residential mental retardation, mental health and substance abuse facilities	$3.0	$15.2	$1.9	6.3	$425.5	0.701	.....	$14.0
	$19.0	$7.0	$19.0	.....	.....	$7.0		
6241—Individual and Family Services	$1.5	$13.4	$1.0	3.1	$489.7	0.740	−11.9	$10.0
	$7.0	$5.0	$7.0	.....	.....	$14.0	$10.0	

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised size standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008 to 2010 to assess whether the proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly businesses much smaller than the current size standards that utilize the SBA's 7(a) and 504 loans.

Furthermore, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Program applicants. Specifically, an applicant exceeding an NAICS industry based size standard may still be eligible if its maximum tangible net worth does not exceed $15 million and its average net income after Federal income taxes (excluding any carry-over losses) for the 2 full fiscal years before the date of the application is not more than $5 million.

Therefore, no size standard in NAICS 62, Health Care and Social Assistance, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 6, Summary of Size Standards Analysis, (below) summarizes the results of SBA analyses of industry specific size standards from Table 3 and the results for common size standards from Table 5. In terms of industry specific size standards, the results in Table 3 might support increases in size standards for 25 industries, decreases for nine industries and no changes for five industries. Based on common size standards for certain NAICS Industry Groups and Subsectors, the results in Table 5 appear to support increases in size standards for 28 industries, decreases for two industries, and no changes for nine industries.

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS codes	NAICS industry title	Current size standard ($ million)	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)
621111	Offices of Physicians (except Mental Health Specialists).	$10.0	$10.0	$10.0
621112	Offices of Physicians, Mental Health Specialists	10.0	5.0	10.0
621210	Offices of Dentists	7.0	7.0	
621310	Offices of Chiropractors	7.0	5.0	7.0
621320	Offices of Optometrists	7.0	5.0	7.0
621330	Offices of Mental Health Practitioners (except Physicians).	7.0	5.0	7.0
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists.	7.0	5.0	7.0
621391	Offices of Podiatrists	7.0	5.0	7.0
621399	Offices of All Other Miscellaneous Health Practitioners	7.0	7.0	7.0
621410	Family Planning Centers	10.0	7.0	
621420	Outpatient Mental Health and Substance Abuse Centers.	10.0	14.0	
621491	HMO Medical Centers	10.0	30.0	
621492	Kidney Dialysis Centers	34.5	35.5	
621493	Freestanding Ambulatory Surgical and Emergency Centers.	10.0	14.0	
621498	All Other Outpatient Care Centers	10.0	19.0	
621511	Medical Laboratories	13.5	30.0	
621512	Diagnostic Imaging Centers	13.5	14.0	
621610	Home Health Care Services	13.5	14.0	
621910	Ambulance Services	7.0	14.0	
621991	Blood and Organ Banks	10.0	30.0	
621999	All Other Miscellaneous Ambulatory Health Care Services.	10.0	14.0	
622110	General Medical and Surgical Hospitals	34.5	35.5	35.5
622210	Psychiatric and Substance Abuse Hospitals	34.5	30.0	35.5
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals.	34.5	35.5	35.5
623110	Nursing Care Facilities	13.5	25.5	
623210	Residential Mental Retardation Facilities	10.0	14.0	14.0
623220	Residential Mental Health and Substance Abuse Facilities.	7.0	10.0	14.0
623311	Continuing Care Retirement Communities	13.5	25.5	
623312	Homes for the Elderly	7.0	10.0	
623990	Other Residential Care Facilities	7.0	10.0	
624110	Child and Youth Services	7.0	7.0	10.0
624120	Services for the Elderly and Persons with Disabilities	7.0	7.0	10.0
624190	Other Individual and Family Services	7.0	10.0	10.0
624210	Community Food Services	7.0	10.0	
624221	Temporary Shelters	7.0	10.0	
624229	Other Community Housing Services	7.0	14.0	
624230	Emergency and Other Relief Services	7.0	30.0	
624310	Vocational Rehabilitation Services	7.0	10.0	
624410	Child Day Care Services	7.0	5.0	

Despite the results depicted in Table 6, SBA believes that lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008 to 2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate was 9.4 percent or higher from May 2009 to December 2010. It has moderated somewhat to 8.6 percent in November 2011, but has been 9.0 percent or higher for eight of the previous 10 months. The unemployment rate is forecast to remain around this elevated level for a while. More recently, Congress passed and the President signed the Jobs Act to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business

owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a more even playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

Lowering size standards can decrease the number of firms that participate in Federal financial and procurement assistance programs for small businesses. It can also affect small businesses that are now exempt from or that receive some form of relief from the myriad other Federal regulations that use SBA's size standards. That impact could take the form of increased fees, paperwork, or other compliance requirements for small businesses. Furthermore, size standards based solely on analytical results without any other considerations can cut off currently eligible small firms from those programs and benefits. In NAICS Sector 62, more than 500 businesses would lose their small business eligibility if size standards were lowered based solely on results from industry specific analysis, and more than 240 small firms would lose their eligibility if the size standards were lowered based solely on common size standards analysis. That would run counter to what SBA and the Federal Government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not intend to reduce size standards for any industries. For industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards. As stated previously, the Small Business Act requires the Administrator to "* * * consider other factors deemed to be relevant * * *" to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant to establishing small business size standards. SBA nevertheless invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

Based on comparisons between industry specific size standards and common size standards within each Industry Group or Subsector, SBA finds that for some industries, common size standards are more appropriate for several reasons. First, analyzing industries at the more aggregated Industry Group or Subsector level simplifies size standards analysis and will produce more consistent results among related industries. Second, in most cases, industries within each Industry Group or Subsector currently have the same size standards and SBA believes it is better to keep the revised size standards also the same unless industries are significantly different. Third, within each Industry Group or Subsector many of the same businesses tend to operate in the same multiple industries. SBA believes that common size standards reflect the Federal marketplace in those industries better than do different size standards for each industry. Fourth, industry specific size standards and common size standards are mostly within a reasonably close range.

For industries where both industry specific size standards and common size standards have been calculated, for the above reasons, SBA proposes to apply common size standards. For industries where SBA has not estimated common size standards, it proposes to apply industry specific size standards. As discussed above, SBA has decided that lowering small business size standards is inconsistent with what the Federal Government is doing to stimulate the economy and encourage job growth through the Recovery Act and the Jobs Act. Therefore, for those industries for which its analyses suggested decreasing their size standards, SBA proposes to retain the current size standards. Thus, of the 39 industries in NAICS Sector 62, SBA proposes to increase size standards for 28 industries and retain the current size standards for 11 industries. The industries for which SBA has proposed to increase their size standards and their proposed size standards appear in Table 7, Summary of Proposed Size Standards Revisions (below).

SBA's decision to not lower size standards in NAICS Sector 62 is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services), which the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941 (October 21, 2009)) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591 (October 6, 2010)). It is also consistent with the Agency's recently proposed rules for NAICS Sector 54, Professional, Technical, and Scientific Services (76 FR 14323 (March 16, 2011)), NAICS Sector 48–49, Transportation and Warehousing (76 FR 27935 (May 13, 2011)), NAICS Sector 51, Information (76 FR 63216 (October 12, 2011)), and NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services (76 FR 63510 (October 12, 2011)), NAICS Sector 61, Educational Services (76 FR 70667 (November 15, 2011)), and NAICS Sector 53, Real Estate and Rental and Leasing (76 FR 70680 (November 15, 2011)). In each of those final and proposed rules, SBA opted not to reduce small business size standards, for the same reasons it has provided above in this proposed rule.

TABLE 7—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS

NAICS codes	NAICS industry title	Current size standard ($ million)	Proposed size standard ($ million)
621420	Outpatient Mental Health and Substance Abuse Centers	$10.0	$14.0
621491	HMO Medical Centers	10.0	30.0
621492	Kidney Dialysis Centers	34.5	35.5
621493	Freestanding Ambulatory Surgical and Emergency Centers	10.0	14.0
621498	All Other Outpatient Care Centers	10.0	19.0
621511	Medical Laboratories	13.5	30.0
621512	Diagnostic Imaging Centers	13.5	14.0
621610	Home Health Care Services	13.5	14.0
621910	Ambulance Services	7.0	14.0
621991	Blood and Organ Banks	10.0	30.0
621999	All Other Miscellaneous Ambulatory Health Care Services	10.0	14.0

TABLE 7—SUMMARY OF PROPOSED SIZE STANDARDS REVISIONS—Continued

NAICS codes	NAICS industry title	Current size standard ($ million)	Proposed size standard ($ million)
622110	General Medical and Surgical Hospitals	34.5	35.5
622210	Psychiatric and Substance Abuse Hospitals	34.5	35.5
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	34.5	35.5
623110	Nursing Care Facilities	13.5	25.5
623210	Residential Mental Retardation Facilities	10.0	14.0
623220	Residential Mental Health and Substance Abuse Facilities	7.0	14.0
623311	Continuing Care Retirement Communities	13.5	25.5
623312	Homes for the Elderly	7.0	10.0
623990	Other Residential Care Facilities	7.0	10.0
624110	Child and Youth Services	7.0	10.0
624120	Services for the Elderly and Persons with Disabilities	7.0	10.0
624190	Other Individual and Family Services	7.0	10.0
624210	Community Food Services	7.0	10.0
624221	Temporary Shelters	7.0	10.0
624229	Other Community Housing Services	7.0	14.0
624230	Emergency and Other Relief Services	7.0	30.0
624310	Vocational Rehabilitation Services	7.0	10.0

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 62 for which it has proposed to increase size standards, no individual firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed individual size standards, if adopted, small business shares of total industry receipts among those industries vary from less than 0.01 percent to 0.6 percent, with an average of 0.1 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on any of the industries.

Request for Comments

SBA invites public comments on this proposed rule, especially on the following issues:

1. To simplify size standards, SBA proposes eight fixed levels for receipts based size standards: $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether the proposed size standards for NAICS Sector 62 are appropriate given the economic characteristics of each industry reviewed in this proposed rule. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether the number of employees is a more suitable measure of size for certain industries and what that employee level should be.

3. SBA proposes common size standards for industries within certain NAICS Industry Groups, namely NAICS 6211, NAICS 6213, NAICS 6232, NAICS 6241, and NAICS 622. SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt common size standards for those industries or establish a separate size standard for each industry,

b. Whether the proposed common size standards for those industries are at the correct levels or what are more appropriate size standards if the proposed standards are not suitable, and

c. Based on SBA's analysis of the industry data, too much variation exists among the industries to retain the current common size standards or propose different common size standards for several other industries that currently have common size standards. SBA welcomes comments on whether it should adopt common size standards for other industries in NAICS Sector 62, and if so, how those industries are related so that a common size standard would be appropriate.

4. SBA's proposed size standards are based on its evaluation of five primary factors: average firm size, average assets size (as a proxy of startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size and the level, and small business share of Federal contracting dollars. SBA welcomes comments on these factors and/or suggestions of other factors that it should consider for assessing industry characteristics when evaluating or revising size standards. SBA also seeks information on relevant data sources, other than those used by the Agency, if available.

5. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on the specific weight for each factor for those industries along with supporting information.

6. For some industries, based on its analysis of industry and program data alone, SBA proposes to increase the existing size standards by a large amount (such as NAICS 621511, NAICS 621991, NAICS 623110, and NAICS 624230), while for others the proposed increases are modest. SBA seeks feedback on whether, as a policy, it should limit the increase to a size standard or establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

7. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values, as in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and proposed size standards revisions in this proposed rule. This will help SBA to move forward with its review of size

standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, 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 proposed 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. 801, *et seq.*

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that the proposed size standards revisions for a number of industries in NAICS Sector 62, Health Care and Social Assistance, will better reflect the economic characteristics of small businesses and the Federal Government marketplace. 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, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business size definitions. The Act also requires that small business size definitions vary to reflect industry differences. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains 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 because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), 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). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In the 28 industries in NAICS Sector 62 for which SBA has proposed increasing size standards, SBA estimates that more than 4,100 additional firms will obtain small business status and become eligible for these programs. That number is about 0.7 percent of the total number of firms that are classified as small under the current standards in all industries within NAICS Sector 62. If adopted as proposed, this will increase the small business share of total industry receipts in all industries within NAICS Sector 62 from about 30 percent under the current size standards to nearly 32 percent.

Three groups will benefit from the proposed size standards revisions in this rule, if they are adopted as proposed: (1) Some businesses that are above the current size standards may 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.

During fiscal years 2008 to 2010, about 66 percent of Federal contracting dollars spent in industries in NAICS Sector 62 were accounted for by the 28 industries for which SBA has proposed to increase size standards. SBA estimates that additional firms gaining small business status in those industries under the proposed size standards could potentially obtain Federal contracts totaling up to $25 million to $30 million annually 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 can also result in lower prices to the Government for procurements reserved for small businesses, but SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, based on the 2008 to 2010 data, SBA estimates about 35 to 45 additional loans totaling about $11 million to $15 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed 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 the number and total amount of loans. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, as described above, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. 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 one or more disasters, SBA cannot make a meaningful estimate of this impact.

To the extent that about 4,100 newly defined additional small firms could become active in Federal procurement programs, the proposed changes, if adopted, may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. In addition, there will be more firms seeking SBA's guaranteed loans, more firms eligible for enrollment in the Central Contractor Registration's Dynamic Small Business Search database, and more firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVO SBC, and SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with

compliance and verification of small business status and protests of small business status. SBA believes that these added costs will be minimal because mechanisms are already in place to handle these administrative requirements.

Additionally, the costs to the Federal Government may be higher on some Federal contracts. 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. However, the additional costs associated with fewer bidders are expected to be minor since, as by 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 (15 U.S.C. 637(a)(1)(D)(i)(I), 644(a), 657a(b)(2)(b), and 657f(b)). The proposed size standards revisions, if adopted, may have 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 a price evaluation preference 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. 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 because FPDS–NG data only identify the size of businesses receiving Federal contracts as ''small businesses'' or ''other than small businesses''; FPDS–NG does not provide the exact size of the business.

The proposed revisions to the existing size standards for Industries in NAICS Sector 62 are consistent with SBA's statutory mandate to assist small business. 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 benefits and costs associated with this action including possible distributional impacts that relate to Executive Order 13563 are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under **SUPPLEMENTARY INFORMATION**) to various industry associations and trade groups. SBA also met with various industry groups to get their feedback on its methodology and other size standards issues. In addition, SBA presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of Jobs Act tours. The presentation also 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.

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 non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 62, Health Care and Social Assistance, is consistent with Executive Order 13563, Section 6, calling for retrospective analyses of existing rules. The last comprehensive 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 were 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 it will revise them when necessary. In addition, the Jobs Act requires 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.

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 the 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.

Paperwork Reduction Act

For the purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule will not impose any new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this proposed rule, if finalized, may have a significant impact on a substantial number of small businesses in NAICS Sector 62, Health Care and Social Assistance. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's 7(a), 504 Guaranteed Loan and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed 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 businesses 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 that 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 businesses?

1. What are the need for and objective of the rule?

Although size standards for three Subsectors of NAICS 62 (NAICS Subsector 621, Ambulatory Health Care Services; NAICS Subsector 622, Hospitals; and NAICS Subsector 623, Nursing and Residential Care Facilities) were reviewed during 1999–2000, size standards for NAICS Subsector 624, Social Assistance, which includes nine industries, have not been reviewed since the early 1980s. Changes in industry structure, technological changes, productivity growth, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries within NAICS Sector 62. Such changes can be sufficient to support revisions to current size standards for some industries. Based on the analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance. The recently enacted Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What are SBA's description and estimate of the number of small businesses to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that more than 4,100 additional firms will become small because of increases in size standards in 28 industries in NAICS Sector 62. That represents 0.7 percent of total firms that are small under current size standards in all industries within that Sector. This will result in an increase in the small business share of total industry receipts for the Sector from about 30 percent under the current size standard to nearly 32 percent under the proposed standards. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at current size standards 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, recordkeeping and other compliance requirements of the rule?

The proposed size standards changes do not impose any additional reporting or recordkeeping requirements on small businesses. However, qualifying for Federal procurement and a number of other programs requires that businesses 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 § 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 to do otherwise. 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 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 the reasons set forth in the preamble, SBA proposes to amend part 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), 636(b), 662, and 694a(9).

2. In § 121.201, in the table, revise the entries for ''621420'', ''621491'', ''621492'', ''621493'', ''621498'', ''621511'', ''621512'', ''621610'', ''621910'', ''621991'', ''621999'', ''622110'', ''622210'', ''622310'', ''623110'', ''623210'', ''623220'', ''623311'', ''623312'', ''623990'', ''624110'', ''624120'', ''624190'', ''624210'', ''624221'', ''624229'', ''624230'', and ''624310'' to 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
* *	* * *	*	*
621420	Outpatient Mental Health and Substance Abuse Centers	$14.0	
621491	HMO Medical Centers	30.0	
621492	Kidney Dialysis Centers	35.5	
621493	Freestanding Ambulatory Surgical and Emergency Centers	14.0	
621498	All Other Outpatient Care Centers	19.0	
621511	Medical Laboratories	30.0	
621512	Diagnostic Imaging Centers	14.0	
621610	Home Health Care Services	14.0	
621910	Ambulance Services	14.0	
621991	Blood and Organ Banks	30.0	
621999	All Other Miscellaneous Ambulatory Health Care Services	14.0	
Subsector 622—Hospitals			
* *	* * *	*	*
622110	General Medical and Surgical Hospitals	35.5	
622210	Psychiatric and Substance Abuse Hospitals	35.5	
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals	35.5	
Subsector 623—Nursing and Residential Care Facilities			
623110	Nursing Care Facilities	25.5	
623210	Residential Mental Retardation Facilities	14.0	
623220	Residential Mental Health and Substance Abuse Facilities	14.0	
623311	Continuing Care Retirement Communities	25.5	
623312	Homes for the Elderly	10.0	
623990	Other Residential Care Facilities	10.0	
Subsector 624—Social Assistance			
* *	* * *	*	*
624110	Child and Youth Services	10.0	
624120	Services for the Elderly and Persons with Disabilities	10.0	
624190	Other Individual and Family Services	10.0	
624210	Community Food Services	10.0	
624221	Temporary Shelters	10.0	
624229	Other Community Housing Services	14.0	
624230	Emergency and Other Relief Services	30.0	
624310	Vocational Rehabilitation Services	10.0	
* *	* * *	*	*

Dated: December 21, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2012–4329 Filed 2–23–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1095; Directorate Identifier 2009–NE–40–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney (PW) Models PW4074 and PW4077 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all PW PW4074 and PW4077 turbofan engines. The existing AD currently requires removing the 15th stage high pressure compressor (HPC) disk within 12,000 cycles since new (CSN) or using a drawdown removal plan for disks that exceed 12,000 CSN. Since we issued that AD, we received a request from an operator that we clarify our inspection schedule for 15th stage HPC disks. This proposed AD would clarify that 15th stage HPC disks that have accumulated more than 9,685 CSN require a borescope inspection (BSI) or eddy current inspection (ECI) of the disk outer rim front rail for cracks prior to accumulating 12,000 CSN. We are proposing this AD to prevent cracks from propagating into the disk bolt holes, which could result in a failure of

the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

DATES: We must receive comments on this proposed AD by April 24, 2012.

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

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

For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7178; fax: 781–238–7199; email: *ian.dargin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2010–1095; Directorate Identifier 2009–NE–40–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On June 24, 2011, we issued AD 2011–14–07, amendment 39–16742 (76 FR 47056, August 4, 2011), for all PW PW4074 and PW4077 turbofan engines with 15th stage HPC disks, part number (P/N) 55H615, installed. That AD requires removing the 15th stage HPC disk within 12,000 CSN or, for any disks that exceed 12,000 CSN after the effective date of this AD, using a drawdown plan that includes a BSI or ECI of the disk outer rim front rail for cracks. That AD resulted from multiple shop findings of cracked 15th stage HPC disks. We issued that AD to prevent cracks from propagating into the disk bolt holes, which could result in a failure of the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2011–14–07 (76 FR 47056, August 4, 2011), we received a request from an operator that we clarify our inspection schedule for 15th stage HPC disks that have accumulated more than 9,685, but less than 12,000 CSN, on the effective date of the AD. The operator indicated that AD 2011–14–07 did not require a BSI or ECI for 15th stage HPC disks that had more than 9,685, but less than 12,000 CSN, on the effective date of the AD. Based on the comment, we reviewed the AD and found that this new AD action was necessary to ensure that the disc was inspected before accumulating 12,000 CSN. This proposed AD would ensure that inspection will occur.

Relevant Service Information

We reviewed and approved the technical contents of Pratt & Whitney Service Bulletin (SB) PW4G–112–72–309, Revision 1, dated July 1, 2010. The SB describes procedures for performing a BSI or ECI for cracks in the front rail of the outer rim of the 15th stage HPC disk.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2011–14–07 (76 FR 47056, August 4, 2011). This proposed AD would also clarify that 15th stage HPC disks that have accumulated more than 9,685, but less than 12,000 CSN, require a BSI or ECI of the disk outer rim front rail for cracks prior to accumulating 12,000 CSN.

Costs of Compliance

We estimate that this proposed AD would affect 44 engines installed on airplanes of U.S. registry. Prorated parts life would cost about $66,000 per 15th stage HPC disk. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $2,904,000. The new requirements of this proposed AD add no additional economic burden.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and

Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–14–07, Amendment 39–16742 (76 FR 47056, August 4, 2011), and adding the following new AD:

Pratt & Whitney: Docket No. FAA–2010–1095; Directorate Identifier 2009–NE–40–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by April 24, 2012.

(b) Affected ADs

This AD supersedes AD 2011–14–07, Amendment 39–16742.

(c) Applicability

This AD applies to Pratt & Whitney (PW) PW4074 and PW4077 turbofan engines with 15th stage high-pressure compressor (HPC) disks, part number (P/N) 55H615, installed.

(d) Unsafe Condition

This AD results from multiple shop findings of cracked 15th stage HPC disks. We are issuing this AD to prevent cracks from propagating into the disk bolt holes, which could result in a failure of the 15th stage HPC disk, uncontained engine failure, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done. To perform the inspections, use paragraph 1.A. or 1.B. of the Accomplishment Instructions ''For Engines Installed on the Aircraft'' or 1.A. or 1.B. of the Accomplishment Instructions ''For Engines Removed from the Aircraft,'' of PW Service Bulletin PW4G–112–72–309, Revision 1, dated July 1, 2010.

(1) For 15th stage HPC disks that have 9,865 or fewer cycles since new (CSN) on the effective date of this AD, remove the disk from service before accumulating 12,000 CSN.

(2) For 15th stage HPC disks that have accumulated more than 9,865 CSN on the effective date of this AD, do the following:

(i) Remove the disk from service at the next piece-part exposure, not to exceed 2,135 cycles-in-service (CIS) after the effective date of this AD.

(ii) Perform a borescope inspection (BSI) or eddy current inspection (ECI) of the front rail of the disk outer rim according to the following schedule:

(A) Within 2,400 cycles-since-last fluorescent penetrant inspection or ECI, or

(B) Within 1,200 cycles-since-last BSI, or

(C) Before accumulating 12,000 CSN, or

(D) Within 55 CIS after the effective date of this AD, whichever occurs latest.

(3) If the BSI from paragraph (e)(2)(ii) of this AD indicates the presence of a crack in the disk outer rim front rail, but you cannot visually confirm a crack, perform an ECI within 5 CIS after the BSI.

(4) If you confirm a crack in the front rail of the disk outer rim using any inspection method, remove the disk from service before further flight.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) Related Information

(1) For more information about this AD, contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7178; fax: (781) 238–7199; email: ian.dargin@faa.gov.

(2) Pratt & Whitney Service Bulletin PW4G–112–72–309 Revision 1, dated July 1, 2010, pertains to the subject of this AD. Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605, for a copy of this service information.

(3) You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 16 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on February 15, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–4286 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0008; Directorate Identifier 2011–NE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. This proposed AD was prompted by the discovery of a manufacturing defect on certain part number (P/N) and serial number (S/N) low-pressure (LP) compressor booster rotors. This proposed AD would require initial and repetitive fluorescent penetrant inspections of certain P/N and S/N LP compressor booster rotors and rework or replacement of them as terminating action to the repetitive inspections. We are proposing this AD to prevent failure of the LP compressor booster rotor, uncontained engine failure, and damage to the airplane.

DATES: We must receive comments on this proposed AD by April 24, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

For service information identified in this proposed AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany, telephone: +49 (0) 33–7086–1883, fax: +49 (0) 33–7086–3276. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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 (phone: 800–647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7758; fax: 781–238–7199; email: *mark.riley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0008; Directorate Identifier 2011–NE–43–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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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 2011–0232, dated December 13, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several LP compressor booster rotors have been found non-compliant to original design. The technical investigations carried out by Rolls-Royce Deutschland revealed that this discrepancy is due to a manufacturing defect and that only some specific LP compressor booster rotor serial numbers are affected. This condition, if not corrected, could lead to an uncontained engine failure, potentially damaging the aeroplane and injuring its occupants, and/or injuring persons on the ground.
>
> To address this condition, RRD has developed an inspection program and a rework for the affected LP compressor booster rotors.
>
> For the reason described above, depending on engine type of operations, this AD requires repetitive fluorescent penetrant inspections of the LP compressor booster rotor and if any crack is found, replacement with a serviceable part. This AD also requires rework of all affected LP compressor booster rotors.

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

Relevant Service Information

RRD has issued Alert Service Bulletin No. SB–BR700–72–A900503, Revision 4, dated June 16, 2011, and RRD SB No. SB–BR700–72–101683, dated September 20, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the 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 96 engines installed on airplanes of U.S. registry. We also estimate that it would take about 5 work-hours per engine to perform one inspection, and about 8 work-hours per engine to perform the rework. The average labor rate is $85 per work-hour. Based on these figures, if all engines are reworked, we estimate the cost of the proposed AD on U.S. operators to perform one inspection and to perform the rework to be $106,080.

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

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:

Rolls-Royce Deutschland Ltd & Co KG: Docket No. FAA–2012–0008; Directorate Identifier 2011–NE–43–AD.

(a) Comments Due Date

We must receive comments by April 24, 2012.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines, with a low-pressure (LP) compressor booster rotor, part number (P/N) BRH19215, or P/N BRH19871, with serial numbers 118 to 255 inclusive, installed.

(d) Reason

This AD was prompted by the discovery of a manufacturing defect on certain P/N and S/N LP compressor booster rotors. We are issuing this AD to prevent failure of the LP compressor booster rotor, uncontained engine failure, and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions.

(1) At the applicable compliance time in Table 1 of this AD, perform an initial fluorescent penetrant inspection (FPI) of the LP compressor booster rotor, in accordance with paragraphs 3.D. through 3.H.(3) of Accomplishment Instructions of RRD Alert Service Bulletin (ASB) No. SB–BR700–72–A900503, Revision 4, dated June 16, 2011.

TABLE 1—COMPLIANCE TIMES

Engine type of operation	Initial FPI (whichever occurs later)	Repetitive FPI interval (not to exceed)
"Hawaiian" Flight Mission only	Before accumulating 36,000 engine cycles (EC) or within 500 EC after the effective date of this AD.	6,000 EC.
Any other rating, or combination of ratings	Before accumulating 18,000 EC, or within 500 EC after the effective date of this AD.	4,000 EC.

(2) Thereafter, at intervals not to exceed the applicable compliance time in Table 1 of this AD, perform repetitive FPIs of the LP compressor booster rotor, in accordance with paragraphs 3.D. through 3.H.(3) of Accomplishment Instructions of RRD ASB No. SB–BR700–72–A900503, Revision 4, dated June 16, 2011.

(3) Remove cracked LP compressor booster rotors before further flight.

(4) At the next piece part exposure of the LP compressor booster rotor during shop visit, remove the LP compressor booster rotor and either:

(i) Rework the LP compressor booster rotor in accordance with paragraphs 3.A. through 3.F. of Accomplishment Instructions of RRD Service Bulletin No. SB–BR700–72–101683, dated September 20, 2010; or

(ii) Replace the LP compressor booster rotor with one that is eligible for installation.

(f) Definition

(1) For the purpose of this AD, an LP compressor booster rotor that is eligible for installation is one that is not listed in applicability paragraph (c) of this AD.

(2) The Hawaiian Flight Mission referenced in Table 1 of this AD is defined in RRD BR715 Time Limits Manual, T–715–3BR, Section 05–00, Task 05–00–02–800–001, Hawaiian Flight Mission Profile, Figure 05–00–02–990–008 (Fig. 8).

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) For more information about this AD, contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7758; fax: 781–238–7199; email: *mark.riley@faa.gov.*

(2) Refer to MCAI EASA Airworthiness Directive 2011–0232, dated December 13, 2011; RRD Alert ASB No. SB–BR700–72–A900503, Revision 4, dated June 16, 2011; and RRD SB No. SB–BR700–72–101683, dated September 20, 2010, for related information.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany, telephone: +49 (0) 33–7086–1883, fax: +49 (0) 33–7086–3276. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on February 13, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–4287 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

RIN 1235–AA05

Application of the Fair Labor Standards Act to Domestic Service

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice and extension of comment period.

SUMMARY: This document extends the period for filing written comments for an additional 14 days on the proposed revisions to the Application of the Fair Labor Standards Act to Domestic Service published on December 27, 2011. The Department of Labor (Department) is taking this action in order to provide interested parties additional time to submit comments.

DATES: The agency must receive comments on or before March 12, 2012. The period for public comments, which was to close on February 27, 2012, will be extended to March 12, 2012.

ADDRESSES: You may submit comments, identified by RIN 1235–AA05, by either one of the following methods:

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

Mail: Mary Ziegler, Director, Division of Regulations, Legislation and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name (Wage and Hour Division) and Regulatory Information Number identified above for this rulemaking (1235–AA05). All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Consequently, prior to including any individual's personal information such as Social Security Number, home address, telephone number, email addresses and medical data in a comment, the Department urges commenters carefully to consider that their submissions are a matter of public

record and will be publicly accessible on the Internet. It is the commenter's responsibility to safeguard his or her information. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* or to submit them by mail early. For additional information on submitting comments and 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, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll free number). Copies of this notice of proposed rulemaking may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023. TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the Wage and Hour Division's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's Web site for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Electronic Access and Filing Comments

Public Participation: This notice of proposed rulemaking is available through the **Federal Register** and the *http://www.regulations.gov* Web site. You may also access this document via the Department's Web site at *http://www.dol.gov/federalregister.* To comment electronically on federal rulemakings, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* which will allow you to find, review, and submit comments on federal documents that are open for comment and published in the **Federal Register.** Please identify all comments submitted in electronic form by the RIN docket number (1235–AA05). Because of delays in receiving mail in the Washington, DC area, commenters should transmit their comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov,* or submit them by mail early to ensure timely receipt prior to the close of the comment period. Submit one copy of your comments by only one method.

II. Request for Comment

The Department is proposing to revise the Fair Labor Standards Act minimum wage, overtime and recordkeeping regulations pertaining to the exemptions for companionship services and live-in domestic services. The Department proposes to amend the regulations to revise the definitions of ''domestic service employment'' and ''companionship services.'' The Department also proposes to more specifically describe the type of activities and duties that may be considered ''incidental'' to the provision of companionship services. In addition, the Department proposes to amend the recordkeeping requirements for live-in domestic workers. Finally, the Department proposes to amend the regulation pertaining to employment by a third party of companions and live-in domestic workers. This change would continue to allow the individual, family, or household employing the worker's services to apply the companionship and live-in exemptions and would deny all third party employers the use of such exemptions.

On December 15, 2011, President Obama announced that the Department of Labor was proposing the rule changes. The Department posted a Notice of Proposed Rulemaking (NPRM), complete with background information, economic impact analyses and proposed regulatory text, on its Web site that day. The Department published the NPRM in the **Federal Register** on December 27, 2011 (76 FR 81190), requesting public comments on the proposed revisions to the regulations pertaining to the exemption for companionship services and live-in domestic services. Interested parties were requested to submit comments on or before February 27, 2012.

The Department has received requests to extend the period for filing public comments from members of Congress and various business organizations. Because of the interest that has been expressed in this matter, the Department has decided to extend the period for submitting public comment for 14 additional days.

Dated: February 16, 2012.

Nancy J. Leppink,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 2012–4147 Filed 2–23–12; 8:45 am]

BILLING CODE 4510–27–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2011–0367, FRL–9636–9]

Approval and Promulgation of Implementation Plans; State of Alaska; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision, submitted by the State of Alaska on April 4, 2011, as meeting the requirements of Clean Air Act (CAA) sections169A and 169B, and Federal Regulations 40 CFR 51.308, to implement a regional haze program in the State of Alaska for the first planning period through July 31, 2018. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). Additionally, EPA proposes to approve the Alaska Department of Environmental Conservation Best Available Retrofit Technology regulations at 18 AAC 50.260.

DATES: Written comments must be received at the address below on or before March 26, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2011–0367, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Keith Rose, EPA Region 10, Office of Air, Waste and Toxics, AWT–107, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900,

Seattle, WA 98101. Attention: Keith Rose, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2011–0367. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (*e.g.,* CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. EPA requests that if at all possible, you contact the individual listed below to view the hard copy of the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Rose at telephone number (206) 553–1949, *rose.keith@epa.gov* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

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I. Background for EPA's Proposed Action

In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in the national parks and wilderness areas. See CAA section 169A. Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169B. EPA promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require states to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas [1] (Class I areas). 64 FR 35714 (July 1, 1999); see also 70 FR 39104 (July 6, 2005) and 71 FR 60612 (October 13, 2006).

The Alaska Department of Environmental Conservation (ADEC) adopted and transmitted its ''Alaska Regional Haze State Implementation Plan'' (Alaska Regional Haze SIP) to EPA Region 10 in a letter dated March 29, 2011. EPA determined the plan complete by operation of law on September 4, 2011. As a result of the Alaska's participation with 13 other states, tribal nations and Federal agencies in the Western Regional Air Partnership (WRAP), Alaska's Regional Haze SIP reflects a consistent approach toward addressing regional visibility impairment at 116 Class I areas in the West.

In this action, EPA is proposing to approve all provisions of Alaska's Regional Haze SIP submission, including the requirements for the calculation of baseline and natural visibility conditions, statewide inventory of visibility-impairing pollutants, best available retrofit technology (BART), Reasonable Progress Goals (RPGs), and Long-Term Strategy (LTS). EPA is also proposing to approve the Alaska Department of Environmental Conservation (ADEC) BART regulations at 18 AAC 50.260.

A. Definition of Regional Haze

Regional haze is impairment of visual range, clarity or colorization caused by emission of air pollution produced by numerous sources and activities, located across a broad regional area. The sources include but are not limited to, major and minor stationary sources, mobile sources, and area sources including non-anthropogenic sources. These sources and activities may emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates,

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Atmospheric fine particulate reduces clarity, color, and visual range of visual scenes. Visibility-reducing fine particulates are primarily composed of sulfate, nitrate, organic carbon compounds, elemental carbon, and soil dust, and impair visibility by scattering and absorbing light. Fine particulate can also cause serious health effects and mortality in humans, and contributes to environmental effects such as acid deposition and eutrophication. See 64 FR at 35715.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks and wilderness areas. The average visual range in many Class I areas in the Western United States is 100–150 kilometers, or about one-half to two-thirds the visual range that would exist without anthropogenic air pollution. Id. Visibility impairment also varies day-to-day and by season depending on variation in meteorology and emission rates.

B. Regional Haze Rules and Regulations

In section 169A of the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.'' CAA section 169A(a)(1). On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment''. See 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the regional haze rule or RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section II of this proposed rulemaking. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands.[2] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze impairment can originate from across state lines, EPA has encouraged the States and Tribes to address visibility impairment from a regional perspective. Five regional planning organizations[3] (RPOs) were created nationally to address regional haze and related issues. One of the main objectives of the RPOs is to develop and analyze data and conduct pollutant transport modeling to assist the States or Tribes in developing their regional haze plans.

The Western Regional Air Partnership (WRAP)[4], one of the five RPOs nationally, is a voluntary partnership of State, Tribal, Federal, and local air agencies dealing with air quality in the West. WRAP member States include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. WRAP Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnka, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

As a result of the regional planning efforts in the West, all states in the WRAP region contributed information to a Technical Support System (TSS) which provides an analysis of the causes of haze, and the levels of contribution from all sources within each state to the visibility degradation of each Class I area. The WRAP States consulted in the development of reasonable progress goals, using the products of this technical consultation process to co-develop their reasonable progress goals for the Western Class I areas. The modeling done by the WRAP relied on assumptions regarding emissions over the relevant planning period and embedded in these assumptions were anticipated emissions reductions in each of the States in the WRAP, including reductions from BART and other measures to be adopted as part of the State's long term strategy for addressing regional haze. The reasonable progress goals in the draft and final regional haze SIPs that have now been prepared by States in the West accordingly are based, in part, on the emissions reductions from nearby States that were agreed on through the WRAP process.

II. Requirements for Regional Haze SIPs

A. The CAA and the Regional Haze Rule

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

[2] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[3] See *http://www.epa.gov/air/visibility/regional.html* for description of the regional planning organizations.

[4] The WRAP Web site can be found at *http://www.wrapair.org.*

B. Determination of Baseline, Natural Conditions, and Visibility Improvement

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is determined by measuring the visual range (or deciview), which is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[5]

The deciview is used in expressing reasonable progress goals (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, *i.e.,* anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20% least impaired (''best'') and 20% most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment, and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*)), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20% least impaired days and 20% most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then-current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline time period is considered the time from which improvement in visibility is measured.

C. Best Available Retrofit Technology

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources[6] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' (''BART'') as determined by the state. States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility-impairing pollutants are sulfur dioxide, nitrogen oxides, and fine particulate matter. EPA has indicated that states should use their best judgment in determining whether volatile organic compounds or ammonia compounds impair visibility in Class I areas.

Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Generally, an exemption threshold set by the State should not be higher than 0.5 deciviews (dv).

In their SIPs, States must identify potential BART sources and BART-eligible sources that have a visibility impact in any Class I area above the ''BART subject'' threshold established by the State and thus, are ''subject'' to

[5] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

[6] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

BART. States must document their BART control analysis and determination for all sources subject to BART.

The term ''BART-eligible'' source used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are generally free to determine the weight and significance to be assigned to each factor.

The regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date EPA approves the regional haze SIP. See CAA section 169A(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

D. Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs that establish two Reasonable Progress Goals (RPGs) (*i.e.,* two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) ten-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. In setting reasonable progress goals (RPGs), States must provide for an improvement in visibility for the most impaired days over the (approximately) ten-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* July 1, 2007, Memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1) (''EPA's Reasonable Progress Guidance''). In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' (URP) or the ''glide path'') and the emission reduction measures needed to achieve that rate of progress over the ten-year period of the SIP. Uniform rate of progress represents a rate of progress that states are to use for comparison to the amount of progress they expect to achieve over the ten-year period. In setting RPGs, each State with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing States,'' *i.e.,* other nearby States with emission sources that may be affecting visibility impairment at the Class I State's areas. See 40 CFR 51.308(d)(1)(iv).

E. Long-Term Strategy

Consistent with the requirement in section 169A(b) of the CAA that States include in their regional haze SIP a ten to fifteen-year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that States include a long-term strategy (LTS) in their regional haze SIPs. The LTS is the compilation of all control measures a State will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures needed to achieve the reasonable progress goals'' for all Class I areas within and affected by emissions from the State. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with contributing states to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultation between states may be required to sufficiently address interstate visibility issues (*e.g.,* where two states belong to different RPOs).

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and, (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTSs, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively.

The periodic review of a state's LTS must provide the status of both regional haze and RAVI impairment, and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR requires a monitoring strategy for measuring, characterizing, and reporting on regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network, *i.e.,* review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met. The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and,
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

H. SIP Revisions and Five-Year Progress Reports

The RHR requires control strategies to cover an initial implementation period through 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every ten years thereafter. Periodic SIP revisions must meet the core requirements of 40 CFR 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of 40 CFR 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

Each state also is required to submit a report to EPA every five years that evaluates progress toward achieving the RPG for each Class I area within the state and outside the state if affected by emissions from within the state. 40 CFR 51.308(g). The first progress report is due five years from submittal of the initial regional haze SIP revision. At the same time a 5-year progress report is submitted, a state must determine the adequacy of its existing SIP to achieve the established goals for visibility improvement. See 40 CFR 51.308(h).

I. Consultation With States and Federal Land Managers

The RHR requires that states consult with Federal Land Managers (FLMs) before adopting and submitting their SIPs. See 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and to offer recommendations on the development of the reasonable progress goals and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, 5-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. EPA's Analysis of Alaska's Regional Haze SIP

A. Affected Class I Areas

Alaska has four Class I areas within the state. These four Class I areas are Denali National Park, Simeonof Wilderness Area, Tuxedni National Wildlife Refuge, and Bering Sea Wilderness Area. ADEC has not identified any other state that is impacting the Class I areas in Alaska, and Alaska has not been identified as a contributor to impacts in other state's Class I areas. However, in accordance with 40 CFR 51.308(d)(1)(iv) and 51.308(d)(3)(i), ADEC commits to continue consultation with states which may reasonably be anticipated to cause or contribute to visibility impairment in Federal Class I areas located within Alaska. ADEC will also continue consultation with any state for which Alaska's emissions may reasonably be anticipated to cause or contribute to visibility impairment in that state's Federal Class I areas.

B. Baseline, Natural Conditions and Visibility Improvement

Alaska, using data from the IMPROVE monitoring network and analyzed by WRAP, calculated current baseline and natural visibility conditions, and the uniform rate of progress (URP) [7] for Denali National Park, Simeonof Wilderness Area and Tuxedni Wildlife Refuge. Baseline visibility for the most-impaired (20% worst) days and the least-impaired (20% best) days was calculated from monitoring data collected by IMPROVE monitors. The IMPROVE monitoring sites for each Class I area are:

- Denali National Park—Denali National Park has two visibility monitors. One site is located at the Denali National Park Headquarters (DENA1), which has operated since 1988, and the second is the Trapper Creek monitoring site (TRCR1) located 100 yards east of the Trapper Creek Elementary School, west of the Town of Trapper Creek. The monitor located at Trapper Creek is the official IMPROVE site for Denali National Park and was established in September 2001 to evaluate the long-range transport of pollution into the Park from the south.
- Simeonof Wilderness Area—The Simeonof Wilderness Area is located on a remote, isolated island in the Aleutian chain approximately 58 miles from mainland Alaska. The Fish and Wildlife Service has placed an IMPROVE air monitor in the community of Sand Point, Alaska to represent this wilderness area. The community is on a more accessible island approximately 60 miles north west of the Simeonof Wilderness Area. The monitor has been operating since September 2001.

[7] The URP is also referred to as the visibility ''glidepath'', which is the linear rate of progress needed to achieve natural visibility conditions by 2064.

• Tuxedni National Wildlife Refuge—Tuxedni National Wildlife Refuge is located on a relatively remote pair of islands in Tuxedni Bay off of Cook Inlet in Southcentral Alaska. The Fish and Wildlife Service has installed an IMPROVE monitor near Lake Clark National Park to represent conditions at Tuxedni Wilderness Area. This site is located on the west side of Cook Inlet, approximately 5 miles from the Tuxedni National Wildlife Refuge. The site was operational as of December 18, 2001, and represents regional haze conditions for the wilderness area.

• Bering Sea Wilderness Area—This wilderness area encompasses St. Matthew Island, Hall Island, and Pinnacle Island and is part of the larger Bering Sea unit of the Alaska Maritime National Wildlife Refuge. The Bering Sea Wilderness area is extremely remote and located approximately 350 miles southwest of Nome, Alaska and is surrounded on all sides by the Bering Sea. There is essentially no electricity or other infrastructure to support a monitor. Additionally, the area is hundreds of miles away from population centers or major stationary sources. This area had a DELTA–DRUM sampler (a mobile sampler) installed during a field visit in 2002. However, difficulties were encountered with the power supply and no viable data are available, therefore ADEC is not able to determine baseline visibility conditions for this site. Due to its inaccessibility, remoteness, and harsh environment, no IMPROVE monitoring is available or is currently planned for the Bering Sea Wilderness Area.

In general, WRAP based their estimates of natural conditions on EPA's 2003 Natural Visibility Guidance, but incorporated refinements which EPA believes provides results more appropriate for Alaska than the general EPA default approach. These refinements include the use of an updated IMPROVE algorithm which uses a higher ratio of organic mass concentration to organic carbon mass, which better accounts for haze from organic mass, and includes a term for sea salt, which causes a significant amount of haze in the Tuxedni and Simeonof Class I areas. See WRAP Technical Support Document, February 28, 2011 (WRAP TSD) section 2.D and 2.E, supporting this action.

Table 1 below shows visibility conditions in Denali National Park, Simeonof Wilderness Area and Tuxedni National Wildlife Refuge for the 20% worst natural visibility days, the 20% worst baseline days, the 2018 URP, and the visibility improvement needed between 2002 and 2018 to achieve the URP. Table 2 shows visibility conditions on the 20% best days.

TABLE 1—20% WORST DAY VISIBILITY CONDITIONS

Site	Class I area	20% Worst natural conditions (dv)	20% Worst baseline conditions (dv)	2018 Uniform rate of progress (dv)	Visibility improvement needed by 2018 (dv)
DENA1	Denali	7.3	9.9	9.5	0.4
TRCR1	Denali	8.4	11.6	11.1	0.5
SIME1	Simeonof	15.6	18.6	18.1	0.5
TUXE1	Tuxedni	11.3	14.1	13.6	0.5

TABLE 2—20% BEST DAY VISIBILITY CONDITIONS

Site	Class I area	20% Best baseline conditions (dv)	20% Best natural conditions (dv)
DENA1	Denali	2.4	1.8
TRCR1	Denali	3.5	2.7
SIME1	Simeonof	7.6	5.3
TUXE1	Tuxedni	4.0	3.2

Based on IMPROVE data collected in the Class I areas in Alaska during the baseline period (2000–2004), the major pollutants that contribute to light extinction on the 20% worst days at the Simeonof site are: sea salt (47%), sulfates (29%), and organic mass concentration (OMC) (9%); at the Denali DENA1 site are: OMC (54%), sulfates (25%), elemental carbon (8%); at the Denali TRCR1 site are: OMC (43%), sulfates (35%), coarse matter (7%); and at the Tuxedni site are: OMC (28%), sea salt (26%), sulfate (28%).

As noted previously, due to the remote location of the Class I area in the Bering Sea, no monitoring site exists in this Class I area and insufficient data are available to accurately calculate baseline values for this Class I area. The area is located a considerable distance off shore in the Bering Sea and is hundreds of miles from any other monitoring location. Alaska evaluated and discussed the origins and influence of aerosols to this Class I area, and concluded that significant impacts from local industrial, commercial or community developments are unlikely. Future impacts from potential offshore oil and gas development is a remote possibility, but is also unlikely as there are no offshore oil and gas developments currently planned for the St. Matthew-Hall area, or the adjoining Aleutian Basin, Bowers Basin, and Aleutian Arc areas. Finally Alaska indicates that it will continue to evaluate the possibility for portable sampling in remote locations as resources allow. Alaska Regional Haze SIP submittal III.K.3–17. EPA acknowledges the provision in the RHR which provides that for Class I areas without monitoring data for 2000–2004 the state should establish baseline values using the most representative available monitoring data for 2000–2004 in consultation with the Administrator. 40 CFR 51.308 (d)(2)(i). However, as explained above and more fully described the SIP submission, representative data is not available for the Bering Sea Wilderness Area. Additionally, given the location of this Wilderness Area in the middle of the Bering Sea hundreds of miles off the

coast of Alaska, it is likely that any sources impacting visibility in the area would be beyond Alaska's jurisdiction or ability to control. Also EPA expects the state to update any available monitoring or visibility impact analyses in its 5-year progress reports. Therefore, given the unique, extremely remote and isolated location and the associated difficulties with monitoring at the area EPA proposes to accept Alaska's approach to the Bering Sea Wilderness Area.

Based on our evaluation of the State's baseline and natural conditions analysis, EPA is proposing to find that Alaska has appropriately determined baseline visibility for the average 20% worst and 20% best days, and natural visibility conditions for the average 20% worst days, and the visibility glidepath from the baseline conditions to natural conditions in the three Class I areas. See sections 2.D and 2.E of the WRAP TSD supporting this action. We also believe the State's analysis accurately determined the individual aerosol species causing impairment in the three Class I areas.

C. Alaska Emissions Inventories

There are three main categories of visibility-impairing air pollution sources: point sources, area sources, and mobile sources. Point sources are larger stationary sources that emit air pollutants. Area sources are large numbers of small sources that are widely distributed across an area, such as residential heating units, re-entrained dust from unpaved roads or windblown dust from agricultural fields. Mobile sources are sources such as motor vehicles, including agricultural and construction equipment, locomotives, and aircraft.

EPA's Regional Haze Rule requires a statewide emission inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area. 40 CFR 51.308(d)(4)(v). ADEC compiled emission inventories for all visibility impairing source categories in Alaska for the 2002 baseline year, and projected future emission inventories for these source categories in 2018. See Appendix III.K.5 of the SIP submittal. The fire sector of the baseline inventory was developed using 2000–2004 average data obtained from the WRAP Fire Inventory efforts. Emission estimates for 2018 were generated from anticipated population growth, growth in industrial activity, and emission reductions from implementation of control measures, *e.g.,* implementation of BART limitations and motor vehicle tailpipe emissions. Chapter 5 of the Alaska Regional Haze SIP submittal discusses how emission estimates were determined for statewide emission inventories by pollutant and source category.

Key factors that were considered in the development of these regional haze emission inventories were:

Pollutants—Inventories were developed for the following pollutants: hydrocarbons (HC), carbon monoxide (CO), oxides of nitrogen (NO_X), sulfur oxides (SO_X), ammonia (NH_3), volatile organic compounds (VOC), and coarse and fine particulate matter (PM_{10} and $PM_{2.5}$, respectively).

Areal Extent and Spatial Resolution—The inventories represent sources within the entire state of Alaska, encompassing a total of 27 boroughs/counties. Emissions were allocated to individual grid cells, of 45 square kilometers each, in a rectangular grid domain covering all of Alaska. This grid domain was based on domain developed under an earlier WRAP study for which a modeling protocol was developed. See Figure III.K.5–2 of the SIP submittal.

Included Sources—Emission sources included known stationary point and area sources including fugitive dust and both anthropogenic and natural fires, and on-road and non-road mobile sources. As discussed later in this section, biogenic (trees and vegetation) and geogenic sources (gas/oil seeps, wind erosion, and geothermal and volcanic activity) were not included.

Temporal Resolution—The inventories were expressed in the form of annual emissions for 2002 and 2018. For all source categories, except the fire sector, the baseline inventory was represented using calendar year 2002 annual emission estimates. The fire sector of the baseline inventory was developed using 2000–2004 average data obtained from the WRAP Fire Inventory efforts. These data reflect fire activity (from wildfires, wildland fires, and prescribed burns) averaged over this five-year period and are less likely to be biased by fire emissions from any individual year. See Alaska Regional Haze submittal III.K.5–3.

The 2018 inventory was developed to reflect emission levels projected to calendar year 2018, accounting for forecasted changes in source activity and emission factors. Population projections compiled by the Alaska Department of Labor and Workforce Development at five-year intervals through 2030 by individual borough and census area were used to grow 2002 baseline activity to 2018 for most of the source categories, with a couple of exceptions.

In developing its 2018 emission inventory, Alaska first determined that emission estimates for wildfires should be held constant between 2002 and 2018. However, as explained later, modest reductions in prescribed burn emissions were assumed, consistent with WRAP 2018b Phase III Fire Inventory forecast. Second, activity from small port commercial marine vessel activity in 2002 was assumed to be identical to that obtained for calendar year 2005.

Alaska also developed emission factors specific to calendar year 2018 for sources affected by regulatory control programs and technology improvements. These source sectors included on-road and non-road mobile sources (except commercial marine vessels and aviation) and stationary point sources. Alaska explained that the emissions forecast for 2018 does not include emissions from new or permitted sources that are not currently operating but which may be in operation in 2018. However, where the status of these facilities is known, Alaska further discussed the sources' influence on predicted emissions or visibility impact on a particular Class I area.

The SIP submittal identifies total annual emission estimates for visibility-impairing pollutants including SOx, NO_X, VOC HC, CO, $PM_{2.5}$, PM_{10} and NH_3 for 2002 and 2018. These emission estimates were partitioned into eight emission source categories: point sources, stationary area sources (excluding fires), on-road mobile, non-road mobile, commercial marine vessels, aviation, anthropogenic fire (human caused), and natural wildfires. Biogenic emissions were not included in these regional haze inventories because no biogenic inventories have been developed for Alaska. Alaska indicates that given its northerly location, preponderance of snow and ice cover, and short growing season, it would be problematic to extrapolate ''lower 48'' biogenic emission factors and activity to it. Similarly, geogenic emissions were also excluded due to lack of available data. Additionally, Alaska did not include internationally transported emissions but cites to a number of studies that have attributed atmospheric aerosols measured in Alaska to contributions from upwind regions as far away as portions of Asia and Russia based on back trajectory analysis and identification of unique chemical source signatures. Alaska explains that robust emission estimates from these source areas are not available

and thus there is no accounting of these international, long-range transported sources. See Alaska Regional Haze SIP submittal III.K.5 for additional discussion of Alaska's emission estimates and inventory. See also WRAP TSD Chapter 3. Tables 2 and 3 below show total statewide emissions (in tons/year), by source sector and pollutant, for the calendar years 2002 and 2018, respectively. In addition to the totals across all source sectors, anthropogenic emission fractions (defined as all sectors except natural fires divided by total emissions) are also shown at the bottom of each table.

TABLE 3—2002 ALASKA STATEWIDE REGIONAL HAZE INVENTORY SUMMARY

Source sector	Annual emissions (tons/year)						
	HC	CO	NO_X	PM_{10}	$PM_{2.5}$	SO_X	NH_3
Area, Excluding Wildfires	128,271	81,978	14,742	106,985	30,636	1,872	0
Non-Road	7,585	52,223	4,111	416	392	49	8
On-Road	7,173	80,400	7,077	204	158	324	307
Commercial Marine Vessels	356	2,880	11,258	663	643	4,979	5
Aviation (Aircraft)	1,566	21,440	3,265	699	667	335	6
Point	5,697	27,910	74,471	5,933	1,237	6,813	580
Wildfires, Anthropogenic	98	2,048	46	200	172	13	9
Wildfires, Natural	274,436	5,831,755	125,110	557,403	478,057	34,304	26,233
TOTAL—All Sources	425,181	6,100,633	240,080	672,502	511,962	48,689	27,149
Anthropogenic Fraction	35.5%	4.4%	47.9%	17.1%	6.6%	29.5%	3.4%

Alaska Regional Haze SIP submittal Table III.K.5–4.

TABLE 4—2018 ALASKA STATEWIDE REGIONAL HAZE INVENTORY SUMMARY

Source sector	Annual emissions (tons/year)						
	HC	CO	NO_X	PM_{10}	$PM_{2.5}$	SO_X	NH_3
Area, Excluding Wildfires	137,696	88,030	15,683	116,629	33,329	2,068	0
Non-Road	7,766	65,900	3,332	337	313	47	9
On-Road	2,946	44,881	2,881	138	74	39	340
Commercial Marine Vessels	616	4,751	16,205	1,031	1,192	1,129	9
Aviation (Aircraft & GSE)	1,799	24,387	3,810	794	757	386	7
Point	6,612	24,406	65,230	1,783	358	8,587	1,106
Fires, Anthropogenic	53	1,100	26	107	93	7	5
Fires, Natural	274,436	5,831,755	125,110	557,403	478,057	34,304	26,233
TOTAL—All Sources	431,925	6,085,210	232,277	678,223	514,173	46,568	27,709
Anthropogenic Fraction	36.5%	4.2%	46.1%	17.8%	7.0%	26.3%	5.3%

Alaska Regional Haze SIP submittal Table III.K.5–5.

Significant changes in anthropogenic sector emission inventories of the primary visibility impairing pollutants, NO_X, PM_{10}, $PM_{2.5}$, and SO_X, between 2002 and 2018 are summarized below:

1. *Non-road:* NO_X (−18.9%), PM_{10} (−19.1%), and $PM_{2.5}$ (−20.2%).

2. *On-road:* NO_X (−59.3%), PM_{10} (−32.3%), $PM_{2.5}$ (−53.2%), and SO_X (−87.9%).

3. *Commercial Marine Vessels:* NO_X (+43.9%), PM_{10} (+55.5%), $PM_{2.5}$ (+85.3%), and SO_X (−77.3%).

4. *Aviation:* NO_X (+16.7%), PM_{10} (+13.6%), $PM_{2.5}$ (+13.5%), and SO_X (15.5%).

5. *Point:* NO_X (−12.4%), PM_{10} (−69.9%), $PM_{2.5}$ (−71.1%), and SO_X (+26.0%).

6. *Anthropogenic Fires:* NO_X (−43.8%), PM_{10} (−46.2%), $PM_{2.5}$ (−46.0%), and SO_X (−43.8%).

The overall changes in the above pollutants between 2002 and 2018, across all source sectors, are NO_X (−3.3%), PM_{10} (+0.9%), $PM_{2.5}$ (+0.4%), and SO_X (−4.4%). EPA is proposing to find that Alaska has appropriately determined the emissions for visibility impairing pollutants in Alaska for 2002 and 2018.

D. Sources of Visibility Impairment in Class I Areas in Alaska

Each pollutant species has its own visibility impairing property; for example, 1 μg/m³ of sulfate at high humidity is more effective in scattering light than 1 μg/m³ of organic carbon, and therefore impairs visibility more than organic carbon. Following the approach recommended by the WRAP, and as explained more fully below, Alaska used a two-step process to identify the contribution of each source or source category to existing visibility impairment. First, ambient pollutant concentration by species (such as sulfate, nitrate, organic carbon, and

elemental carbon) was determined from the IMPROVE data collected for each Class I area. These concentrations were then converted into deciview values to distribute existing impairment among the measured pollutant species. The deciview value for each pollutant species was calculated by using the ''revised IMPROVE equation'' (See WRAP TSD, Section 2.C) to calculate extinction from each pollutant species concentration. Second, two regional visibility models, a back-trajectory model and a Weighted Emissions Potential (WEP) model, were used to determine which source categories contributed to the ambient concentration of each pollutant species.

As further explained in the SIP submittal, due to a number of constraints in developing a comprehensive Alaska emission inventory, rather than conducting photochemical modeling to determine current and future visibility conditions in Class I areas in Alaska, the WRAP selected alternate meteorological modeling techniques to determine current and future visibility conditions. WRAP used the two modeling techniques described below to determine visibility conditions in the Denali, Tuxedni, and Simeonof Class I areas:

Back-trajectory modeling was conducted to determine the path of air parcels impacting each Class I area. Back-trajectory analyses use interpolated measured or modeled meteorological fields to estimate the most likely central path over geographical areas that provided air to a receptor at any given time. The method essentially follows a parcel of air backward in hourly steps for a specified period of time. Back trajectories account for the impact of wind direction and wind speed on delivery of emissions to the receptor, but do not account for chemical transformation, dispersion, and deposition of samples during transport.

Weighted Emissions Potential (WEP) analysis was used to determine how much each emission source area (sources within each gridded emission area) contributes to visibility impairment in the Denali, Simeonof, and Tuxedni Class I areas, based on both the baseline 2002 and the 2018 Alaska emissions inventories. This method does not account for chemistry and removal processes. Instead, the WEP analysis relies on an integration of gridded emissions data, meteorological back trajectory residence time data, a one-over-distance factor to approximate deposition and dispersion, and a normalization of the final results.

The results of the WEP analysis, conducted by WRAP for Alaska, identified the following source areas and source categories impacting visibility at the Denali National Park (measured at both the Denali and Trapper Creek IMPROVE sites), Simeonof Wilderness Area, and Tuxedni National Wildlife Refuge:

1. Denali National Park

Table III.K.7–1 of the SIP submittal summarizes the WEP values for Denali, based on data collected at the DENAL1 IMPROVE site, for the top three boroughs (Yukon-Koyukuk, Southeast Fairbanks, and Fairbanks North Star) for each pollutant on the 20% worst days. WEP predicts that 95% of the total $PM_{2.5}$ for 2002 came from these boroughs, and of that amount, 95% came from natural fires in Yukon-Koyukuk and Southeast Fairbanks boroughs. For VOCs, natural wildfires in Yukon-Koyukuk and Southeast Fairbanks boroughs are the largest source, and stationary area sources in Denali Borough are the second largest source. For NO_X contributions in 2002, 77% came from wildfires in Yukon-Koyukuk and Southeast Fairbanks boroughs, and about 13% came from point sources in the Fairbank North Star borough. For SO_X contributions in 2002, 64% came from natural fires in Yukon-Koyukuk and Southeast Fairbanks boroughs, and 29% came from point sources in Fairbanks North Star borough. For ammonia contributions in 2002, 97% came from natural fires in Yukon-Koyukuk and Southeast Fairbanks boroughs. The State noted that natural fires are the dominant source for all of the pollutants identified at this monitoring site, and there are no other significant sources of $PM_{2.5}$ other than natural fires. Overall, the information presented in Table III.K.7–1of the SIP submittal demonstrates that the only significant anthropogenic sources of concern impacting Denali are Fairbanks SO_2 point sources.

Table III.K.7–3 of the SIP submittal shows the WEP values for Denali based on data collected at the Trapper Creek site. This table shows that natural fires are the largest source of emissions impacting this site, although there is also significant contribution from several anthropogenic source categories. In summary, 82% of the $PM_{2.5}$ in 2002 came from natural fires in Yukon-Koyukuk and Southeast Fairbanks boroughs, and 11% of the $PM_{2.5}$ came from point sources in the Matanuska-Susitna borough. For NO_X, 32% of the contributions for 2002 came from natural fires in Yukon-Koyukuk borough, 20% came from point sources on the Kenai Peninsula and 16% came from on-road mobile sources in the Matanuska-Susitna borough. The contribution of NO_X from on-road mobile sources is expected to drop to about half this value by 2018 due to the benefits of fleet turnover and increasingly stringent Federal motor vehicle emissions standards. For SO_X, 57% of the contributions for 2002 came from natural fires in the Yukon-Koyukuk borough, while 19% of the SO_X came from stationary sources in the Matanuska-Susitna borough. Alaska has determined that natural fires are the dominant source for all of the visibility impairing pollutants at the Trapper Creek monitor in Denali National Park, but there is also a significant contribution from point sources on the Kenai Peninsula, and from on-road and stationary sources in the Matanuska-Susitna borough.

2. Simeonof Wilderness Area

A summary of the WEP values for the boroughs impacting Simeonof is presented in Table III.K.7–2 of the SIP submittal. The WEP analysis for this site shows that natural fires in the Yukon-Koyukuk borough are the dominant source of all pollutants impairing visibility. The WEP analysis concluded that 96% of the $PM_{2.5}$, 87% of the VOCs, 76% of the NO_X, 91% of the SO_X, and 95% of the ammonia impacting Simeonof during 2000–2004 was from natural fires in the Yukon-Koyukuk borough. Alaska indicated that the forecast for emissions from natural fires in 2018 impacting the Simeonof Class I area are the same as for the baseline, which means that the visibility impacts from anthropogenic sources is expected to remain relatively small compared to contributions from natural fires through 2018 at this site.

3. Tuxedni National Wildlife Refuge Area

The information presented in Table III.K.7–4 of the SIP submittal shows a complex mixture of anthropogenic and natural source contributions that impact visibility at the Tuxedni National Wildlife Refuge. While natural fires are still the most significant source for many of the pollutants, (including 78% of the $PM_{2.5}$, 41% of the VOCs, 44% of the SO_X, and 54% of the ammonia), 64% of the NO_X that impacts Tuxedni comes from point sources on the Kenai Peninsula. Anthropogenic sources projected to significantly impact Tuxedni in 2018 are: (1) point and stationary sources on the Kenai Peninsula, which will contribute 44% of the VOCs impacting Tuxedni, and (2) stationary areas sources on the Kenai

Peninsula, which will contribute 37% of the SO_X impacting Tuxedni.

EPA is proposing to find that Alaska has used appropriate air quality models to identify the primary pollutants, and source areas for these pollutants, impacting the Denali, Simeonof, and Tuxedni Class I areas. EPA is also proposing to find that the SIP submittal contains an appropriate analysis of the impact of these pollutants on visibility in each of the Class I areas in Alaska. See WRAP TSD Chapter 6.B (EPA's analysis of the WRAP's WEP analysis for Alaska).

E. Best Available Retrofit Technology (BART)

1. Alaska BART Regulations

Alaska has adopted new regulations at 18 AAC 50.260 (a)–(q) which provide the State with the authority to regulate BART sources in Alaska. In April 2007, ADEC proposed regulations to adopt the Federal BART rules into 18 AAC 50.260 to establish the process and specific steps for the BART eligible sources to follow to provide the analysis necessary for ADEC to make BART determinations. ADEC's regulations adopting the Federal BART rules were promulgated on December 30, 2007 and submitted to EPA for inclusion in the SIP on February 7, 2008. The essential elements of these regulations are summarized below.

In 18 AAC 50.260(a), ADEC adopts the Federal BART guidelines at 40 CFR part 51 Appendix Y and the definitions at 40 CFR 51.301 with specified exceptions where the definition at AS 46.14.990 is used. 18 AAC 50.260(b) specifies that sources subject to BART be identified in accordance with Section III of the BART guideline and sets the date by which ADEC will notify subject sources of their status.

18 AAC 50.260(c) establishes the procedures by which a source can request an exemption from BART by submitting a visibility impact analysis showing that the source is not reasonably anticipated to cause or contribute to any impairment of visibility in a Class I area.

18 AAC 50.260(d)–(l) establish the process that sources that did not request or receive an exemption or an Owner Requested Limit (ORL) must undertake to conduct a BART analysis, including visibility impact analysis modeling, to determine BART emission limits for sources that are subject to BART.

18 AAC 50.260(m) establishes how a final BART determination may be appealed.

18 AAC 50.260(n) establishes the deadline by which a source must implement a final BART determination.

18 AAC 50.260(o) requires the owner or operator of a source required to install control technology to maintain the equipment and conduct monitoring, recordkeeping, and reporting in accordance with the final BART determination.

18 AAC 50.260(p) explains the billing process for ADEC services under this section.

18 AAC 50.260(q) includes the definitions related to regional haze in the rules that are not in 18 AAC 50.990. These new regulations are consistent with the definitions and requirements for BART under the RHR. EPA proposes to approve these regulations.

2. BART–Eligible Sources in Alaska

In order to identify sources that could potentially be eligible for BART, ADEC conducted a preliminary review of its Title V permits. ADEC then worked in conjunction with WRAP's contractor, Eastern Research Group, Inc. (ERG), to identify BART-eligible sources from this preliminary source list. ERG's report of April 2005, found that the following seven sources were BART-eligible sources:

- Chugach Electric, Beluga River Power Plant (Chugach Electric);
- Alyeska Pipeline Service Company, Valdez Marine Terminal (Alyeska);
- Tesoro, Kenai Refinery (Tesoro);
- Anchorage Municipal Light and Power, George Sullivan Plant 2 (Anchorage Municipal);
- ConocoPhillips Alaska Inc., Kenai LNG Plant (CPAI);
- Agrium, Chemical-Urea Plant (Agrium); and
- Golden Valley Electric Association, Healy Power Plant (GVEA).

Chugach Electric was determined to not be BART-eligible due to the replacement of the BART-eligible emission units with ones that were not BART-eligible. In April 2007, ADEC sent a letter to Chugach officials regarding the status of its BART-eligible emission units. Chugach responded with information that the BART-eligible emission units had been replaced and the plant had become a ''steam electric plant'' after the BART timeframe. EPA concurs with ADEC that Chugach Electric is not a BART-eligible source.

After identifying the BART-eligible sources, the second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, *i.e.,* those sources that are 'subject' to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines and Alaska's regional haze regulations, ADEC provided BART source emission rates to WRAP, which conducted modeling to determine which BART-eligible sources could be reasonable anticipated to cause or contribute to visibility impairment in two Class I areas, Denali National Park and Tuxedni National Wildlife Refuge.[8] In WRAP's analyses, a 0.5 dv threshold was used to determine if a source was causing or contributing to visibility impairment in either of these two Class I areas.

Alaska also established a 0.5 dv threshold to determine if a BART-eligible source was subject to BART (see p. III.K.6–4 of the SIP submittal). This threshold was based on the following reasons:

(1) Baseline visibilities at all Alaska IMPROVE sites are within 0.5 dv of the 2018 goal (See Table III.K.4–3 of the SIP submittal), and calculations conducted by ADEC demonstrate that the 2018 goal will be achieved in all Alaska Class I areas (see Alaska Regional Haze SIP submittal, III.K.9–33 through 9–40), except the Bering Sea Wilderness Area, for which there is no baseline data.

(2) Insight into selecting a threshold was also gained from a review of the uncertainty observed in historical visibility measurements at each of the Class I area monitoring sites. Uncertainty values computed for each site (*i.e.,* standard deviation) vary from 0.5 dv for Denali, to 0.8 dv at Simeonof, to 0.6 dv at Trapper Creek, to 1.0 dv at Tuxedni. A BART threshold of 0.5 dv would either be less than or equal to each of these visibility uncertainty values, thus visibility impacts of sources meeting this significance threshold would not be distinguished from historical variations observed at each of the monitoring sites.

Based on these reasons, Alaska selected the 0.5 dv threshold to determine which sources are subject to BART. Any source with an impact of greater than 0.5 dv in any Class I area, would be subject to a BART analysis and BART emission limitations. In the BART Guidelines, EPA recommended that States ''consider the number of BART sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. In general,

[8] Visibility impacts at Simeonof and the Bering Sea Wilderness Areas are expected to be below 0.5 dv.

a larger number of BART sources causing impacts in a Class I area may warrant a lower contribution threshold.'' 70 FR 39104, 39161 July 6, 2005.

EPA reviewed the modeled impacts of the BART-eligible sources that Alaska decided were BART-exempt. These sources, Alyeska, Tesoro, Anchorage Municipal, Conoco-Phillips, and Agrium, were modeled to have a cumulative visibility impact of just over 1 dv on Tuxedni, and a 0.98 dv impact at Denali. See Table III.K.6–2 in SIP submittal. Given the number and location of sources and the cumulative impact from these sources, it is reasonable for Alaska to conclude that a 0.5 dv threshold was appropriate for capturing those BART-eligible sources with significant impacts on visibility in Class I areas. For these reasons and in consideration of the facts specific to Alaska, EPA is proposing to approve the 0.5 dv threshold adopted by Alaska for determining which sources in Alaska are subject to BART.

To initially identify sources subject to BART, based on a 0.5 dv threshold, Alaska used the CALPUFF dispersion model results generated by WRAP. CALPUFF was used to assess the impact of emissions from BART-eligible sources on visibility at Denali and Tuxedni. CALPUFF used meteorological data forecast data, surface meteorological measurements, and major source specific emission estimates to calculate visibility impacts due to emissions of SO_2, NO_X and primary PM emissions. See Alaska Regional Haze SIP submittal Section III.K.6 for a summary of source specific modeling results and deciview impacts.

ADEC subsequently refined the CALPUFF modeling results by using a more accurate three-year meteorological data set, Additionally, the sources, ADEC, EPA, and the FLMs worked together to develop a more detailed CALMET modeling protocol along with the additional meteorological data. The results of this second dispersion modeling were compared to the 0.5 dv threshold to determine which sources were subject to BART. The modeling result for three of the six remaining BART-eligible sources (Alyeska Pipeline Service Company, Valdez Marine Terminal, Tesoro, Kenai Refinery and Anchorage Municipal Light & Power, Sullivan Plant) demonstrated that their visibility impacts were less than 0.5 dv. Therefore, Alaska determined that these three sources are not subject to BART.

The Agrium, Chem-Urea Plant is not currently operating and it is not known when it might reopen, and operating data necessary to conduct a BART analysis was not available. Agrium notified ADEC that it would be requesting the suspension of the renewal of its Title V permit as well as the termination of its current Title V permit for this facility. Given these conditions, ADEC issued a BART determination for Agrium which stated that Agrium has a zero emission limit for its BART eligible units, and must pursue a new air permit if and when it plans to restart this facility. Therefore, Agrium currently has a zero emission limit for its BART eligible units and that if this facility restarts operation, a new PSD air permit would be required that includes all units (including the BART units) at the facility. As a result, if this facility restarts operation, all BART-eligible units at the facility would be reclassified as PSD units and therefore would be subject to PSD emission limits. Therefore, ADEC has determined that this source is not subject to BART.

Alaska's review of the more refined CALPUFF modeling of the Conoco Phillips Alaska, Inc. (CPAI), Kenai LNG Plant found that its impact on the Tuxedni Class I area was greater than 0.5 dv. Subsequently, ADEC issued a Compliance Order by Consent (COBC) to the facility providing that after December 31, 2013, the emissions from the identified BART eligible units at the CPAI Kenai LNG Plant will be limited to a level that will not cause or contribute to visibility impairment in any Class I area at equal to or greater than 0.5 dv. The specific operating conditions, and allowable maximum daily NO_X emission limits, required to remain below a 0.5 dv impact, are specified in Exhibit B of the COBC. ADEC has determined that this source is not subject to BART. EPA proposes to approve this determination.

EPA proposes to approve ADEC's determination that Alyeska Pipeline Service Company Valdez Marine Terminal; Tesoro, Kenai Refinery; Anchorage Municipal Light & Power, Sullivan Plant; the Agrium, Chem-Urea Plant, and the CPAI Kenai LNG Plant are not subject to BART.

3. BART-Subject Sources in Alaska

Modeling for the remaining BART eligible source, the GVEA Healy Power Plant Unit #1, demonstrated baseline visibility impacts of greater than 3.4 dv, and therefore is subject to BART. A summary of the modeling results and proposed actions to control emissions from this facility is summarized below.

ADEC determined that the Golden Valley Electric Association (GVEA), Healy coal fired power plant is a BART-eligible source located approximately 5 miles from Denali National Park. The BART-eligible units consist of one primary coal-fired boiler, a 25-MW Foster-Wheeler boiler, referred to as ''Healy Unit #1'', and one auxiliary boiler (Auxiliary Boiler #1). GVEA undertook a full assessment of control options for Healy Unit # 1 under 18 AAC 50.260(d)–(e) and used the WRAP modeling protocol and submitted its initial BART control analysis report on July 28, 2008. In this revised BART report, GVEA concluded that the existing NO_X, SO_2, and PM limits were BART for Healy Unit #1.

Subsequently, ADEC through its contractor Enviroplan, conducted a thorough BART analysis following the steps outlined in the BART Guidelines. Followings ADEC's consultation with the FLM and receipt and review of public comments, Enviroplan completed a final BART determination report for GVEA on January 19, 2010, and revised this report on June 1, 2010. See Alaska Regional Haze SIP submittal, Appendix III.6–62 through 6–179. (Final Enviroplan BART Determination Report for GVEA, revised June 1, 2010 (''Enviroplan GVEA Healy BART Report'')). This report, based on updated site-specific cost information on control technologies, and on the assumption that the useful life of installed control technologies would be 8 years (based on installation by 2016 and plant shutdown in 2024), concluded that the following control technologies are BART for Healy Unit #1: (1) Selective Non Catalytic Reduction (SNCR) added to the existing Low NO_X Burners (LNB) with Over Fired Air (OFA) for NO_X, (2) the existing dry sodium bicarbonate dry sorbent injection (DSI) system for SO_2, and (3) the existing reverse-gas baghouse system for PM_{10}

The Enviroplan GVEA Healy BART Report concluded that SNCR was BART for NO_X because it would be cost effective at $4,208/ton (based on a 2024 closure of Healy Unit #1), and because SNCR would provide an 0.62 deciview improvement in visibility at the Denali Class I area for 51 days per year (a reduction from 3.36 dv impact to a 2.74 dv impact). The State determined that Selective Catalytic Reduction (SCR) was not cost effective at $15,762/ton and was therefore was rejected as BART for NO_X control for this unit. Enviroplan also concluded that Rotating Over Fire Air (ROFA®), even though cost effective, would not be incrementally cost effective over SNCR because the cost per deciview improvement for the ROFA® equivalent emission limit would be 50 percent higher than the cost for the SNCR limit (for a visibility improvement of only 0.05 dv), and the capital cost of installing ROFA® would

be 180 percent higher than installing SNCR.

For SO_2 controls, Enviroplan indicated that increased sorbent injection, with a potential visibility improvement of 0.25 dv, was the only cost-effective option that could improve visibility in Denali National Park. However, after evaluating this alternative according to the required BART criteria, Enviroplan concluded that this option was cost prohibitive because it would cost $3,578 for each ton of SO_2 removed and would result in a visibility improvement of only 0.25 dv. Enviroplan also noted that increasing the sorbent injection rate, could potentially cause a visibility impairing ''brown plume'' effect (due to the oxidation of nitrogen oxide (NO) to nitrogen dioxide (NO_2) prior to discharge from the stack), which would adversely impact visibility in Denali National Park.

Based on the results of Enviroplan's evaluation, and in response to public comments received on the proposed BART for Healy Unit #1, ADEC determined that the BART emission limits for GVEA Healy Unit #1, based on a 2024 shutdown, are 0.20 lb/mmBtu for NO_X, the current limit of 0.30 lb/mmBtu for SO_2, and the current limit of 0.015 lb/mmBtu for PM.

The BART Guidelines provide that a source's remaining useful life may be considered as an element of the cost analysis in a BART determination for a particular source and recognizes that if the remaining useful life represents a relatively short time frame it may affect the annualized costs of the retrofit controls. BART Guidelines IV.D.4.k.1. As explained in the BART Guidelines, where the facility will be shut down earlier than its normal expected life, the remaining useful life is the difference between the date the controls are put in place and the date the facility permanently ceases operations. The BART Guidelines further provide that ''Where this date affects the BART determination this date should be assured by a federally, or State-enforceable restriction preventing further operation.'' BART Guidelines, IV.D.4.k.2.(2). In the case of the Healy Unit #1, EPA recognizes that the 2024 shutdown date relied on in the cost effectiveness calculation described above is not enforceable. However, the BART Guidelines provide that the methods specified in EPA's Control Cost Manual used to calculate annualized costs should reflect the specified time period for amortization that varies depending on the type of control. Therefore, based on our review, EPA considers 15 years to be a reasonable estimated remaining useful lifetime for the particular control technologies under consideration for NO_X or SO_2 control technologies for Healy Unit #1.

Based on a 15-year lifetime, EPA found that SCR was not cost effective for controlling NO_X emissions at $10,170/ton. This cost effectiveness value does not include the cost to replace lost electricity generation during installation of SCR because there is insufficient evidence that the cost is a necessary consequence of SCR installation. When this element is removed from the cost estimate, the overall cost effectiveness over a 15-year lifetime for SCR decreases from $11,765/ton to $10,170/ton (see EPA's Healy BART Report-addendum). EPA finds that SCR is still not cost effective at this lower rate. However, the following NO_X control technologies were considered cost effective: SNCR at $3,125/ton, ROFA at $3,476/ton, and ROFA® with Rotamix® at $4,325/ton.

EPA next considered the environmental impacts of each of these cost effective technologies. ROFA® with Rotamix® when operated to achieve the quoted NO_X emission rate of 0.11 lb/MMbtu, reportedly carries some risk of increased emissions of carbon monoxide (CO), carbon dioxide (CO_2), and ''loss-on-ignition'' (un-burnt carbon particulate matter). Increased particulate matter emissions could result in additional visibility impairment at the Denali Class I area. However, EPA found that data quantifying this risk is not readily available, since facilities employing ROFA® with Rotamix® are typically allowed slightly higher NO_X emission limits than those quoted by the vendors of these technologies. EPA's review did not identify a facility utilizing ROFA® with Rotamix® that was subject to an emission limit near 0.11 lb/mmBTU, the level quoted by the vendor for ROFA® with Rotamix® for Healy Unit #1. Installation of the ROFA® technology alone (without Rotamix®) is cost effective, and could achieve an emission rate of 0.15 lb/mmBtu according to the vendor quote, but would only result in a visibility improvement of approximately 0.05 dv beyond the improvement achievable using SNCR. ADEC considered this incremental visibility improvement not significant enough to warrant the increased cost for ROFA®, and EPA agrees with this decision.

ADEC selected the BART NO_X emission limit for Healy Unit #1 based on a consideration of the BART five-step control review process, information provided by GVEA in their BART analyses, the Enviroplan GVEA Healy BART Report, and a decision by ADEC to grant GVEA's request to allow for some operational variability in the NO_X emission rate for Healy Unit #1. GVEA conducted an analysis of 2003–2008 (5 years) 30-day rolling NO_X and SO_2 emissions from Healy Unit #1, applied three standard deviations to the mean of these values, and requested that their BART emission limits reflect the resultant rates at three standard deviations. In response, ADEC determined that an additional allowance of 5% higher than the emission rate identified in the findings report (0.19 lb/mmBtu) would sufficiently allow for operating variability. Specifically, ADEC determined that the flexibility provided by a 0.20 lbs/mmBtu NO_X emission limit instead of a 0.19 lb/mmBtu NO_X emission limit would require GVEA to stay within the specified emission limit, while allowing for a reasonable amount of operational variability. See Appendix III.K.6–114 of the SIP submittal. EPA believes that this minor NO_X emission allowance would not significantly change the visibility impairment at Denali National Park due to emissions from Healy Unit #1. Therefore, EPA proposes to approve the State's determination that an emission limit of 0.20 lbs/mmBtu for NO_X is BART for Healy Unit #1.

For SO_2, EPA found that optimizing the existing Dry Sorbent Injection (DSI) system to achieve an emission limit of 0.18 lb/mmBtu, by increasing the sorbent injection rate, is cost effective at $3,578/ton. However, increased sorbent injection rate carries the risk of a ''brown plume'' effect. Brown plume refers to the oxidation of nitrogen oxide (NO) to nitrogen dioxide (NO_2) prior to discharge from the stack. NO_2 is brown in color, while NO is colorless; the two together form NO_X. Combustion emissions are initially NO, and oxidize in the atmosphere to NO_2. High sorbent injection rates can increase the potential for this oxidation to occur prior to discharge, potentially resulting in a visible brown plume from the exhaust stack. Due to the proximity of Healy Unit #1 to Denali National Park, a brown plume may result in increased visibility impairment in the sections of the Park closest to Healy Unit #1, even though overall visibility impairment would be reduced. Two other SO_2 control options, a spray dryer, and wet limestone flue gas desulfurization, were considered not to be cost effective at $7,198/ton and $7,763/ton, respectively. Therefore, EPA proposes to approve the SO_2 emission limit achievable by the current DSI control technology, 0.30 lb/mmBtu, as BART for Healy Unit #1.

ADEC determined that the existing reverse-gas baghouse system is the state-

of-the-art particulate emissions (PM) control technology for utility boiler applications, and therefore, the existing high-efficiency reverse-gas baghouse installed on the Healy Unit #1 is BART for PM. EPA proposes to approve the PM emission limit achievable by the current reverse-gas baghouse control technology, 0.015 lb/mmBtu, as BART for Healy Unit #1.

Regarding the Auxiliary Boiler #1, the State indicated that this unit is just used during shutdown periods or emergency repairs to Healy Unit #1 to supply heat to the Healy 1 building or to provide steam and potable hot water to Healy Unit #2, if needed, when Healy Unit #1 is not operating and that it is fired monthly for maintenance checks. Additionally, refined modeling for the State also indicated that that the predicted visibility impacts attributable to the boiler were less than .067 dv. The State determined that the existing uncontrolled configuration and current Title 5 permit limits for the Auxilliary Boiler #1 were BART, and that no additional controls were required. See Enviroplan GVEA Healy BART Report Table E–1 for BART emission limits specific to the Auxiliary Boiler #1. EPA agrees that given the low annual emissions for the boiler, add-on pollution controls equipment for NO_X and PM are not cost effective. EPA found that the only viable method to control SO_2 emission from the Auxiliary Boiler #1 would be to switch to ultra-low sulfur diesel. However, due to the cost differential between high sulfur diesel and ultra-low sulfur diesel in the Fairbanks area, it would cost approximately $28,000/t on to reduce SO_2 emission from the Auxiliary Boiler #1 by switching fuels. Based on this cost, EPA has determined that this approach would not be cost effective. EPA proposes to approve the State's BART determination for the Auxiliary Boiler #1.

F. Determination of Reasonable Progress Goals

The RHR requires States to show ''reasonable progress'' toward natural visibility conditions over the time period of the SIP, with 2018 as the first milestone year. The RHR at 40 CFR 51.308(d)(1) requires states to establish a goal, expressed in deciviews, for each Class I area within the state that provides for reasonable progress toward achieving natural visibility conditions by 2064. As such, the State must establish a Reasonable Progress Goal (RPG) for each Class I area that provides for visibility improvement for the most-impaired (20% worst) days and ensures no degradation in visibility for the least-impaired (20% best) days in 2018. RPGs are estimates of the progress to be achieved by 2018 through implementation of the Long Term Strategy (LTS), which includes anticipated emission reductions from all State and Federal regulatory requirements implemented between the baseline and 2018, including but not limited to BART and any additional controls for non-BART sources or emission activities including any Federal requirements that reduce visibility impairing pollutants.

As explained above, ADEC relied on the WEP analysis conducted by the WRAP to project visibility conditions at Denali National Park, Simeonof Wilderness Area, and Tuxedni National Wildlife Area in 2018. The visibility projections were based on estimates of emissions reductions from all existing and known controls resulting from Federal and state CAA programs as of December 2010.

In setting the RPGs for its Class I areas, ADEC considered a number of different factors. These factors included: (1) Attainment of the URP in each Class I area by 2018, (2) results of the Four Factor Analysis, (3) additional improvements in visibility due to BART controls, (4) evidence that there is significant contribution to visibility impairment from international sources (such as Asian Dust, and Arctic Haze) and substantial contributions from natural sources (such as wildfires and sea salt), and (5) additional improvements in visibility in Alaskan Class I areas due to new maritime emission regulations that will achieve substantial reductions by 2015 in SO_2 and NO_X emissions from commercial marine vessels. These five factors are further described in the following paragraphs.

(1) Attainment of the 2018 URPs—ADEC conducted a statistical analysis of historical visibility data from the Denali, Tuxedni, and Simeonof Class I areas to demonstrate that the visibility in the Class I areas in Alaska in 2018 projected by the WEP analysis falls within the bounds of the 2018 URP glide path, with a 95% degree of confidence. This indicates that there is no difference between the WEP forecast of visibility impairment in the Class I areas, and the URP determined for each Class I area in 2018.

(2) Results of the Four Factor Analysis—As described in section II.D. above, when establishing RPGs the RHR requires the states to consider (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. 40 CFR 51.308(d)(1)(i)(A). This is referred to as the Four Factor Analysis. As reflected in the information presented in Table III.K.9–2 of the SIP submittal, the WEP analysis indicates that three categories of point sources may be significant contributors to regional haze and warrant further analysis under the four factors. These three categories are: industrial boilers, petroleum refineries, and reciprocating engines and turbines. Based on the four-factor analyses of these three source categories, ADEC concluded that it is not reasonable to require additional controls for these source categories at this time. Alaska explained its reasons to support this decision include: (1) The Class I areas in Alaska do not need large visibility improvements to reach natural conditions in 2064, (2) the Class I areas are predicted to attain the URP in 2018, (3) emissions from natural sources (primarily wildfires) contribute the most significant visibility impacts, and (4) it is uncertain, at this time, how much visibility improvements could be attained by controlling individual point sources, since each contributing point source has not been individually modeled for visibility impact to the nearest Class I area.

(3) Additional Improvements not included in the WEP Analysis—Additional improvements at several sources that were not factored into ADEC's WEP analysis reduce visibility impairing pollutants impacting Denali, and Tuxedni, within the next 5 years. GVEA's Healy Power Plant Unit #1 will install SNCR as BART for NO_X, which will reduce NO_X impacts at Denali by 0.62 dv. The Conoco Philips Kenai LNG plant will also reduce its emissions to below 0.5 dv under the conditions of a consent order. Finally, the Agrium, Chem-Urea Plant in the Kenai has stopped operating and therefore has dramatically reduced NH_3, NO_X and $PM_{2.5}$ emissions impacting Tuxedni (by 98%, 18%, and 93%, respectively). These reductions in emissions from sources on the Kenai Peninsula indicate that visibility at Tuxedni should improve even more rapidly than predicted by the WEP analysis.

(4) Contribution from International Sources and Natural Sources—Significant contributions to haze in the Class I areas is Alaska include natural sources (biogenic aerosols, sea salt, volcanic emissions) and international sources. See generally, Alaska Regional Haze SIP submittal, III.K.3–4 to 3–8. There is also evidence that natural wildfire is a substantial contributor to visibility impairment in the three

modeled Class I areas, but particularly in the Denali Class I area. The speciation analysis, clearly demonstrate that natural fires are the dominant source of pollutants impacting all Class I areas within Alaska on the 20% worst days. In Denali, natural fires contribute 97% of the $PM_{2.5}$, 68% of the VOCs, 79% of the NO_X, and 65% of the SO_2 that cause visibility impairment in that Class I area. At Trapper Creek (also in Denali), natural fires contribute 86% of the $PM_{2.5}$, 65% of the VOCs, 34% of the NO_X, and 62% of the SO_2 that cause visibility impairment. In Simeonof, natural fires contribute 99% of the $PM_{2.5}$, 89% of the VOCs, 76% of the NO_X, and 92% of the SO_2 that cause visibility impairment on the worst 20% days. In Tuxedni, natural fires contribute 78% of the $PM_{2.5}$, 41% of the VOCs, 15% of the NO_X, and 44% of the SO_2 that cause visibility impairment on the worst days. See generally Alaska Regional Haze SIP submittal, Section III.K.4, and WEP analyses shown in Tables III.K.7–1 through III.K.7–4.

(5) Additional Improvements due to New Maritime Emission Regulations—Alaska also found that new emission control requirements on commercial marine vessels, which will be fully in effect by 2015, will reduce SO_2, NO_X, and $PM_{2.5}$ emission contributions to visibility impairment in Simeonof Wilderness Area and Tuxedni National Wildlife Refuge. In October 2008, the International Maritime Organization (IMO) adopted Annex VI amendments which specify (1) New fuel quality requirements for commercial marine vessels beginning from July 2010, (2) Tier II and III NO_X emission standards for new commercial marine engines, and (3) Tier I NO_X requirements for existing pre-2000 commercial marine engines. The Annex VI amendments designate waters within 200 miles of the North American coast (including Alaska) as an emission control area (ECA). The requirements of Annex VI ensure large reductions in particulate matter, NO_X, and SO_2 emission from commercial marine vessels operating in the ECA. These reductions were not factored into the Alaska 2018 emissions inventory projections or the WEP analysis, but are expected to further improve visibility at Tuxedni, and to a lesser extent Simeonof, which are both significantly impacted by emissions from commercial marine vessels.

Alaska acknowledged that its emission inventory and 2018 reasonable progress forecasts and emission inventory do not include emissions from the 50 MW coal-fired unit at the GVEA facility in Healy (Healy Unit #2) The State explained, the unit has not operated for a number of years, is not currently operating and that the available information to analyze the potential visibility impact of the Healy Unit #2 emissions on Denali is inconclusive. The State does recognize however that if the unit is brought on line, the point source NO_X and SOx emissions emitted from within the Denali Borough would increase by a factor of 4.0 and 2.8 respectively. Alaska Regional Haze SIP submittal III.K.9–32, 9–37. EPA is aware that on February 3, 2012, ADEC issued a revised Title 5 permit to GVEA allowing Healy 2 to resume operations, and that emissions from Healy 2 could have an impact on visibility in Denali. Final Air Quality Operating Permit No. AQ0173TVP02 (Feb. 3, 2012). However, since the visibility impacts of these future emissions have not yet been modeled, the exact amount of impact cannot be determined at this time. Therefore, for reasonable progress purposes, it is not reasonable to require additional controls on the facility at this time. If or when the unit begins operating again, ADEC commits to assessing the impact of these additional emissions on visibility in Denali and will evaluate control options for the facility as part of its 5 year progress report. In light of the uncertainty regarding the facility at this time, we propose to approve the State's consideration of the Healy Unit #2 in its reasonable progress evaluation. EPA will consider additional relevant information it receives during public comment period regarding the emissions or visibility impact of this source as it relates to Alaska's reasonable progress goals.

EPA is proposing to agree with the State's analysis and conclusion that it is not reasonable to seek additional controls on other emission sources within the State at this time to achieve further reasonable progress. Importantly, the RPGs for the Class I areas in Alaska are projected to meet the URP in 2018. Alaska has demonstrated that the RPGs provide for visibility improvement on the worst days, and no degradation of visibility on the best days compared to the baseline average. EPA finds that the State's decision not to seek additional control measures is supported by the fact that there is significant contribution to haze in the Class I areas due to international sources and some natural sources (biogenic aerosols, sea salt, and volcanic emissions), as well as substantial contributions to haze from wildfires. In addition, the State expects reductions in statewide emissions of SO_2 and NO_X due to BART emission limits on Healy Unit #1, emission limits on the Conoco Phillips Kenai LNG Plant specified in the consent order between Alaska and Conoco Philips, and the shutdown of the Agrium, Chem-Urea Plant. Based on the above reasons, EPA is proposing to approve ADEC's demonstration that its RPGs provide for reasonable progress in all its Class I areas for the first planning period, as required in CFR 51.308(d)(1)(i), (ii) and (vi).

G. Long Term Strategy (LTS)

Alaska relied on monitoring, emission inventories and modeling information from the WRAP as the technical basis for its LTS. Coordination and consultation occurred with other states through the WRAP, in which all western states participated in developing the technical analysis upon which their SIPs are based. This included identifying all anthropogenic sources of visibility impairment including major and minor stationary sources, mobile sources, and area sources. The anticipated net effect on visibility over the first planning period due to changes in point, area, and mobile source emissions is a significant reduction in regional haze in the Denali, Tuxedni, and Simeonof Class I areas. In particular, ADEC considered the following factors in developing its long-term strategy.

1. Ongoing Air Pollution Control Programs

Alaska has a number of ongoing programs and regulations that directly protect visibility or provide for improved visibility by generally reducing emissions.

a. Prevention of Significant Deterioration/New Source Review Regulations

The two primary regulatory programs for addressing visibility impairment from industrial sources are the BART and Prevention of Significant Deterioration/New Source Review (PSD/NSR) rules. The PSD/NSR rules require that emissions from new industrial sources and major changes to existing sources protect visibility in Class I areas through attainment of air quality related values, including visibility, in Class I areas.

b. Regional Haze BART Controls

Section 51.308(e) of the RHR includes the requirements for states to implement Best Available Retrofit Technology for eligible sources within the State that may reasonably cause or contribute to any impairment of visibility in any mandatory Class I area. Alaska's BART regulations (18 AAC 50.260) specify

how to determine if a source is subject to BART, and identify the process for determining BART emission limits for BART-subject sources. As discussed in section II.E. above, ADEC has completed analysis of identified BART-eligible sources in Alaska and has determined BART emission limits for all BART-subject sources. Each source subject to BART is required to install and operate BART as expeditiously as practicable, but in no case more than five year after EPA approval of the regional haze SIP.

c. Operating Permit Program and Minor Source Permit Program

ADEC implements a Title V operating permit program as well as a minor source permit program for stationary sources of air pollution. The Title V permits are consistent with the requirements of 40 CFR part 71 and requirements are found in 18 AAC 50 Article 3, Major Stationary Source Permits. The requirements for minor source permits are found in 18 AAC 50 Article 5, Minor Permits. These permit programs, coupled with PSD/NSR requirements, serve to ensure that stationary industrial sources in Alaska are controlled, monitored, and tracked to prevent deleterious effects of air pollution.

d. Alaska Open Burning Regulations

Alaska has previously established open burning regulations in 18 AAC 50.065. These regulations are intended to prevent particulate matter emitted from open burning from adversely impacting visibility in Class I areas. For example,18 AAC 50.065 (b)–(f) provide ADEC the authority to require pre-approvals for controlled burning to manage forest land, vegetative cover, fisheries, or wildlife habitat if the area to be burned exceeds 40 acres yearly. The open burning regulations, working in conjunction with the state's Enhanced Smoke Management Plan, control visibility impairing pollutants resulting from planned open burning activities.

e. Local, State and Federal Mobile Source Control Programs

Mobile source emissions show decreases in NO_X, SO_2, and VOCs in Alaska during the period 2002–2018. These declines in emissions are due to numerous rules already in place, most of which are Federal regulations. The State of Alaska has established regulations related to mobile sources that primarily impact the Fairbanks and Anchorage CO maintenance areas, Alaska's two largest cities. These programs have resulted in NO_X and hydrocarbon emission reductions from motor vehicles in Alaska's two largest communities.

f. The Federal Motor Vehicle Control Program and Federal Diesel Emission Standards

The Federal Motor Vehicle Control Program (FMVCP) is a Federal certification program that requires all new cars sold in all states except California to meet more stringent emission standards. As a result, motor vehicle emissions will be reduced as the older vehicle fleet is replaced with newer cleaner vehicles. Additionally, a variety of Federal rules establishing emission standards and fuel requirements for diesel on-road and non-road equipment will significantly reduce emissions of particulate matter, nitrogen oxides, and sulfur oxides from emission sources over the first planning period in Alaska. Alaska reports that as of 2010, all on-road and non-road diesel engines in Alaska have meet EPA's national requirements for 15 ppm sulfur diesel fuel. In addition to these regulatory programs, ADEC is also promoting voluntary projects to reduce diesel emission reductions throughout the state.

g. Implementation of Programs To Meet PM_{10} NAAQS

The community of Eagle River and the Mendenhall Valley in Juneau are either currently or formerly nonattainment areas with respect to the NAAQS for coarse particulate matter (PM_{10}). These areas exceeded the standards due primarily to wood burning and road dust sources, and now have strict controls in place that regulate wood burning and control road dust, the two major sources of PM_{10} in these communities.

2. Measures To Mitigate Impacts of Construction Activities

In developing its LTS, ADEC has considered the impact of construction activities on visibility in the Class I areas. ADEC regulations at 18 AAC 50.045(d) require that entities who cause or permit bulk materials to be handled, transported, or stored or who engage in industrial activities or construction projects shall take reasonable precautions to prevent particulate matter from being emitted into the ambient air. This regulation allows the state to take action on fugitive dust emissions from construction activities. Based on the general knowledge of growth and construction activity in Alaska, ADEC believes that current state and Federal regulations adequately address this emission source category.

3. Emission Limitations and Schedules for Compliance

Emission limits and compliance schedules for affected sources are specified under Alaska and Federal regulations in accordance with the Clean Air Act. Additionally, as discussed above, Alaska has established specific emission limits and compliance schedules for sources subject to BART. The state anticipates future SIP updates may identify additional emission controls that could be implemented at that time and commits to include limits and compliance schedules as needed in future plan updates.

4. Source Retirement and Replacement Schedules

Alaska's continued implementation of NSR and PSD requirements, with the FLMs reviewing impacts to Class I areas, will assure that there is no degradation of visibility in Alaska Class I areas on the least impaired days from expansion or growth of stationary sources in the state. ADEC will continue to track source retirement and replacement and include known schedules in periodic revisions to its Air Quality Control (ACC) Plan and Regional Haze SIP.

5. Smoke Management Techniques for Agricultural and Forestry Burning

Smoke from wildland fires is a major contributor to visibility impairment Class I areas in Alaska. Alaska found that implementation of effective smoke management techniques through regulation and an Enhanced Smoke Management Plan (ESMP) will mitigate impacts of planned burning on visibility in its Class I areas. Additionally, ADEC has developed and implemented an ESMP, and includes this plan as part of this long-term strategy. Specifically, the ESMP, which will be revised at least every 5 years or sooner if needed, outlines the process, practices and procedures to manage smoke from prescribed and other open burning to help ensure that prescribed fire (*e.g.* controlled burn) activities minimize smoke and air quality problems.

6. Enforceability of Emission Limitations and Control Measures

BART emission limits and control measures will enforceable as a matter of State law by virtue of Alaska's BART regulations at 18 AAC 50.260 and federally enforceable once approved as part of its State Implementation Plan. ADEC has adopted this Regional Haze Plan into the Alaska Air Quality Control Plan (Alaska's State Implementation Plan) at 18 AAC 50.030, which ensures that all elements in the plan are

federally enforceable once approved by EPA.

EPA is proposing to find that ADEC adequately addressed the RHR requirements in its long-term strategy (LTS). EPA believes that this LTS provides sufficient measures to ensure that Alaska will meet its emission reduction obligations to achieve adequate visibility protection for the Class I areas in the State.

H. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in Alaska is the IMPROVE network. As discussed in section III.B. of this notice, there are currently two IMPROVE monitoring sites at Denali National Park, one at Simeonof, and one at Tuxedni. There is no IMPROVE site for the Bering Sea Wilderness Area. As previously explained, one of the monitoring challenges in Alaska is the logistical difficulty of monitoring at remote locations in the harsh arctic environment. The challenges for ongoing air and visibility monitoring in Alaska include transportation and site maintenance in isolated and remote areas where access may be intermittently available only by air or water, and electrical power may be lacking. Alaska is working with EPA and the FLMs to ensure that the monitoring network in Alaska provides data that are representative of visibility conditions in each affected Class I area within the State. In the SIP submittal, Alaska commits to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods. See Alaska Regional Haze SIP submittal III.K.3.C.2.

I. Consultation With States and FLMs

Through the WRAP, member states and Tribes worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the WRAP states. The State of Alaska provided an opportunity for FLM consultation, at least 60 days prior to holding any public hearing on the SIP. This SIP was submitted to the FLMs on June 24, 2010, for review and comment. Comments were received from the FLMs on August 23, 2010. As required by 40 CFR 51.308(i)(3), the FLM comments and State responses are included the SIP submittal.

40 CFR 51.308(f–h) establish requirements and timeframes for states to submit periodic SIP revisions and progress reports that evaluate progress toward the reasonable progress goal for each Class I area. As required by 40 CFR 51.308(i)(4), ADEC will continue to coordinate and consult with the FLMs during the development of these future progress reports and plan revisions, as well as during the implementation of programs having the potential to contribute to visibility impairment in mandatory Class I areas. This consultation process shall provide on-going and timely opportunities to address the status of the control programs identified in this SIP, the development of future assessments of sources and impacts, and the development of additional control programs.

J. SIP Revisions and Five-Year Progress Reports

Section 51.308(f) of the Regional Haze Rule requires that regional haze plans be revised and submitted to EPA by July 31, 2018, and every ten years thereafter. In accordance with those requirements, ADEC commits to revising and submitting this Plan by July 31, 2018, and every ten years thereafter. See Alaska Regional Haze SIP submittal section III.K.10.

40 CFR 51.308(g) requires states to submit a progress report to EPA every five years evaluating progress towards the reasonable progress goal(s). The first progress report is due five years from the submittal of the initial implementation plan and must be in the form of an implementation plan revision that complies with 40 CFR 51.102 and 51.103. ADEC commits to submitting a report on reasonable progress to EPA every five years following the initial submittal of the SIP. The reasonable progress report will evaluate the progress made towards the reasonable progress goal for each mandatory Class I area located within Alaska and in each mandatory Class I area located outside Alaska, which may be affected by emissions from Alaska.

IV. Amendment to Air Quality Control Plan Regarding Open Burning and Regional Haze

The Alaska Regional Haze SIP submittal included amendments to the Air Quality Control Plan at 18 AAC 50.30. More specifically, Volume II., Section III. F: Open Burning is revised to include the ''In Situ Burning Guidelines for Alaska, Revision 1'' (August 2008) and to update the open burn application requirements in Alaska's Enhanced Smoke Management Plan. ADEC's ''In Situ Burning Guidelines'' apply to specified situations involving oil spills. Alaska's Enhanced Smoke Management Plan applies to prescribed burning and for land clearing approvals. Additionally, Volume II, Section III. K: Area Wide Pollution Control Program for Regional Haze is a new section and, as discussed above, is intended to meet the RHR requirements, and Volume II: Appendices to Volume II is amended to include the Appendices for Alaska's Areawide Pollutant Control Program for Regional Haze.

EPA proposes to approve the amendments at 18 AAC 50.30.

V. What action is EPA proposing?

EPA is proposing to approve the Alaska Regional Haze plan, submitted on April 4, 2011, as meeting the requirements set forth in section 169A of the Act and in 40 CFR 51.308 regarding Regional Haze. EPA is also proposing to approve ADEC's BART regulations in 18 AAC 50.260. Additionally, EPA is proposing to approve the amendments to 18 AAC 50.30 to adopt by reference Volume II., Section III. F. Open Burning; Volume II, Section III. K. Area Wide Pollution Control Program for Regional Haze; and Volume II, Appendices to Volume II.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

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

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, and Volatile organic compounds.

Dated: February 14, 2012.

Dennis J. McLerran,

Regional Administrator Region 10.

[FR Doc. 2012–4326 Filed 2–23–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0028; FRL–9637–2]

RIN 2060–AQ70

Proposed Confidentiality Determinations for the Petroleum and Natural Gas Systems Source Category, and Amendments to Table A–7, of the Greenhouse Gas Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action re-proposes confidentiality determinations for the data elements in subpart W, the petroleum and natural gas systems category, of the Mandatory Reporting of Greenhouse Gases Rule. On July 7, 2010, the EPA proposed confidentiality determinations for then-proposed subpart W data elements and is now issuing this re-proposal due to significant changes to certain data elements in the final subpart W reporting requirements. The EPA is also proposing to assign 10 recently added reporting elements as ''Inputs to Emission Equations'' and to defer their reporting deadline to March 31, 2015, consistent with the agency's approach in the August 25, 2011 rule which finalized the deferral of some reporting data elements that are inputs to emissions equations.

DATES: *Comments.* Comments must be received on or before March 26, 2012 unless a public hearing is held, in which case comments must be received on or before April 9, 2012.

Public Hearing. To request a hearing, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by March 2, 2012. Upon such request, the EPA will hold the hearing on March 12, 2012 in the Washington, DC area. The EPA will publish further information about the hearing in the **Federal Register** if a hearing is requested.

ADDRESSES: You may submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0028, by one of the following methods:

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

• *Email: GHGReportingCBI@epa.gov.*

• *Fax:* (202) 566–1741.

• *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2011–0028, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0028. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2011–0028. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, then the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER GENERAL INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReportingRule@epa.gov.* For technical information and

implementation materials, please go to the Web site *http://www.epa.gov/climatechange/emissions/subpart/w.html.* To submit a question, select Rule Help Center, followed by ''Contact Us.''

SUPPLEMENTARY INFORMATION:

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal, memoranda to the docket, and all other related information will also be available through the WWW on EPA's greenhouse gas reporting rule Web site at *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

Additional information on submitting comments. To expedite review of your comments by agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC 20460, telephone (202) 343–9263, email address: *GHGReportingRule@epa.gov.*

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

API American Petroleum Institute
BAMM Best Available Monitoring Methods
BOEMRE Bureau of Energy Management and Regulatory Enforcement
CAA Clean Air Act
CEMS continuous emission monitoring system
CO_2 carbon dioxide
CO_2e carbon dioxide equivalent
CBI confidential business information
CFR Code of Federal Regulations
EIA U.S. Energy Information Administration
EOR enhanced oil recovery
EPA U.S. Environmental Protection Agency
FERC Federal Energy Regulatory Commission
GASIS Gas Information System
GHG greenhouse gas
ICR Information Collection Request
LDC local natural gas distribution company
LNG liquefied natural gas
MMBtu million Btu
MMscfd million standard cubic feet per day
NESHAP national emission standards for hazardous air pollutants
NGLs natural gas liquids
N_2O nitrous oxide
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management & Budget
psia pounds per square inch
RFA Regulatory Flexibility Act
T–D transmission—distribution
UIC Underground Injection Control
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
WWW Worldwide Web

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information
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I. General Information

A. What is the purpose of this action?

The EPA is re-proposing confidentiality determinations for the data elements in subpart W of 40 CFR part 98 of the Mandatory Reporting of Greenhouse Gases Rule (hereinafter referred to as ''Part 98''). Subpart W of Part 98 requires monitoring and reporting of greenhouse gas (GHG) emissions from petroleum and natural gas systems. The petroleum and natural gas systems source category (hereinafter referred to as ''subpart W'') includes facilities that have emissions equal to or greater than 25,000 metric tons carbon dioxide equivalent ($mtCO_2e$).

The proposed confidentiality determinations in this notice cover all of the data elements that are currently in subpart W except for those that are in the ''Inputs to Emission Equations'' data category. The covered data elements and their proposed data category assignments are listed by data category in the memorandum entitled ''Proposed Data Category Assignments for Subpart W'' in Docket ID No. EPA–HQ–OAR–2011–0028.

This proposal also contains updates to Table A–7 of Part 98, the table of inputs to emission equations whose reporting deadline we have deferred until 2015. These data elements were added or revised to subpart W as a result of technical revisions made on December 23, 2011 (76 FR 80554).

B. Does this action apply to me?

This proposal affects entities that are required to submit annual GHG reports under subpart W of Part 98. Subpart W applies to facilities in eight segments of the petroleum and natural gas industry that emit GHGs greater than or equal to 25,000 metric tons of CO_2 equivalent per year. These eight segments are:

- Offshore petroleum and natural gas production (from offshore platforms).
- Onshore petroleum and natural gas production (including equipment on a single well-pad or associated with a single well pad used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum and/or natural gas (including condensate).
- Onshore natural gas processing (separation of natural gas liquids (NGLs) or non-methane gases from produced natural gas, or the separation of NGLs into one or more component mixtures).
- Onshore natural gas transmission compression (use of compressors to move natural gas from production fields, natural gas processing plants, or other transmission compressors through transmission pipelines to natural gas distribution pipelines, LNG storage facilities, or into underground storage).
- Underground natural gas storage (subsurface storage of natural gas, natural gas underground storage processes and operations, and wellheads connected to the compression units located at the facility where injections and recovering of natural gas takes place into and from underground reservoirs).
- Liquefied natural gas (LNG) storage (onshore LNG storage vessels located above ground, equipment for liquefying natural gas, compressors to capture and re-liquefy boil-off-gas, re-condensers, and vaporization units for regasification of the liquefied natural gas).
- LNG import and export facilities (onshore and offshore equipment

importing or exporting LNG via ocean transport, including liquefaction of natural gas to LNG, storage of LNG, transfer of LNG, and re-gasification of LNG to natural gas).

• Natural gas distribution (distribution pipelines and metering and regulating equipment at metering-regulating stations that re operated by a local distribution company (LDC) within a single state that is regulated as a separate operating company by a public utility commission or that is operated as an independent municipally-owned distribution system).

For a summary of the source category definitions for subpart W, which includes further background on these eight industry segments, please see 40 CFR 98.230 of the subpart W final rule (75 FR 74490, November 30, 2010 and 76 FR 80554).

The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). If finalized, these amended regulations could affect owners or operators of petroleum and natural gas systems. Regulated categories and entities may include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Source category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98 subpart A, and subpart W. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. Legal Authority

The EPA is proposing rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114. As stated in the preamble to the 2009 final rule (74 FR 56260, October 30, 2009) and the Response to Comments on the Proposed Rule, Volume 9, Legal Issues, CAA section 114 provides the EPA broad authority to obtain the information in Part 98, including those in subpart W, because such data would inform and are relevant to the EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed Part 98 (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA.

D. What should I consider as I prepare my comments to the EPA?

1. Submitting Comments That Contain CBI

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA–HQ–OAR–2011–0028.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

Identify the rulemaking by docket number and other identifying information (e.g., subject heading, **Federal Register** date and page number).

Follow directions. The EPA may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

Explain why you agree or disagree, and suggest alternatives and substitute language for your requested changes.

Describe any assumptions and provide any technical information and/or data that you used.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow us to reproduce your estimate.

Provide specific examples to illustrate your concerns and suggest alternatives.

Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your information and comments by the comment period deadline identified in the preceding section titled **DATES**. To ensure proper receipt by the 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.

To expedite review of your comments by agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207–J, Washington, DC, 20460, telephone (202) 343–9263, email *GHGReportingCBI@epa.gov*. You are also encouraged to send a separate copy of your CBI information to Carole Cook at the provided mailing address in the **FOR FURTHER INFORMATION CONTACT** section. Please do not send CBI to the electronic docket or by email.

II. Background and General Rationale

A. Background on Subpart W CBI Re-Proposal

On October 30, 2009, the EPA published the Mandatory Reporting of

Greenhouse Gases Final Rule, 40 CFR part 98, for collecting information regarding greenhouse gases (GHGs) from a broad range of industry sectors (74 FR 56260). Under Part 98 and its subsequent amendments, certain facilities and suppliers above specified thresholds are required to report GHG information to the EPA annually. The data to be reported consist of GHG emission and supply information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions and supplied quantities. In the preamble to Part 98, we stated, ''[t]hrough a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise and in response to requests provided in comments, we may identify classes of information that are not emissions data, and are CBI'' (74 FR 56287, October 30, 2009).

On July 7, 2010, the EPA proposed confidentiality determinations for data elements of all GHGRP subparts of Part 98 (75 FR 39094, hereinafter referred to as the ''July 7, 2010 CBI Proposal'').

On May 26, 2011, the EPA published the final CBI determinations for the data elements in 34 Part 98 subparts, except for those data elements that were assigned to the ''Inputs to Emission Equations'' data category (76 FR 30782, hereinafter referred to as the ''Final CBI Rule''). That final rule did not include CBI determinations for subpart W for the reasons described above.

The Final CBI Rule: (1) Created and finalized 22 data categories for part 98 data elements; (2) assigned data elements in 34 subparts to appropriate data categories; (3) for 16 data categories, issued category-based final CBI determinations for all data elements assigned to the category; and (4) for the other five data categories (excluding the inputs to emission equations category), the EPA determined that the data elements assigned to those categories were not ''emission data'' but made individual final CBI determination for those data elements. Finally, the EPA did not make final confidentiality determinations for the data elements assigned to the ''Inputs to Emission Equations'' data category.

Subpart W reporting requirements were finalized on November 30, 2010 (75 FR 74458), and the EPA has published two revisions to the final subpart W reporting requirements since that data. On September 27, 2011, the EPA published the final rule: ''Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems: Revisions to Best Available Monitoring Method Provisions'' (76 FR 59533, hereinafter referred to as the ''BAMM Final Rule''), which revised certain BAMM extension request data elements and added a new data element in subpart W. Additionally, on December 23, 2011 the EPA published the final rule: ''Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Petroleum and Natural Gas Systems Category of the Greenhouse Gas Reporting'' (76 FR 80554, hereinafter referred to as the ''Technical Revisions Rule''), which provided clarification on existing requirements, increased flexibility for certain calculation methods, amended data reporting requirements, clarified terms and definitions, and made technical corrections. This action finalized the addition or revision of over 200 subpart W data elements. Today's re-proposal of confidentiality determinations for data elements addresses the subpart W data elements as finalized, including the revisions in the BAMM Final Rule and Technical Revisions Rule.

B. Background on Data Elements in the ''Inputs to Emission Equations'' Data Category

The EPA received numerous public comments on the July 7, 2010 CBI Proposal. In particular, the EPA received comments that raised serious concerns regarding the public availability of data in the ''Inputs to Emission Equations'' category. In light of those comments, the EPA took three concurrent actions, which are as follows:

- Call for Information: Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule, 75 FR 81366 (December 27, 2010) (hereinafter referred to as the ''Call for Information'').
- Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule; Proposed Rule, 75 FR 81350 (December 27, 2010) (hereinafter referred to as the ''Deferral Proposal'').
- Interim Final Regulation Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule, 75 FR 81338 (December 27, 2010) (hereinafter referred to as the ''Interim Final Rule'').

On August 25, 2011, the EPA published the final ''Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule'' (76 FR 53057, hereinafter referred to as the ''Final Deferral''). In that action, the EPA deferred the deadline for reporting some ''Inputs to Emission Equations'' data elements to March 31, 2013, and others to March 31, 2015. Data elements with the March 31, 2013 reporting deadline are identified in Table A–6 of subpart A and those with the March 31, 2015 reporting deadline are identified in Table A–7 to subpart A. For subpart W, the EPA deferred the reporting of all data elements classified as ''Inputs to Emission Equations'' as of the publication of the Final Deferral until March 31, 2015.

Currently, Table A–7 does not reflect the changes or additions to inputs to equations made in the Technical Revisions Rule. The agency is now addressing this in today's action.

III. Re-Proposal of CBI Determinations for Subpart W

A. Overview

We propose to assign each of the data elements in subpart W, a direct emitter subpart, to one of eleven direct emitter data categories created in the Final CBI Rule. As noted previously, for 8 of the 11 direct emitter categories, the EPA has made categorical confidentiality determinations, finalized in the Final CBI Rule. For these eight categories, the EPA is proposing to apply the categorical confidentiality determinations (made in the Final CBI Rule) to the subpart W reporting elements assigned to each of these categories.

In the Final CBI Rule, for 2 of the 11 data categories, the EPA did not make categorical confidentiality determinations, but rather made confidentiality determinations on an element by element basis. We are therefore following the same approach in this action for the subpart W reporting elements assigned to these 2 categories.

Lastly, in the Final CBI Rule, for the final data category, ''Inputs to Emissions Equations''; the EPA did not make a final confidentiality determination and indicated that this issue would be addressed in a future action. Please note that in the Final Deferral, the EPA already assigned certain subpart W data elements to the ''Inputs to Emission Equations'' data category. However, since then, 10 data elements were added to subpart W after the Final Deferral was promulgated. The EPA is proposing to assign these 10 new data elements to the ''Inputs to Emission Equations'' data category, as well as proposing to defer the reporting of these inputs until 2015. Please see the memorandum entitled ''Proposed Data Category Assignments for Subpart W'' in Docket ID No. EPA–

HQ–OAR–2011–0028 for a listing of the data elements that the EPA is proposing to assign to this data category. Note that we are not proposing confidentiality determinations at this time for any subpart W data elements assigned to the ''Inputs to Emissions Equations'' data category and plan to propose confidentiality determinations for elements in this data category in a later action. Please see the following Web site for further information on this topic: *http://www.epa.gov/climatechange/emissions/CBI.html.*

Table 2 of this preamble summarizes the confidentiality determinations that were made in the Final CBI Rule for the following direct emitter data categories created in that notice. Please note that the ''Inputs to Emission Equations'' data category is excluded, as final determinations for that category have not yet been made.

TABLE 2—SUMMARY OF FINAL CONFIDENTIALITY DETERMINATIONS FOR DIRECT EMITTER DATA CATEGORIES

Data category	Confidentiality determination for data elements in each category		
	Emission data [a]	Data that are not emission data and not CBI	Data that are not emission data but are CBI [b]
Facility and Unit Identifier Information	X		
Emissions	X		
Calculation Methodology and Methodological Tier	X		
Data Elements Reported for Periods of Missing Data that are Not Inputs to Emission Equations	X		
Unit/Process ''Static'' Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Unit/Process Operating Characteristics that are Not Inputs to Emission Equations		X [c]	X [c]
Test and Calibration Methods		X	
Production/Throughput Data that are Not Inputs to Emission Equations			X
Raw Materials Consumed that are Not Inputs to Emission Equations			X
Process-Specific and Vendor Data Submitted in BAMM Extension Requests			X

[a] Under CAA section 114(c), ''emission data'' are not entitled to confidential treatment. The term ''emission data'' is defined at 40 CFR 2.301(a)(2)(i).
[b] Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.
[c] In the Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

We are requesting comment on several aspects of this proposal. First, we seek comment on the proposed data category assignment for each of these data elements. If you believe that the EPA has improperly assigned certain data elements in this subpart to one of the data categories, please provide specific comments identifying which data elements may be mis-assigned along with a detailed explanation of why you believe them to be incorrectly assigned and in which data category you believe they best would belong.

Second, we seek comment on our proposal to apply the categorical confidentiality determinations (made in the Final CBI Rule for eight direct emitter data categories) to the data elements in subpart W that are assigned to those categories.

Third, for those data elements assigned to the two direct emitter data categories without categorical CBI determinations, we seek comment on the individual confidentiality determinations we are proposing for these data elements. If you comment on this issue, please provide specific comment along with detailed rationale and supporting information on whether such data element does or does not qualify as CBI.

Because this is a re-proposal, the EPA is not responding to previous comments submitted on the July 7, 2010 CBI Proposal relative to the data elements in this subpart. Although the EPA considered those comments when developing this re-proposal, we encourage you to resubmit all relevant comments to ensure their consideration by the EPA in this rulemaking. In resubmitting previous comments, please make any necessary changes to clarify that you are addressing the re-proposal and add details as requested in Section III.D of this preamble.

B. Approach To Making Confidentiality Determinations

For a direct emitter subpart such as subpart W, the EPA proposes to assign each data element to one of 11 direct emitter data categories. As noted previously, the EPA made categorical confidentiality determinations for eight direct emitter data categories, and the EPA proposes to apply those final determinations to the subpart W data elements assigned to those categories in this rulemaking. For the data elements in the two non-inputs direct emitter data categories that do not have categorical confidentiality determinations, we are proposing to make confidentiality determinations on an individual data element basis.[1]

The following two direct emitter data categories do not have category-based CBI determinations: ''Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations'' and ''Unit/Process Operating Characteristics That are Not Inputs to Emission Equations.'' For these two categories, the EPA evaluated the individual data elements assigned to these categories to determine whether individual data elements qualify as CBI. In the sections below, the EPA explains the data elements in these two categories and states the reasons for proposing to determine that each does or does not qualify as CBI under CAA section 114(c). The EPA is specifically soliciting comments on the CBI proposals for data elements in these two data categories. In section III.C of this preamble, the data elements in these two data categories are listed individually by data category along with the proposed confidentiality determination. The data elements along with their proposed confidentiality determinations are also listed in the memorandum entitled ''Proposed Data Category Assignments for Subpart W'' in

[1] As mentioned above, EPA determined that data elements in these two categories are not ''emission data'' under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98. That determination applies to data elements in subpart W assigned to those categories through this rulemaking.

Docket ID No. EPA–HQ–OAR–2011–0028.

C. Proposed Confidentiality Determinations for Individual Data Elements in Two Data Categories

The EPA is proposing to assign 28 subpart W data elements to the ''Unit/Process 'Static' Characteristics that Are Not Inputs to Emission Equations'' data category because they are basic characteristics of units, equipment, abatement devices, and other facility-specific characteristics that do not vary with time or with the operations of the process (and are not inputs to emission equations). These 28 data elements are proposed as non-CBI with the rationales shown in Table 3 of this preamble as follows:

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE ''UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS'' DATA CATEGORY

Citation	Data element	Proposed rationale
1 98.236c4iiiA	Count of absorbent desiccant dehydrators.	Desiccant dehydrators are used to dehydrate natural gas. The EPA is proposing that the count of desiccant dehydrators (in addition to the sizing) be non-CBI because the disclosure of this type of information is not likely to cause substantial competitive harm. Moreover, these types of equipment are typically visible on site even outside the fence-line at the operating site and are usually not concealed from public view. The EPA proposes that this data be not confidential and considered non-CBI.
2 98.236c8iA	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), where reported by sub-basin category: Number of wellhead separators sending oil to atmospheric tanks.	Separators are used to separate hydrocarbons into liquid and gas phases. Separators are typically connected to atmospheric storage tanks (hydrocarbon tanks) where hydrocarbon liquids are stored. The number of wellhead separators sending oil to atmospheric tanks can vary widely depending on numerous conditions, including the sizing of the tank and throughput of the separators, and the number of parties involved with handling or processing the separated constituents. Information on the count of atmospheric storage tanks with a throughput above 500 barrels of oil per day is already publicly available in Title V permits under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH[2] for Oil and Gas Production. Any additional information required under subpart W regarding the number of wellhead separators is the same type of information already made publicly available through the NESHAP and thus is a reasonable expansion of that information. Further, information about the number of wellhead separators sending oil to atmospheric tanks does not provide insight into the performance (ability to separate hydrocarbon into different phases) or the overall operational efficiency for the facility that could cause substantial competitive harm if disclosed. The EPA proposes that this data be not confidential and considered non-CBI.
3 98.236c8iD	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Count of hydrocarbon tanks at well pads.	Information on the count of atmospheric storage tanks with a throughput above 500 barrels of oil per day is already publicly available in Title V permits under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH[3] for Oil and Gas Production. Further, knowledge of whether the tanks are located on a well-pad or off a well-pad does not provide any insight into the operational characteristics of the facility, nor does it provide insight into sensitive or proprietary information about a facility, but rather identifies the industry segment under subpart W to which the tanks belong. The EPA proposes that this data be not confidential and considered non-CBI.
4 98.236c8iE	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Best estimate of count of stock tanks not at well pads receiving your oil.	Information on the count of stock tanks with a throughput above 500 barrels of oil per day is already publicly available in Title V permits under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH[4] for Oil and Gas Production. Further, knowledge of whether the tanks are located on a well-pad or off a well-pad does not provide any insight into the operational characteristics of the facility, nor does it provide insight into sensitive or proprietary information about a facility, but rather identifies the industry segment under subpart W to which the tanks belong. The EPA proposes that this data be not confidential and considered non-CBI.
5 98.236c8iG	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Count of tanks with emissions control measures, either vapor recovery system or flaring, for tanks at well pads.	Atmospheric storage tanks receive and store hydrocarbon liquids typically from separators or from onshore production wells. Some tanks are equipped with vapor recovery units or flares to control the tank emissions. Information on the emission control devices associated with tanks are included in Title V permits under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH for Oil and Gas Production. Disclosure of this data does not provide insight into the performance or the overall operational efficiency for the facility that could cause substantial competitive harm if disclosed. The EPA proposes that this data be not confidential and considered non-CBI.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Citation	Data element	Proposed rationale
6 98.236c8iH	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Best estimate of count of stock tanks assumed to have emissions control measures not at well pads, receiving your oil.	Atmospheric storage tanks (also known as stock tanks) receive and store hydrocarbon liquids typically from separators or from onshore production wells. Some tanks are equipped with vapor recovery units or flares to control the tank emissions. Information on the emission control devices associated with tanks are included in Title V permits under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH for Oil and Gas Production. Disclosure of this data does not provide insight into the performance or the overall operational efficiency for the facility that could cause substantial competitive harm if disclosed. The EPA proposes that this data be not confidential and considered non-CBI.
7 98.236c8iC	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Estimated average sales oil stabilized API gravity (degrees) (when using methodology 1).	API gravity is a measure of the relative density of liquid hydrocarbons and does not reveal the composition of the hydrocarbon liquid or the reporter's productivity. Data on the sales oil stabilized API gravity are made publicly available by many state agencies (e.g., the Railroad Commission of Texas). Further, information about API gravity does not provide insight into the performance or the operational efficiency for onshore petroleum and natural gas production facilities that could cause substantial competitive harm if disclosed. Moreover, this data is reported as an average for a sub-basin, which further diminishes any possible sensitivity. Because this information is publicly available and is reported only as an average for the sub-basin, the EPA proposes this data be not confidential and considered non-CBI.
8 98.236c8iC	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Estimated average sales oil stabilized API gravity (degrees) (when using methodology 2).	API gravity is a measure of the relative density of liquid hydrocarbons and does not reveal the composition of the hydrocarbon liquid or the reporter's productivity. Data on the sales oil stabilized API gravity are made public by many state agencies (e.g., the Railroad Commission of Texas). Further, information about API gravity does not provide insight into the performance or the operational efficiency for onshore petroleum and natural gas production facilities that could cause substantial competitive harm if disclosed. Moreover, this data is reported as an average for a sub-basin, which further diminishes any possible sensitivity. Because this information is publicly available and is reported as an average for the sub-basin, the EPA proposes that this data be not confidential and considered non-CBI.
9 98.236c8iiiE	Wellhead gas-liquid separators and wells with throughput less than 10 barrels per day, using Calculation Methodology 5 of 40 CFR 98.233(j) Equation W–15 of 40 CFR 98.233: Count of hydrocarbon tanks on well pads.	Information on the count of atmospheric storage tanks with a throughput above 500 barrels of oil per day is already publicly available in Title V permits under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH[5] for Oil and Gas Production. Further, knowledge of whether the tanks are located on a well-pad or off a well-pad does not provide any insight into the operational characteristics of the facility, nor does it provide insight into sensitive or proprietary information about a facility, but rather identifies the industry segment under subpart W to which the tanks belong. The EPA proposes that this data be not confidential and considered non-CBI.
10 98.236c8iiF	Wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of 40 CFR 98.233(j), where the following by sub-basin category are reported: Count of hydrocarbon tanks, both on and off well pads assumed to have emissions control measures: either vapor recovery system or flaring of tank vapors.	Atmospheric storage tanks (also known as hydrocarbon tanks) receive and store hydrocarbon liquids typically from separators or from onshore production wells. Some tanks are equipped with vapor recovery units or flares to control the tank emissions. Information on the emission control devices associated with tanks are included in Title V permits under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH for Oil and Gas Production. Disclosure of this data does not provide insight into the performance or the overall operational efficiency for the facility that could cause substantial competitive harm if disclosed. The EPA proposes that this data be not confidential and considered non-CBI.
11 98.236c8iiC	Wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of 40 CFR 98.233(j), where the following by sub-basin category are reported: Total number of wells sending oil to separators off the well pads.	Information on the number of wells and their characteristics, including production levels, is publicly available through many published sources, including the U.S. Energy Information Administration,[6] and through commercial databases that are available to the public for purchase.[7] Although information on the number of wells sending oil to separators that are located off well pads may not be readily available from public data sources, it can generally be assumed that oil producing wells send oil either to separators or tanks that are either located on a well pad or off a well pad. Although, in some cases, oil is sent directly to tanks and not first sent to separators, this is more a function of the characteristics of the oil and is not correlated with sensitive or proprietary information about the facility or its processes. Thus, disclosure of this data does not provide insight into the performance or the overall operational efficiency for the facility that could cause substantial competitive harm if disclosed. Because information on oil producing wells is already publicly available, the EPA proposes to determine that these data elements are not confidential; they will be considered non-CBI.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Citation	Data element	Proposed rationale
12 98.236c8iiB	Wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of 40 CFR 98.233(j), where the following by sub-basin category are reported: Total number of wells sending oil directly to tanks.	Information on the number of wells and their characteristics, including production levels, is publicly available through many published sources, including the U.S. Energy Information Administration,[8] and through commercial databases that are available to the public for purchase.[9] Although information on the number of wells sending oil directly to storage tanks may not be readily available in public data sources, it can generally be assumed that oil producing wells send oil either to separators or tanks. While in some cases, oil is sent directly to tanks and not first sent to separators, this is more a function of the characteristics of the oil and is not correlated with sensitive or proprietary information about the facility or its processes. Thus, disclosure of this data does not provide insight into the performance or the overall operational efficiency for the facility that could cause substantial competitive harm if disclosed. Because information on oil producing wells is already publicly available, the EPA proposes to determine that these data elements are not confidential; they will be considered non-CBI.
13 98.236c8iiD	Wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of 40 CFR 98.233(j), where the following by sub-basin category are reported: Sales oil API gravity range (degrees) for wells in 40 CFR 98.236(c)(8)(ii)(B) and (C).	API gravity is a measure of the relative density of liquid hydrocarbons and does not reveal the composition of the hydrocarbon liquid or the reporter's productivity. Data on the sales oil stabilized API gravity are made public by many state agencies (e.g., the Railroad Commission of Texas). Further, information about API gravity does not provide insight into the performance or the operational efficiency for onshore petroleum and natural gas production facilities that would likely cause substantial competitive harm if disclosed. Moreover, this data is reported as a range within a sub-basin and not for individual wells, which further diminishes any possible sensitivity. Because this information is publicly available, and also is reported as an average for the sub-basin category, the EPA proposes that this data be not confidential and considered non-CBI.
14 98.236c8iiE	Wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of 40 CFR 98.233(j), where the following by sub-basin category are reported: Count of hydrocarbon tanks on well pads.	Information on the count of atmospheric storage tanks with a throughput above 500 barrels of oil per day is already publicly available in Title V permits under EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart HH[10] for Oil and Gas Production. Further, knowledge of whether the tanks are located on a well-pad or off a well-pad does not provide any insight into the operational characteristics of the facility. Nor does it provide insight into sensitive or proprietary information about a facility, but rather identifies the industry segment under subpart W to which the tanks belong. The EPA proposes that this data be not confidential and considered non-CBI.
15 98.236c5iE	Well venting for liquids unloading, for Calculation Methodology 1, where the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Average casing diameter or internal tubing diameter, where applicable.	The well casing diameter is the diameter of the pipe inserted into a recently drilled section of a borehole during the well drilling process. Data on well casing diameter are publicly available from vendors of casing pipes. Further, information about well casing diameter does not provide insight into the performance or the operational efficiency for onshore petroleum and natural gas production facilities that would likely cause substantial competitive harm if disclosed. Moreover, facilities report this information for one well used to represent the remaining wells in a group. This data element is not necessarily the same for other wells in the same tubing size and pressure group combination and therefore, does not reveal sufficient data to characterize the operations of a particular business or compromise any of its business advantages. Thus, the sensitivity of these data elements is further diminished. Because this information is publicly available and also is reported as an average for a group of wells, the EPA proposes that this data be not confidential and considered non-CBI.
16 98.236c5iE	Well venting for liquids unloading, for Calculation Methodology 1, where the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Well depth of each well selected to represent emissions in that tubing size and pressure combination.	The well depth is the depth of a hydrocarbon well. Data on well depth is publicly available from State Oil and Gas Commission websites and through commercial databases available to the public for purchase.[7] Information about well depth does not provide insight into the performance or the operational efficiency of onshore petroleum and natural gas production facilities that would likely cause substantial competitive harm if disclosed. Moreover, facilities report this information for one well used to represent the remaining wells in a group. This data element is not necessarily the same for other wells in the same tubing size and pressure group combination and therefore, does not reveal sufficient data to characterize the operations of a particular business or compromise any of its business advantages. Thus, the sensitivity of this data element is further diminished. Because this information is publicly available, and also is reported as representative of wells in the same group, the EPA proposes that this data be not confidential and considered non-CBI.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

	Citation	Data element	Proposed rationale
17	98.236c5iF	Well venting for liquids unloading, for Calculation Methodology 1, where the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Casing pressure of each well selected to represent emissions in that tubing size group and pressure group combination that does not have a plunger lift, pounds per square inch (psia).	The casing pressure refers to the pressure of the casing of a hydrocarbon well. Data on casing pressure is publicly available from State Oil and Gas Commission websites and through commercial databases available to the public for purchase.[7] Information about casing pressure does not provide insight into the performance or the operational efficiency for onshore petroleum and natural gas production facilities that would likely cause substantial competitive harm if disclosed. Moreover, facilities report this information for one well used to represent the remaining wells in a group. This data element is not necessarily the same for other wells in the same tubing size and pressure group combination and therefore does not reveal sufficient data to characterize the operations of a particular business or compromise its business advantage. Thus, the sensitivity of this data element is further diminished. Because this information is publicly available and also is reported as a representative number in a sub-basin, the EPA proposes that this data be not confidential and considered non-CBI.
18	98.236c5iG	Well venting for liquids unloading, for Calculation Methodology 1, where the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Tubing pressure of each well selected to represent emissions in a tubing size group and pressure group combination that has a plunger lift (psia).	Data on tubing pressure is publicly available from State Oil and Gas Commission websites and through commercial databases available to the public for purchase.[7] Information about tubing pressure does not provide insight into the performance or the operational efficiency for onshore petroleum and natural gas production facilities that would likely cause substantial competitive harm if disclosed. Moreover, facilities report this information for one well used to represent the remaining wells in a group. This data element is not necessarily the same for other wells in the same tubing size and pressure group combination and therefore does not reveal sufficient data to characterize the operations of a particular business or compromise any of its business advantages. Thus, the sensitivity of this data element is further diminished. Because this information is publicly available, the EPA proposes that this data be not confidential and considered non-CBI.
19	98.236c5iiD	Well venting for liquids unloading, for Calculation Methodologies 2 and 3, where the following for each sub-basin category are reported: Average internal casing diameter, in inches, of each well, where applicable.	The well casing diameter is the diameter of the pipe inserted into a recently drilled section of a borehole during the well drilling process. Data on well casing diameter are publicly available from vendors of casing pipes. Information about well casing diameter does not provide insight into the performance or the operational efficiency of onshore petroleum and natural gas production facilities that would likely cause substantial competitive harm if disclosed. Because this information is publicly available and also is reported as an average for each sub-basin category, the EPA proposes that this data be not confidential and considered non-CBI.
20	98.236c13iA	Each centrifugal compressor with wet seals in operational mode, where the following for each degassing vent are reported: Number of wet seals connected to the degassing vent.	Wet seals form the barrier that keeps gas from seeping through the gap between the compressor shaft and the compressor casing. Information about the number of wet seals connected to the degassing vent of a centrifugal compressor does not provide valuable insight into the performance or the operational efficiency of the reporting facility, but rather provides insight into the characteristics of a piece of equipment. Overall, the number of wet seals that are connected to a degassing vent is more a matter of operational convenience and does not reveal any process related information. The EPA proposes that this data element not be confidential and considered non-CBI.
21	98.236c16i	Local distribution companies: Number of above grade T–D transfer stations in the facility.	The number of above grade transmission-distribution (T–D) transfer stations is the number of stations where gas is transferred from a transmission pipeline to a distribution pipeline in a natural gas distribution facility. A larger number of T–D transfer stations could suggest that a larger quantity of gas is transferred into the LDC distribution network, however, this is not a definite or direct correlation. The amount of gas transferred can vary drastically depending on the operations of a local distribution company (LDC). Therefore, information about the number of above grade T–D transfer stations does not provide direct insight into the performance or the operational efficiency for LDCs. Moreover, even if throughput data could be inferred from the number of T–D transfer stations, the throughput data is already publicly available by company and state through EIA[11], therefore further diminishing its sensitivity. The EPA is proposing that this data be not confidential and considered non-CBI.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Citation	Data element	Proposed rationale
22 98.236c16iv	Local distribution companies: Report total number of below grade T–D transfer stations in the facility.	The number of below grade transmission-distribution (T–D) transfer stations is the number of stations located underground where gas is transferred from a transmission pipeline to a distribution pipeline in a natural gas distribution facility. A larger number of T–D transfer stations could suggest that a larger quantity of gas is transferred into the local distribution company (LDC) distribution network, however, this is not a definite or direct correlation. The amount of gas transferred can vary drastically depending on the operations of a LDC. Therefore, information about the number of below grade T–D transfer stations does not provide direct insight into the performance or the operational efficiency for LDCs. Moreover, even if throughput data could be inferred from the number of T–D transfer stations, the throughput data is already publicly available by company and state through EIA,[12] therefore further diminishing its sensitivity. The EPA is proposing that this data be not confidential and considered non-CBI.
23 98.236c16v	Local distribution companies: Report total number of above grade metering-regulating stations (which includes above grade T–D transfer stations) in the facility.	The number of above grade metering-regulating stations is the number of stations located above ground where gas is metered, pressure regulated, or both, in a natural gas distribution facility. This count includes the number of above grade T–D transfer stations, where gas is transferred from a transmission pipeline to a distribution pipeline in a natural gas distribution facility. A larger number of metering-regulating stations could suggest that a larger quantity of gas is transferred into the LDC distribution network, however, this is not a definite or direct correlation. The amount of gas transferred can vary drastically depending on the operations of a local distribution company (LDC). Therefore, information about the number of above grade metering-regulating stations does not provide direct insight into the performance or the operational efficiency for LDCs. Moreover, even if throughput data could be inferred from the number of metering-regulating stations, the throughput data is already publicly available by company and state through EIA,[13] therefore further diminishing its sensitivity. The EPA is proposing that this data be not confidential and considered non-CBI.
24 98.236c16vi	Local distribution companies: Report total number of below grade metering-regulating stations (which includes below grade T–D transfer stations) in the facility.	The number of below grade metering-regulating stations is the number of stations located below ground where gas is metered, pressure regulated, or both, in a natural gas distribution facility. This count includes the number of below grade T–D transfer stations, where gas is transferred from a transmission pipeline to a distribution pipeline in a natural gas distribution facility. A larger number of metering-regulating stations could suggest that a larger quantity of gas is transferred into the LDC distribution network, however, this is not a definite or direct correlation. The amount of gas transferred can vary drastically depending on the operations of a local distribution company (LDC). Therefore, information about the number of below grade metering-regulating stations does not provide direct insight into the performance or the operational efficiency for LDCs. Moreover, even if throughput data could be inferred from the number of metering-regulating stations, the throughput data is already publicly available by company and state through EIA,[14] therefore further diminishing its sensitivity. The EPA is proposing that this data be not confidential and considered non-CBI.
25 98.236c17i	Each EOR injection pump blowdown: Pump capacity (barrels per day).	Pump capacity, which will be reported by EOR operations in the onshore production segment only, can be estimated from the quantity of CO_2 injected, because the pump capacity is proportional to the volume of CO_2 that the pump is pumping (i.e., the volume of CO_2e reported). Therefore, if the volume of CO_2 that was pumped is known, then the pump's capacity can be estimated to be between 150 to 200 percent greater than the reported volume, to handle fluctuations in CO_2 loads. The quantity of CO_2 injected can be determined from Underground Injection Control (UIC) permits, which are issued for each injection well by the EPA or by states that have primary enforcement authority for permitting injection wells. Information related to UIC permits is reported to the EPA or states at least annually and made available to the public either through state websites or upon request from the public. Finally, knowing the pump capacity does not result in any competitive disadvantage to the reporter, because the injection volume of the pump, which is related to throughput of the pump, is publicly available through the EPA's UIC program. The EPA proposes that the subpart W pump capacity data element not be treated as confidential, because it can be estimated using publicly available data, to a level of accuracy that substantially diminishes the potential harm of releasing this data. Although a competitor can use this information to estimate injection or oil production volumes, such information is already publicly available. The EPA is proposing that this data be not confidential; and considered non-CBI.

TABLE 3—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS 'STATIC' CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Citation	Data element	Proposed rationale
26 98.236c19i	Onshore petroleum and natural gas production and natural gas distribution combustion emissions: Cumulative number of external fuel combustion units with a rated heat capacity equal to or less than 5 mmBtu/hr, by type of unit.	The number of external combustion units with heat input capacities equal to or less than 5mmBtu/hour reveals nothing about the productivity of a business's operation (e.g., capacity information). Information about the cumulative number of external fuel combustion units with specified heat capacities does not provide insight into the performance or the operational efficiency for a facility that would likely cause substantial competitive harm if disclosed. Furthermore, technical specifications and operational details, such as hours of operation, are not revealed through this data element and hence cannot be used to determine throughput from each compressor. Moreover, throughput data for each facility is publicly available.[7] Thus, this data element does not compromise confidential business information that will harm the business' competitive advantage, because the information that is revealed by this data element is already publicly available. The EPA is proposing that this data be not confidential and considered non-CBI.
27 98.236c19ii	Onshore petroleum and natural gas production and natural gas distribution combustion emissions: Cumulative number of external fuel combustion units with a rated heat capacity larger than 5 mmBtu/hr, by type of unit.	The number of external combustion units with heat input capacities greater than 5mmBtu/hour reveals nothing about the productivity of a business's operation (e.g., capacity information). Information about the cumulative number of external fuel combustion units with specified heat capacities does not provide insight into the performance or the operational efficiency for a facility that would likely cause substantial competitive harm if disclosed. Furthermore, technical specifications and operational details, such as hours of operation, are not revealed through these data elements and hence cannot be used to determine throughput from each compressor. Moreover, throughput data for each facility is already publicly available.[7] Thus, this data element does not compromise confidential business information that will harm the business's competitive advantage, because the information that is revealed by this data element is already publicly available. The EPA is proposing that this data be not confidential and considered non-CBI.
28 98.236c19v	Onshore petroleum and natural gas production and natural gas distribution combustion emissions: Cumulative number of internal fuel combustion units, not compressor-drivers, with a rated heat capacity equal to or less than 1 mmBtu/hr or 130 horse power, by type of unit.	The number of internal combustion units (other than compressor drivers) with a rated heat input capacity of 1 mmBtu/hour or less (130 HP) reveals nothing about the productivity of a business's operation (e.g., capacity information). Information about the cumulative number of internal fuel combustion units with specified heat capacities does not provide insight into the performance or the operational efficiency for a facility that would likely cause substantial competitive harm if disclosed. Furthermore, technical specifications and operational details, such as hours of operation, are not revealed through this data element and hence cannot be used to determine throughput from each compressor. Moreover, throughput data for each facility is already available in the public domain[7]. Thus, this data element does not compromise confidential business information that will harm the business's competitive advantage, because the information that is revealed by this data element is already publicly available. The EPA is proposing that this data be not confidential and considered non-CBI.

The EPA is proposing to assign 38 subpart W data elements to the "Unit/process Operating Characteristics that Are Not Inputs to Emission Equations" data category, because they are characteristics of equipment, such as wells and plunger lifts, abatement devices, and other facility-specific characteristics that vary over time with changes in operations and processes (and are not inputs to emission equations). Some of these elements are part of extension requests for the use of BAMM and generally relate to the reasons for a request and expected dates of compliance with regular reporting requirements. The remaining data elements are part of the annual GHG report for 40 CFR part 98, subpart W. All of the 38 data elements are listed below. Of the 38 data elements, elements 1 thru 37 are proposed as non-CBI, while data element 38 is proposed to be CBI, as explained in Table 4 of this preamble:

[2] *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3751089d31ea79d2273ed12c4f723ba9&rgn=div6&view=text&node=40:10.0.1.1.1.8&idno=40.*

[3] *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3751089d31ea79d2273ed12c4f723ba9&rgn=div6&view=text&node=40:10.0.1.1.1.8&idno=40.*

[4] *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3751089d31ea79d2273ed12c4f723ba9&rgn=div6&view=text&node=40:10.0.1.1.1.8&idno=40.*

[5] *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3751089d31ea79d2273ed12c4f723ba9&rgn=div6&view=text&node=40:10.0.1.1.1.8&idno=40.*

[6] *http://www.eia.gov/dnav/ng/ng_prod_wells_s1_a.htm.*

[7] *http://www.didesktop.com/products/.*

[8] *http://www.eia.gov/dnav/ng/ng_prod_wells_s1_a.htm.*

[9] *http://www.didesktop.com/products/.*

[10] *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3751089d31ea79d2273ed12c4f723ba9&rgn=div6&view=text&node=40:10.0.1.1.1.8&idno=40.*

[11] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[12] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[13] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[14] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY

Citation	Data element	Proposed rationale
1 98.236c4iiB	All glycol dehydrator with throughput less than 0.4 MMscfd: Which vent gas controls are used.	A glycol dehydration unit is a process unit that separates liquids from a natural gas stream using diethylene glycol (DEG) or triethylene glycol (TEG). Information on the types of vent gas controls used for glycol dehydrators does not provide insight into the facility's performance or operational efficiency that would likely result in substantial competitive harm if disclosed. Furthermore, information about the types of vent gas controls typically used at petroleum and natural gas facilities is publicly available through EPA's Natural Gas Star Program technology fact sheets. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
2 98.236c5iB	Well venting for liquids unloading, for Calculation Methodology 1, where the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Whether the selected well from the tubing diameter and pressure group combination had a plunger lift (yes/no).	A plunger lift system is an artificial liquid lift mechanism that includes a plunger (tubular steel structure with valves) that rests at the bottom of a wellbore on a spring loaded base. As gas is produced through the natural gas well, liquids accumulate on top of the plunger and gradually reduce the flow rate of natural gas. To expel the liquids from the well, the well is shut-in, at which point the casing pressure builds up and pushes the plunger to the surface preceded by the liquids in the wellbore. Information on whether or not such artificial lift systems are being used for a given well would not provide insight into the performance or the operational efficiency of the facility because knowing those operational characteristics of a facility would not result in compromising a reporter's competitive advantage. Furthermore, the production and throughput data are already publicly available.[15] The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
3 98.236c5iB	Well venting for liquids unloading, for Calculation Methodology 1, where the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Count of plunger lifts.	A plunger lift system is an artificial liquid lift mechanism that includes a plunger (tubular steel structure with valves) that rests at the bottom of a wellbore on a spring loaded base. As gas is produced through the natural gas well, liquids accumulate on top of the plunger and gradually reduce the flow rate of natural gas. To expel the liquids from the well, the well is shut-in, at which point the casing pressure builds up and pushes the plunger to the surface preceded by the liquids in the wellbore. Information on the count of plunger lifts at a sub-basin level for a given facility does not reveal any sensitive information at a facility and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
4 98.236c5iA	Well venting for liquids unloading, for Calculation Methodology 1, report the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Count of wells vented to the atmosphere for liquids unloading.	Liquid unloading is conducted in mature gas wells that have an accumulation of liquids that impedes the steady flow of natural gas. This is a common occurrence in reservoirs where the pressure is depleted and liquids enter the wellbore. Information on the number of wells vented to the atmosphere for the purposes of unloading liquids or the frequency of the unloadings does not provide insight into sensitive or proprietary information about a facility, but rather may give a sense of the relative vintage of the well and about production rates for a given well, which are already publicly available through state oil and gas commissions and commercial databases.[16] Hence, information on the count of wells vented to the atmosphere for liquids unloading does not reveal any sensitive information at a facility and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
5 98.236c5iC	Well venting for liquids unloading, for Calculation Methodology 1, report the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Cumulative number of unloadings vented to the atmosphere.	Liquid unloading is conducted in mature gas wells that have an accumulation of liquids that impedes the steady flow of natural gas. This is a common occurrence in reservoirs where the pressure is depleted and liquids enter the wellbore. Information on the number of wells vented to the atmosphere for the purposes of unloading liquids or the frequency of the unloadings does not provide insight into sensitive or proprietary information about a facility, but rather may give a sense of the relative vintage of the well and about production rates for a given well, which are already publicly available through state oil and gas commissions and commercial databases[16]. Hence, information on the count of wells vented to the atmosphere for liquids unloading does not reveal any sensitive information at a facility and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Citation	Data element	Proposed rationale
6 98.236c5iiA	Well venting for liquids unloading, for Calculation Methodologies 2 and 3, report the following for each sub-basin category are reported: Count of wells vented to the atmosphere for liquids unloading.	Liquid unloading is conducted in mature gas wells that have an accumulation of liquids which impedes the steady flow of natural gas. This is a common occurrence in reservoirs where the pressure is depleted and liquids enter the wellbore. Information on the number of wells vented to the atmosphere for the purposes of unloading liquids or the frequency of the unloadings does not provide insight into sensitive or proprietary information about a facility, but rather may give a sense of the relative vintage of the well and about production rates for a given well, which are already publicly available through state oil and gas commissions and commercial databases.[16]. Hence, information on the count of wells vented to the atmosphere for liquids unloading does not reveal any sensitive information at a facility and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
7 98.236c5iiB	Well venting for liquids unloading, for Calculation Methodologies 2 and 3, where the following by each tubing diameter group and pressure group combination within each sub-basin category are reported: Count of plunger lifts.	A plunger lift systems is an artificial liquid lift mechanism that includes a plunger (tubular steel structure with valves) that rests at the bottom of a wellbore on a spring loaded base. As gas is produced through the natural gas well, liquids accumulate on top of the plunger and gradually reduce the flow rate of natural gas. To expel the liquids from the well, the well is shut-in, at which point the casing pressure builds up and pushes the plunger to the surface preceded by the liquids in the wellbore. Information on the count of plunger lifts at a sub-basin level for a given facility does not reveal any sensitive information at a facility and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
8 98.236c6iA	Gas well completions with hydraulic fracturing, report the following for each sub-basin and well type (horizontal or vertical) combination: Total count of completions in calendar year.	The term "well completions" commonly refers to the process of cleaning the wellbore of drill cuttings, cutting fluids, and proppants (when a well is hydraulically fractured) after the well has been drilled. Information on the number of completions performed by an oil and gas operator in a given year is available publicly on state oil and gas commission Web sites, commercial oil and gas databases,[17] and also is available publicly through the EIA. Therefore, the EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
9 98.236c6iG	Gas well completions with hydraulic fracturing, where the following for each sub-basin and well type (horizontal or vertical) combination are reported: Number of completions employing purposely designed equipment that separates natural gas from the backflow.	The term "well completions" commonly refers to the process of cleaning the wellbore of drill cuttings, cutting fluids, and proppants (when a well is hydraulically fractured) after the well has been drilled. Hydraulically fractured wells result in significantly higher backflow gas in comparison to conventional wells without hydraulic fracturing. Completions on a subset of the hydraulically fractured wells may be performed using purposely designed equipment that separates natural gas from the backflow, generally referred to as reduced emission completions. Information on the number of completions performed by an oil and gas operator in a given year is available publicly on state oil and gas commission Web sites, and also is available publicly through the EIA. The amount of estimated emissions resulting from well completions and workovers with hydraulic fracturing employing purposely designed equipment that separates natural gas from the backflow is publicly available in the National Inventory. The disclosure of the number of completions employing purposely designed equipment that separates natural gas from the backflow is not likely to cause substantial competitive harm because throughput data are already publicly available through the EIA.[18] Therefore, the EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
10 98.236c6iC	Gas well workovers with hydraulic fracturing, report the following for each sub-basin and well type (horizontal or vertical) combination: Total count of workovers in calendar year that flare gas or vent gas to the atmosphere.	As natural gas wells mature, the production from the well decreases. Often such mature wells are hydraulically fractured to increase production and the wells are re-completed. Information on the number of workovers performed nationally in a given year is available through the U.S. National Inventory. Knowing that wells are being worked over can only give a sense of the relative vintage of the well and increase in production rates. However, the information on age and production throughput is available through oil and gas commissions and commercial databases as well as the EIA.[19] Hence, information on the count of wells that undergo workovers does not reveal any sensitive information at a facility and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Citation	Data element	Proposed rationale
11 98.236c6iH	Gas well workovers with hydraulic fracturing, where the following for each sub-basin and well type (horizontal or vertical) combination are reported: Number of workovers employing purposely designed equipment that separates natural gas from the backflow.	As natural gas wells mature, the production from the well decreases. Often such mature wells are hydraulically fractured to increase production and the wells are re-completed. Information on the number of workovers performed by oil and gas operators in a given year is available publicly through the U.S. National Inventory. The amount of estimated emissions resulting from well completions and workovers with hydraulic fracturing employing purposely designed equipment that separates natural gas from the backflow is publicly available in the National Inventory. The amount of natural gas captured through reduced emission completions from well workovers gives a sense of the mitigation of GHGs and increase in throughput, i.e. gas production. However, throughput information is already available through oil and gas commission Web sites and commercial oil and gas databases as well as the EIA.[20] Therefore, the disclosure of the information on the number of workovers employing purposely-designed equipment that separates natural gas from the backflow is not likely to cause substantial competitive harm. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
12 98.236c6iiC	Gas well completions and workovers without hydraulic fracturing: Total number of days of gas venting to the atmosphere during backflow for completion.	The term "well completions" commonly refers to the process of cleaning the wellbore of drill cuttings, cutting fluids, and proppants (when well is hydraulically fractured) after the well has been drilled. Information on the number of completions performed by an oil and gas operator in a given year is available publicly on state oil and gas commission Web sites, and through the EIA. Furthermore, the disclosure of information on the total number of days of gas venting to the atmosphere during backflow for completion is not likely to cause substantial competitive harm because it does not reveal sensitive or proprietary information about the facility. Therefore, the disclosure of the information on the number of days of backflow during completions is not likely to cause substantial competitive harm. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
13 98.236c7iA	For blowdown vent stack emission source, for each unique physical volume that is blown down more than once during the calendar year: Total number of blowdowns for each unique physical volume in the calendar year (when using Eq. W–14B).	When equipment is taken out of service either to be placed in standby or for maintenance purposes, the natural gas in the equipment is typically released to the atmosphere. Such a practice is called blowdown. Blowdowns in a facility, unless for planned maintenance, are usually un-planned events. The number of blowdowns does not provide any process specific information, such as how long the equipment has been operating or at what efficiency. Hence, the disclosure of the information on the number of blowdowns is not likely to cause substantial competitive harm. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
14 98.236c7iiA	For blowdown vent stack emission source, for all unique volumes that are blown down once during the calendar year: Total number of blowdowns for all unique physical volumes in the calendar year.	When equipment is taken out of service either to be placed in standby or for maintenance purposes, the natural gas in the equipment is typically released to the atmosphere. Such a practice is called blowdown. Blowdowns in a facility, unless for planned maintenance, are usually un-planned events. The number of blowdowns does not provide any process specific information, such as how long the equipment has been operating or at what efficiency. Hence, the disclosure of the information on the number of blowdowns is not likely to cause substantial competitive harm. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
15 98.236c8iB	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Estimated average separator temperature (degrees Fahrenheit) (when using methodology 1).	Separators are used to separate hydrocarbons into liquid and gas phases. Separators are typically connected to atmospheric storage tanks (hydrocarbon tanks) where hydrocarbon liquids are stored. Characteristics of the separator, such as temperature and pressure, may vary widely and are dependant on the particular characteristics of the oil entering the separator. Information about the temperature of the separator does not provide insight into the performance or the operational efficiency of the separator that would likely cause substantial competitive harm if disclosed, because general information about throughput, which may be inferred when combined with other information, about this equipment is already publicly available. Furthermore, this data element is reported as an average value from a sub-basin, and is not reported for each piece of equipment, further diminishing any sensitivity related to disclosure of this data element. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

	Citation	Data element	Proposed rationale
16	98.236c8iB	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Estimated average separator temperature (degrees Fahrenheit) (when using methodology 2).	Separators are used to separate hydrocarbons into liquid and gas phases. Separators are typically connected to atmospheric storage tanks (hydrocarbon tanks) where hydrocarbon liquids are stored. Characteristics of the separator, such as temperature and pressure, may vary widely and are dependent on the particular characteristics of the oil entering the separator. Information about the temperature of the separator does not provide insight into the performance or the operational efficiency of the separator that would likely cause substantial competitive harm if disclosed, because general information about throughput, which may be inferred when combined with other information about this equipment that is already publicly available. Furthermore, this data element is reported as an average value from a sub-basin, and is not reported for each piece of equipment, therefore, further diminishing any sensitivity related to disclosure of this data element. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
17	98.236c8iB	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Estimated average pressure (psig) (when using methodology 1).	Separators are used to separate hydrocarbons into liquid and gas phases. Separators are typically connected to atmospheric storage tanks (hydrocarbon tanks) where hydrocarbon liquids are stored. Characteristics of the separator, such as temperature and pressure, may vary widely and are dependent on the particular characteristics of the oil entering the separator. Information about the pressure of the separator does not provide insight into the performance or the operational efficiency of the separator that would likely cause substantial competitive harm if disclosed, because general information about throughput, which may be inferred when combined with other information about this equipment that is already publicly available. Furthermore, this data element is reported as an average value from a sub-basin, and is not reported for each piece of equipment, further diminishing any sensitivity related to disclosure of this data element. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
18	98.236c8iB	Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of 40 CFR 98.233(j), reported by sub-basin category: Estimated average pressure (psig) (when using methodology 2).	Separators are used to separate hydrocarbons into liquid and gas phases. Separators are typically connected to atmospheric storage tanks (hydrocarbon tanks) where hydrocarbon liquids are stored. Characteristics of the separator, such as temperature and pressure, may vary widely and are dependent on the particular characteristics of the oil entering the separator. Information about the pressure of the separator does not provide insight into the performance or the operational efficiency of the separator that would likely cause substantial competitive harm if disclosed, because general information about throughput, which may be inferred when combined with other information about this equipment that is already publicly available. Furthermore, this data element is reported as an average value from a sub-basin, and is not reported for each piece of equipment, further diminishing any sensitivity related to disclosure of this data element. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
19	98.236c8ivA	If wellhead separator dump valve is functioning improperly during the calendar year: Count of wellhead separators that dump valve factor is applied.	Separators are used to separate hydrocarbons into liquid and gas phases. Separators are typically connected to atmospheric storage tanks (hydrocarbon tanks) where hydrocarbon liquids are stored. Dump valves on separators are used to periodically dump liquids in the separator into a liquids pipeline. Malfunctioning dump valves are a function of the maintenance of the separator. Information on dump valves, such as the count of separators for which the dump valves were improperly functioning during the calendar year, would not provide meaningful insight into proprietary or sensitive information at a facility and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

Citation	Data element	Proposed rationale
20 98.236c10i	Well testing venting and flaring: Number of wells tested per basin in calendar year.	Well testing venting and flaring refers to the process by which an owner or operator vents or flares natural gas at the time the production rate of a well is determined for regulatory, commercial, or technical purposes. Venting and flaring done immediately after a well completion is included in the well completion emissions and not under the well testing venting and flaring emissions source. The EPA is proposing that the disclosure of this data be non-confidential, because the disclosure of this data likely would not cause substantial competitive harm. The data is reported at a basin level as opposed to a field or sub-basin level, which is at a much greater level of granularity. Furthermore, reporting the number of wells tested in a basin for a given year does not provide any insight on exactly which wells within that basin were tested, thereby diminishing the sensitivity associated with disclosure of this data. Lastly, the data reported does not include the production rate of the tested well, thereby further diminishing the sensitivity with disclosure of this data. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
21 98.236c10ii	Well testing venting and flaring: Average gas to oil ratio for each basin.	Well testing venting and flaring refers to the process by which an owner or operator vents or flares natural gas at the time the production rate of a well is determined for regulatory, commercial, or technical purposes. Venting and flaring done immediately after a well completion is included in the well completion emissions and not under the well testing venting and flaring emissions source. Disclosure of the average gas to oil ratio of wells tested within a basin is not likely to cause substantial competitive harm because information on the gas to oil ratio for wells can be determined through publicly available information through many state agencies (e.g., the Railroad Commission of Texas lists the gas to oil ratio in their "Gas Master" and "Oil Master" publications). Furthermore, this data element is reported as an average ratio at a basin level and is not reported on a per well basis, further diminishing sensitivity associated with disclosure of this data. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
22 98.236c10iii	Well testing venting and flaring: Average number of days the well is tested in a basin.	Well testing venting and flaring refers to the process by which an owner or operator vents or flares natural gas at the time the production rate of a well is determined for regulatory, commercial, or technical purposes. Venting and flaring done immediately after a well completion is included in the well completion emissions and not under the well testing venting and flaring emissions source. Disclosure of the average number of days the well is tested in a basin is not likely to cause substantial harm, because reporters are reporting an average for all of the wells tested within a basin rather than reporting for the number of data days of well testing for individual wells. Furthermore, the number of days a well is tested in a basin is not likely to provide any insight into proprietary or sensitive information at a facility and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
23 98.236c11ii	Associated natural gas venting and flaring for each basin: Average gas to oil ratio for each basin.	Disclosure of the average gas to oil ratio of wells tested within a basin is not likely to cause substantial competitive harm, because information on the gas to oil ratio for wells can be determined through publicly available information through many state agencies (e.g., the Railroad Commission of Texas lists the gas to oil ration in their "Gas Master" and "Oil Master" publications). Gas to oil ratios can generally be determined from the ratio of the volume of gas that comes out of solution to the volume of oil produced at specified conditions. Furthermore, this data element is reported as an average ratio at a basin level and is not reported on a per well basis, thus further diminishing sensitivity associated with disclosure. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
24 98.236c11i	For associated natural gas venting and flaring for each basin: Number of wells venting or flaring associated natural gas in a calendar year.	Associated natural gas is vented or flared when it is not being captured for sales. This information can be used to determine the crude oil production from the facility. However, because production information is already available through state oil and gas commissions and commercial oil and gas databases, including the EIA,[21] the EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
25 98.236c12iii	Flare stacks: Percent of gas sent to un-lit flare determined by engineering estimate and process knowledge based on best available data and operating records.	The EIA published emissions information on vents and flares in an Emissions Study which is available to the public.[22] In addition, the Bureau of Energy Management and Regulatory Enforcement (BOEMRE) collects information on flare and vent stack emissions through 30 CFR 250.1163(a),[23] for which information is made publicly available through the offshore platform studies. Hence, the EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE ''UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS'' DATA CATEGORY—Continued

	Citation	Data element	Proposed rationale
26	98.236c15iB	For each component type (major equipment type for onshore production) that uses emission factors for estimating emissions (refer to 40 CFR 98.233(q) and (r)): Equipment leaks found in each leak survey: For Onshore natural gas processing; range of concentrations of CO_2 (refer to Equation W–30 of 40 CFR 98.233).	The typical composition of natural gas in processing plants upstream of the dew point control is similar to that of production quality gas. Production quality gas information is available through databases from Gas Technology Institute[24] and Department of Energy Gas Information System (GASIS) Database[25] both of which are publicly available. Furthermore, the composition of natural gas downstream of the dew point control is typically similar to transmission quality gas. Transmission pipeline companies continuously monitor their gas composition and publish gas composition data on their Web sites. Also, the composition of gas varies throughout the year. Hence, the disclosure of the range of concentrations of individual components is not likely to cause substantial competitive harm. Therefore, the EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
27	98.236c15iB	For each component type (major equipment type for onshore production) that uses emission factors for estimating emissions (refer to 40 CFR 98.233(q) and (r)): Equipment leaks found in each leak survey: For Onshore natural gas processing; range of concentrations of CH_4 (refer to Equation W–30 of 40 CFR 98.233).	The typical composition of natural gas in processing plants upstream of the dew point control is similar to that of production quality gas. Production quality gas information is available through databases from Gas Technology Institute[26] and Department of Energy GASIS Database[27] both of which are publicly available. Furthermore, the composition of natural gas downstream of the dew point control is typically similar to transmission quality gas. Transmission pipeline companies continuously monitor their gas composition and publish gas composition data on their websites. Also, the composition of gas varies throughout the year. Hence, the disclosure of the range of concentrations of individual components is not likely to cause substantial competitive harm. Therefore, the EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
28	98.236c15iA	For each component type (major equipment type for onshore production) that uses emission factors for estimating emissions (refer to 40 CFR 98.233(q) and (r)): Total count of leaks found in each complete survey listed by date of survey and each type of leak source for which there is a leaker emission factor in Tables W–2, W–3, W–4, W–5, W–6, and W–7 of this subpart.	The term ''equipment leaks'' refers to those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening. Leaking components at a facility may have a correlation to the level of maintenance at a facility. However, there is no direct correlation between the level of maintenance and process efficiency, i.e. a higher number of leaks in one facility do not indicate that the processes have been running longer or more frequently than those processes at another facility that has a lower number of leaks. Furthermore, Department of Transportation and Federal Energy Regulatory Commission (FERC) regulations require natural gas distribution companies and transmission pipeline companies, respectively, to conduct periodic leak detection and fix any leaking equipment. The number of leaks detected and fixed are classified and reported to the DOT and is publicly available. Finally, 40 CFR part 60, subpart KKK requires facilities to monitor for VOC leaks and report them to the EPA. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
29	98.236e	For onshore petroleum and natural gas production report the following: Best available estimate of the API gravity for each oil sub-basin category.	The API gravity is a measurement of density of crude oil or petroleum product. Information about the API gravity for specific operators in a basin is publicly available through many state agencies (e.g., the Railroad Commission of Texas). Therefore, the disclosure of the API gravity is not likely to cause substantial competitive harm. Furthermore, this data element is reported as an average for the sub-basin rather than for individual wells, which further diminishes any sensitivity associated with disclosure of this data element. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
30	98.236e	For onshore petroleum and natural gas production report the following: Best available estimate of the gas to oil ratio for each oil sub-basin category.	Gas to oil ratios can generally be determined by taking the ratio of the volume of gas that comes out of solution, to the volume of oil produced at specified conditions. Disclosure of the average gas to oil ratio of wells tested within a basin is not likely to cause substantial competitive harm because the gas to oil ratio for wells can be determined from information made public by many state agencies (e.g., the Railroad Commission of Texas). Also, this data element is reported as an average ratio for the sub-basin and is not reported on a per well basis, further diminishing sensitivity associated with disclosure. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
31	98.236e	For onshore petroleum and natural gas production report the following: Best available estimate of the average low pressure separator pressure for each oil sub-basin category.	The low pressure separator refers to the last separator in a series of separators that are used for gravity separation of hydrocarbons into liquid and gas phases. Separator pressure, along with the gas-to-oil ratio and temperature of the separator, can be used to estimate throughput of natural gas and oil (or condensate) from the facility. However, throughput information is already available through state oil and gas commissions and commercial oil and gas databases as well as the EIA.[28] Hence, the EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE "UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS" DATA CATEGORY—Continued

	Citation	Data element	Proposed rationale
32	98.236c13iB	For compressors with wet seals in operational mode: Fraction of vent gas recovered for fuel or sales or flared.	Compressors are sometimes equipped with wet seals. Wet seals form the barrier that keeps gas from seeping through the gap between the compressor shaft and the compressor casing. Knowing the fraction of vent gas recovered for fuel, sales, or flare can give an indication of the efficiency of the capture device. However, such efficiencies are common knowledge available from equipment vendors. In addition, knowing the fraction of gas captured can give an indication of the volume of gas captured. The volume of gas captured for sending to a flare or fuel system are a portion of the total flare emissions and total fuel consumed at a facility. Information on flare emissions from processing plants is publicly available through EIA. Because this type of information is available upstream, the EPA is proposing that the same type of information being reported by other facilities downstream of the processing plant will also not cause substantial competitive harm if disclosed and would not result in any competitive disadvantage to the reporters. Finally, the sales volume of gas, essentially the facility throughput, is public information available through state oil and gas commission websites and commercial oil and gas databases as well as the EIA.[29] Hence, the EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
33	98.236c8iiiD	Wellhead gas-liquid separators and wells with throughput less than 10 barrels per day, using Calculation Methodology 5 of 40 CFR 98.233(j) Equation W–15 of 40 CFR 98.233: Best estimate of fraction of production sent to tanks with assumed control measures: either vapor recovery system or flaring of tank vapors.	The fraction of production sent to tanks with assumed control measures, either with vapor recovery systems or flares, refers to the amount of hydrocarbon liquids produced from wells that is sent to tanks with specified control measures. Information about the fraction of production sent to tanks with control measures would likely not cause substantial competitive harm because the estimated amount of methane and carbon dioxide emissions for tanks and separators are publicly available through EPA's National Inventory, thus diminishing the sensitivity of disclosing this data. Furthermore, the amount of gas captured, can indicate the increase in production throughput of the facility. However, this is already publicly available through many state oil and gas commissions, and is also available through commercial oil and gas databases as well as the EIA.[30] The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
34	98.234f8i	Extension requests which request Best Available Monitoring Method (BAMM) beyond 2011 for sources listed in 40 CFR 98.234(f)(2), (3), (4), and (5)(iv): Initial electronic notice of intent to submit an extension request for the use of BAMM beyond December 31, 2011.	An initial notice of intent to extend the period during which BAMM is used does not contain detailed information, such as process diagrams and operational information, which could provide insight into facility-specific operating conditions or process design, or any other proprietary or sensitive information at a facility, and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
35	98.234f8iiB	Extension requests which request BAMM beyond 2011 for sources listed in 40 CFR 98.234(f)(2), (3), (4), and (5)(iv): Description of the unique or unusual circumstances, such as data collection methodologies that do not meet safety regulations or specific laws or regulations that conflict for each source for which an owner or operator is requesting use of BAMM.	The description of the unique or unusual circumstances, including data collection methodologies that the reporting facility cannot follow or of the monitoring instruments that cannot be installed does not reveal detailed information, such as process diagrams and operational information, which could provide insight into facility-specific operating conditions or process design, or any other proprietary or sensitive information at a facility, and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
36	98.234f8iiB	Extension requests which request BAMM beyond 2011 for sources listed in 40 CFR 98.234(f) (2), (3), (4), and (5) (iv): Description of the unique or unusual circumstances, such as data collection methodologies that are technically infeasible for which an owner or operator is requesting use of BAMM.	The description of the unique or unusual circumstances, including data collection methodologies that the reporting facility cannot follow or of the monitoring instruments that cannot be installed does not reveal detailed information, such as process diagrams and operational information, which could provide insight into facility-specific operating conditions or process design, or any other proprietary or sensitive information at a facility, and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.
37	98.234f8iiC	Extension requests which request BAMM beyond 2011 for sources listed in 40 CFR 98.234(f)(2), (3), (4), and (5)(iv): Detailed explanation and supporting documentation of how the owner or operator will receive the services or equipment to comply with all of these subpart W reporting requirements.	A description of the methods by which the necessary equipment and services will be secured does not reveal detailed information, such as process diagrams and operational information, which could provide insight into facility-specific operating conditions or process design, or any other proprietary or sensitive information at a facility, and would likely not cause competitive harm if disclosed. The EPA is proposing that this data element is not confidential; and that it will be considered non-CBI.

TABLE 4—DATA ELEMENTS PROPOSED TO BE ASSIGNED TO THE ''UNIT/PROCESS OPERATING CHARACTERISTICS THAT ARE NOT INPUTS TO EMISSION EQUATIONS'' DATA CATEGORY—Continued

Citation	Data element	Proposed rationale
38 98.234f8iiC	Extension requests which request BAMM beyond 2011 for sources listed in 40 CFR 98.234(f)(2), (3), (4), and (5)(iv): Detailed explanation and supporting documentation of when the owner or operator will receive the services or equipment to comply with all of these subpart W reporting requirements. Proposed as CBI.	This data element includes the dates by which the owner or operator will receive the services or equipment necessary to comply with all of the subpart W reporting requirements. The EPA is proposing that this data element be confidential because it would reveal information to a competitor about when a facility would be installing equipment or when the facility would plan to perform the necessary modifications to their processes in order to comply with the rule. The disclosure of this type of sensitive information about a facility's internal processes may give a competitor an unfair advantage. See 40 CFR 98.234(f) (8)(ii)(C). The EPA is proposing that this data element be confidential; and that it will be considered CBI. (Proposed as CBI).

D. Commenting on the Proposed Confidentiality Determinations

We seek comment on the proposed confidentiality status of data elements in two direct emitter data categories: ''Unit/Process 'Static' Characteristics that Are Not Inputs to Emission Equations'' and ''Unit/Process Operating Characteristics that Are Not Inputs to Emission Equations''. By the EPA's proposing confidentiality determinations prior to data reporting through this proposal and rulemaking process, we provide potential reporters an opportunity to submit comments identifying data they consider sensitive and the rationales and supporting documentation, the same as those they would otherwise submit for case-by-case confidentiality determinations. We will evaluate claims of confidentiality before finalizing the confidentiality determinations. Please note that this will be reporters' only opportunity to substantiate your confidentiality claim. Once finalized, the EPA will release or withhold subpart W data in accordance with 40 CFR 2.301, which contains special provisions governing the treatment of Part 98 data for which confidentiality determinations have been made through rulemaking. Please consider the following instructions in submitting comments on the data elements in subpart W.

Please identify each individual data element you do or do not consider to be CBI or emission data in your comments. Please explain specifically how the public release of that particular data element would or would not cause a competitive disadvantage to a facility. Discuss how this data element may be different from or similar to data that are already publicly available. Please submit information identifying any publicly available sources of information containing the specific data elements in question, since data that are already available through other sources would not be proposed as CBI. In your comments, please identify the manner and location in which each specific data element you identify is available, including a citation. If the data are physically published, such as in a book, industry trade publication, or federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and ISBN or other identifier. For data published on a Web site, provide the address of the Web site and the date you last visited the Web site and identify the Web site publisher and content author.

If your concern is that competitors could use a particular input to discern sensitive information, specifically describe the pathway by which this could occur and explain how the discerned information would negatively affect your competitive position. Describe any unique process or aspect of your facility that would be revealed if the particular data element(s) you consider sensitive were made publicly available. If the data element you identify would cause harm only when used in combination with other publicly available data, then describe the other data, identify the public source(s) of these data, and explain how the combination of data could be used to cause competitive harm. Describe the measures currently taken to keep the data confidential. Avoid conclusory and unsubstantiated statements, or general assertions regarding potential harm. Please be as specific as possible in your comments and include all information necessary for the EPA to evaluate your comments.

IV. Proposed Deferral of Inputs to Emission Equations for Subpart W and Amendments to Table A–7

Of the 154 subpart W data elements that were revised in the Subpart W Technical Revisions Rule, 30 are ''Inputs to Emission Equations''. All 30 are revisions to existing ''Inputs to Emission Equations'' that were addressed in the Final Deferral and included in Table A–7 to subpart A of Part 98. For the 30 revised inputs, the revisions did not change the type of information to be reported to the EPA under these requirements. For 19 of the 30 inputs, the changes included minor wording changes such as requiring certain data elements be reported by ''sub-basin'' instead of ''field'' or small clarifications that did not change the general meaning of the data elements. For 11 of the 30 inputs, the Technical Revisions Rule re-numerated the section references. We are therefore proposing in this action to amend Table A–7 of Part 98 by re-numerating these 11 subpart W ''Inputs to Emission Equations'' as finalized in the Subpart W Technical Revisions Rule.

The Subpart W Technical Revisions Rule also added the following 10 new data elements, which we are proposing

[15] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[16] *http://www.didesktop.com/products/.*

[17] *http://www.didesktop.com/products/.*

[18] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[19] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[20] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[21] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[22] *http://www.epa.gov/gasstar/documents/emissions_report/6_vented.pdf.*

[23] *http://www.boemre.gov/ntls/PDFs/2011–N04FlareMeterSigned05–16–2011.pdf.*

[24] August 2011, GTI's Gas Resource Database—Unconventional Natural Gas and Gas Composition Databases, GRI—01/0136.

[25] *http://www.netl.doe.gov/technologies/oil-gas/publications/EPreports/ResourceAssess/Final_28139.pdf.*

[26] August 2011, GTI's Gas Resource Database—Unconventional Natural Gas and Gas Composition Databases, GRI—01/0136.

[27] *http://www.netl.doe.gov/technologies/oil-gas/publications/EPreports/ResourceAssess/Final_28139.pdf.*

[28] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[29] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

[30] *http://www.eia.gov/cfapps/ngqs/ngqs.cfm?f_report=RP1.*

to assign to the ''Inputs to Emission Equations'' data category and to defer their reporting until March 31, 2015. The proposed inputs include the following 10 data elements:

- Annual quantity of CO_2, that was recovered from each acid gas removal unit and transferred outside the facility (metric tons CO_2e), under subpart PP of this part. (40 CFR 98.236(c)(3)(iv))
- Blowdown vent stack emission source, for each unique physical volume that is blown down more than once during the calendar year: Report total number of blowdowns for each unique physical volume in the calendar year (when using Eq. W–14A). (40 CFR 98.236(c)(7)(i)(A))
- Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 of 40 CFR 98.233(j), report by sub-basin category: Annual CO_2 gas quantities that were recovered (metric tons CO_2e), for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 1 of 40 CFR 98.233(j). (40 CFR 98.236(c)(8)(i)(K))
- Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 of 40 CFR 98.233(j), report by sub-basin category: Report annual CH_4 gas quantities that were recovered (metric tons CO_2e), for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 1 of 40 CFR 98.233(j). (40 CFR 98.236(c)(8)(i)(K))
- Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 2 of 40 CFR 98.233(j), report by sub-basin category: Report annual CO_2 gas quantities that were recovered (metric tons CO_2e), for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 2 of 40 CFR 98.233(j). (40 CFR 98.236(c)(8)(i)(K))
- Wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 2 of 40 CFR 98.233(j), report by sub-basin category: Report annual CH_4 gas quantities that were recovered (metric tons CO_2e), for all wellhead gas-liquid separators or storage tanks using Calculation Methodology 2 of 40 CFR 98.233(j). (40 CFR 98.236(c)(8)(i)(K))
- Wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of 40 CFR 98.233(j), report the following by sub-basin category: Report annual CO_2 gas quantities that were recovered (metric tons CO_2e), for Calculation Methodology 3 or 4 of 40 CFR 98.233(j). (40 CFR 98.236(c)(8)(ii)(H))
- Wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of 40 CFR 98.233(j), report the following by sub-basin category: Report annual CH_4 gas quantities that were recovered (metric tons CO_2e), for Calculation Methodology 3 or 4 of 40 CFR 98.233(j). (40 CFR 98.236(c)(8)(ii)(H))
- Wellhead gas-liquid separators and wells with throughput less than 10 barrels per day, using Calculation Methodology 5 of 40 CFR 98.233(j), Equation W–15 of 40 CFR 98.233: Annual CO_2 gas quantities that were recovered (metric tons CO_2e), at the sub-basin level for Calculation Methodology 5 of 40 CFR 98.233(j). (40 CFR 98.236(c)(8)(iii)(G))
- Wellhead gas-liquid separators and wells with throughput less than 10 barrels per day, using Calculation Methodology 5 of 40 CFR 98.233(j), Equation W–15 of 40 CFR 98.233: Report annual CH_4 gas quantities that were recovered (metric tons CO_2e), at the sub-basin level for Calculation Methodology 5 of 40 CFR 98.233(j). (40 CFR 98.236(c)(8)(iii)(G))

As explained in Section II.A of the Final Deferral, these 10 data elements are related to and therefore are being evaluated together along with the other subpart W data elements assigned to this category. As with the other equation inputs, we believe that to complete our evaluation we will need until March 31, 2015, the current reporting deadline for subpart W equation inputs. The EPA is therefore proposing to add these 10 inputs to Table A–7 of Part 98 to require their reporting by March 31, 2015. For more information, please refer to Section II.B. of this preamble.

We are also proposing to move 21 data elements that were categorized as ''Inputs to Emission Equations'' in the Final Deferral Rule to other categories. These data elements require aggregated data to be reported and not the specific values used in the equations. Therefore, the EPA is proposing to re-categorize these data elements as either ''Unit/Process 'Static' Characteristics that Are Not Inputs to Emission Equations'' or ''Unit/Process Operating Characteristics that Are Not Inputs to Emission Equations''. Please see the memorandum entitled ''Proposed Changes to Subpart W Inputs'' in Docket ID No. EPA–HQ–OAR–2011–0028 for a comparison of the changes to Table A–7 of subpart A for subpart W data reporting elements.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

In this action, we are proposing to (1) Make confidentiality determinations for subpart W data elements (except for inputs to equations); and (2) make the changes described in this notice regarding subpart W data elements in Table A–7 of Part 98, which specifies the data elements to be reported by March 31, 2015.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

As previously mentioned, this action proposes confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98. This action does not impose any new information collection burden. This action does not increase the reporting burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in subpart W, under 40 CFR part 98, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) documents prepared by the EPA have been assigned OMB control number 2060–0651 for subpart W. The OMB control numbers for EPA regulations in 40 CFR are listed at 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this re-proposal on small entities, ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town,

school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This action proposes confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98. After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any new requirement on small entities that are not currently required by Part 98.

The EPA took several steps to reduce the impact of Part 98 on small entities. For example, the EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, the EPA did not require facilities to install continuous emission monitoring systems (CEMS) if they did not already have them. Facilities without CEMS can calculate emissions using readily available data or data that are less expensive to collect such as process data or material consumption data. For some source categories, the EPA developed tiered methods that are simpler and less burdensome. Also, the EPA required annual instead of more frequent reporting. Finally, the EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an ''open door'' policy for stakeholders to help inform EPA's understanding of key issues for the industries.

We continue to be interested in the potential impacts of this action on small entities and welcome comments on issues related to such effects.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This action, which is proposing confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98, does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This action does not increase the reporting burden. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

In developing Part 98, the EPA consulted with small governments pursuant to a plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of EPA's consultations with state and/or local officials or other representatives of state and/or local governments in developing Part 98, see Section VIII.D of the preamble to the final rule (74 FR 56370, October 30, 2009).

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. However, for a more detailed discussion about how Part 98 relates to existing state programs, please see Section II of the preamble to the final rule (74 FR 56266, October 30, 2009).

This action, which is proposing confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98, applies to facilities containing petroleum and natural gas systems that directly emit greenhouses gases over 25,000 metric tons of CO_2 equivalent. It does not apply to governmental entities unless a government entity owns a facility that directly emits greenhouse gases above threshold levels, so relatively few government facilities would be affected. This action also does not limit the power of states or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials. For a summary of EPA's consultation with state and local organizations and representatives in developing Part 98, see Section VIII.E of the preamble to the final rule (74 FR 56371, October 30, 2009).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action, which is proposing confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98, does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not increase the reporting burden. Thus, Executive Order 13175 does not apply to this action. For a summary of EPA's consultations with tribal governments and representatives, see Section VIII.F of the preamble to the final rule (74 FR 56371, October 30, 2009). The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action, which is proposing confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98, is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action, which is proposing confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98, is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866 .

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs the EPA

to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action, which is proposing confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98, does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this action, which is proposing confidentiality determinations for subpart W data elements (except for inputs to equations) and amendments to Table A–7 of Part 98, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses only reporting and recordkeeping procedures.

List of Subjects 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Dated: February 16, 2012.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Table A–7 to subpart A of part 98 is amended by revising the entries for subpart W to read as follows:

TABLE A–7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2015 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2015).
*	* * *	* * *
W	98.236(c)(1)(i)	All.
W	98.236(c)(1)(ii)	All.
W	98.236(c)(1)(iii)	All.
W	98.236(c)(2)(i)	All.
W	98.236(c)(3)(i)	All.
W	98.236(c)(3)(ii)	Only Calculation Methodology 2.
W	98.236(c)(3)(iii)	All.
W	98.236(c)(3)(iv)	All.
W	98.236(c)(4)(i)(A)	All.
W	98.236(c)(4)(i)(B)	All.
W	98.236(c)(4)(i)(C)	All.
W	98.236(c)(4)(i)(D)	All.
W	98.236(c)(4)(i)(E)	All.
W	98.236(c)(4)(i)(F)	All.
W	98.236(c)(4)(i)(G)	All.
W	98.236(c)(4)(i)(H)	All.
W	98.236(c)(4)(ii)(A)	All.
W	98.236(c)(5)(i)(D)	All.
W	98.236(c)(5)(ii)(C)	All.
W	98.236(c)(6)(i)(B)	All.
W	98.236(c)(6)(i)(D)	All.
W	98.236(c)(6)(i)(E)	All.
W	98.236(c)(6)(i)(F)	All.
W	98.236(c)(6)(i)(G)	Only the amount of natural gas required.
W	98.236(c)(6)(i)(H)	Only the amount of natural gas required.
W	98.236(c)(6)(ii)(A)	All.
W	98.236(c)(6)(ii)(B)	All.
W	98.236(c)(7)(i)(A)	Only for Equation W–14A.
W	98.236(c)(8)(i)(F)	All.
W	98.236(c)(8)(i)(K)	All.
W	98.236(c)(8)(ii)(A)	All.
W	98.236(c)(8)(ii)(H)	All.
W	98.236(c)(8)(iii)(A)	All.
W	98.236(c)(8)(iii)(B)	All.

TABLE A–7 TO SUBPART A OF PART 98—DATA ELEMENTS THAT ARE INPUTS TO EMISSION EQUATIONS AND FOR WHICH THE REPORTING DEADLINE IS MARCH 31, 2015—Continued

Subpart	Rule citation (40 CFR part 98)	Specific data elements for which reporting date is March 31, 2015 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2015).
W	98.236(c)(8)(iii)(G)	All.
W	98.236(c)(12)(ii)	All.
W	98.236(c)(12)(v)	All.
W	98.236(c)(13)(i)(E)	All.
W	98.236(c)(13)(i)(F)	All.
W	98.236(c)(13)(ii)(A)	All.
W	98.236(c)(13)(ii)(B)	All.
W	98.236(c)(13)(iii)(A)	All.
W	98.236(c)(13)(iii)(B)	All.
W	98.236(c)(13)(v)(A)	All.
W	98.236(c)(14)(i)(B)	All.
W	98.236(c)(14)(ii)(A)	All.
W	98.236(c)(14)(ii)(B)	All.
W	98.236(c)(14)(iii)(A)	All.
W	98.236(c)(14)(iii)(B)	All.
W	98.236(c)(14)(v)(A)	All.
W	98.236(c)(15)(ii)(A)	All.
W	98.236(c)(15)(ii)(B)	All.
W	98.236(c)(16)(viii)	All.
W	98.236(c)(16)(ix)	All.
W	98.236(c)(16)(x)	All.
W	98.236(c)(16)(xi)	All.
W	98.236(c)(16)(xii)	All.
W	98.236(c)(16)(xiii)	All.
W	98.236(c)(16)(xiv)	All.
W	98.236(c)(16)(xv)	All.
W	98.236(c)(16)(xvi)	All.
W	98.236(c)(17)(ii)	All.
W	98.236(c)(17)(iii)	All.
W	98.236(c)(17)(iv)	All.
W	98.236(c)(18)(i)	All.
W	98.236(c)(18)(ii)	All.
W	98.236(c)(19)(iv)	All.
W	98.236(c)(19)(vii)	All.

* * * * * * *

[FR Doc. 2012–4320 Filed 2–23–12; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2010–004; 4500030113]

RIN 1018–AV97

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Dunes Sagebrush Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our December 14, 2010, proposed endangered status for the dunes sagebrush lizard (*Sceloporus arenicolus*) under the Endangered Species Act of 1973, as amended. We also announce the availability of a signed conservation agreement for the dunes sagebrush lizard in Texas. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the new conservation agreement, and a previously completed conservation agreement for the dunes sagebrush lizard in New Mexico. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: The comment period end date is March 12, 2012. We request that comments be submitted by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule, the ''Texas Conservation Plan for Dunes Sagebrush Lizard (*Sceloporus arenicolus*)'', and the ''Candidate Conservation Agreement for the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) and Sand Dune Lizard (*Sceloporus arenicolus*) in New Mexico'' on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2010–0041, or by mail from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R2–ES–2010–0041, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2010–0041; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 2105 Osuna NE., Albuquerque, NM 87113; telephone (505–761–4781). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800–877–8339).

SUPPLEMENTARY INFORMATION:

Background

On December 14, 2010, we published a proposed rule (75 FR 77801) to list the dunes sagebrush lizard, a lizard known from southeastern New Mexico and adjacent west Texas, as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For a description of previous Federal actions concerning the dunes sagebrush lizard (formerly known as the sand dunes lizard), please refer to the proposed rule. In addition to the original comment period associated with the publication of the proposed rule, we held two public meetings in April 2011 and reopened the comment period to accept additional public comments (76 FR 19304; April 7, 2011). On December 5, 2011, we provided notice of extension of our final determination pursuant to section 4(b)(6) of the Act and reopened the comment period a third time (76 FR 75858). That comment period closed on January 19, 2012.

Since that time, the Texas Comptroller's Office, in coordination with industry, landowners, and agricultural interests, has prepared and finalized a conservation agreement for the lizard, titled the ''Texas Conservation Plan for Dunes Sagebrush Lizard (*Sceloporus arenicolus*)''. Additionally, the ''Candidate Conservation Agreement for the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) and Sand Dune Lizard (*Sceloporus arenicolus*) in New Mexico'' was finalized in December 2008. The Service would like to consider the conservation measures in these agreements in its final listing determination. As such, we are reopening the comment period to allow the public an opportunity to provide comment on the likelihood of implementation and effectiveness of the conservation measures in the agreements pursuant to our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (68 FR 15100; March 28, 2003).

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing for the dunes sagebrush lizard that was published in the **Federal Register** on December 14, 2010 (75 FR 77801). We will consider information and recommendations from all interested parties. We intend that any final action resulting from this proposal be as accurate as possible and based on the best available scientific and commercial data.

If you previously submitted comments or information on the proposed rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning this proposed listing will take into consideration all written comments and any additional information we received.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2010–0041, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2010–0041, or by mail from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 10, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–4348 Filed 2–23–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 37
Friday, February 24, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974, System of Records

AGENCY: United States Agency for International Development.

ACTION: Notice of new system of records.

SUMMARY: The United States Agency for International Development (USAID) is issuing public notice of its intent to establish a new system of records maintained in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, entitled ''USAID–31, HSPD–12 PIV Lifecycle Management.''

This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C. 522a(e)(4)).

DATES: Public comments must be received on or before March 14, 2012. Unless comments are received that would require a revision; this update to the system of records will become effective on March 14, 2012.

ADDRESSES: You may submit comments:

Paper Comments

- *Fax:* (703) 666–1466.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA. 22202.

Electronic Comments

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Email: privacy@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact, USAID Privacy Office, United States Agency for International Development, 2733 Crystal Drive, 10th Floor, Arlington, VA 22202. Email: *privacy@usaid.gov.*

SUPPLEMENTARY INFORMATION: Personal Identity Verification (PIV) Lifecycle Management system allows for the control and flexibility of PIV card enrollment, issuance, and management under the direction of USAID Management for domestic and international operations. The direct management of the PIV deployment enables USAID to update the card and features at its own pace, implement the use of PIV credential data, such as a digital signature and encryption certificates for documents and email and to add biometric authentication capabilities as it becomes available.

Dated: December 21, 2011.

Jeffery Anouilh,

Deputy Chief Information Security Office and Privacy Officer.

USAID–31

SYSTEM NAME:

HSPD–12 PIV Lifecycle Management.

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION(S):

United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of current employees, contractors, consultants, and partners.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system contains USAID organizational information. The covered record, which has already been collected by the Department of State for issuance of the current USAID PIV badge, are as follows: name; employee digital photo; two digital fingerprints; organizational affiliation; Agency; 3–4 Public Key Infrastructure (PKI) certificates; and expiration date. In order to access the data on the chip, the cardholder must create a Personal Identification Number (PIN).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Privacy Act of 1974 (Pub. L. 93–579), sec. 552a(c), (e), (f), and (p).

PURPOSE(S):

Records in this system will be used:

(1) To update current USAID Direct Hire employees' card data in order to comply with OMB M–11–11 for physical and logical access to USAID networks and facilities.

(2) To issue PIV compliant cards to eligible contractors.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

These records are not disclosed to consumer reporting agencies.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

USAID may disclose relevant system records in accordance with any current and future blanket routine uses established for its record systems. These may be for internal communications or with external partners.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data records are located at the hosting environment, and maintained in user-authenticated, password-protected systems. All records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties.

RETRIEVABILITY:

Records are retrievable by name, PIN number or any other identifier listed in the categories of records cited above.

SAFEGUARDS:

Additional administrative safeguards are provided through the use of internal standard operating procedures in accordance with the FIPS–201, and NIST 800–53 standards.

RETENTION AND DISPOSAL:

Records are retained using the appropriate, approved National Archives Records Administration—Schedules for the type of record being maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Jeffrey Anouilh, United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202.

NOTIFICATION PROCEDURES:

Individuals requesting notification of the existence of records on them must send the request in writing to the Chief Privacy Officer, USAID, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202.

The request must include the requestor's full name, his/her current address and a return address for transmitting the information. The request shall be signed by either notarized signature or by signature under penalty of perjury and reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to a record must submit the request in writing according to the ''Notification Procedures'' above. An individual wishing to request access to records in person must provide identity documents, such as government-issued photo identification, sufficient to satisfy the custodian of the records that the requester is entitled to access.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on himself or herself must identify the information to be changed and the corrective action sought. Requests must follow the ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

The records contained in this system will be provided by and updated by the individual who is the subject of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–4192 Filed 2–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Agricultural Research, Extension, Education, and Economics Advisory Board Notice of Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture (USDA) announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet March 28–29, 2012. The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: The meeting will take place at the Texas A&M AgriLife, Agriculture and Life Sciences Building, 600 John Kimbrough Boulevard, College Station, Texas 77843. Written comments from the public may be sent to the Contact Person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, Room 3901 South Building, United States Department of Agriculture, STOP 0321, 1400 Independence Avenue SW., Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: J. Robert Burk, Executive Director or Shirley Morgan-Jordan, Program Support Coordinator, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 536–6547; fax: (202) 720–6199; or email: *Robert.Burk@usda.gov* or *Shirley.Morgan@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: On Wednesday, March 28, 2012, from 8 a.m.–5 p.m., the full Advisory Board meeting will begin with introductory remarks provided by the Chair of the Advisory Board and the USDA Under Secretary for Research, Education, and Economics. Throughout the day remarks will be made by internal and external USDA sources relevant to the Board's role in advising the Department on subjects relevant to Research, Education, and Economics. An evening reception will be held from 6 p.m.–8 p.m. with guest speakers presenting remarks on a similar subject. Specific items of discussion will include discussion panels related to the structure and function of Cooperative Extension across the nation, opportunities for the future of Cooperative Extension, and regular Board business.

On Thursday, March 29, 2012, the Board will reconvene at 8 a.m. to discuss initial recommendations resulting from the meeting, future planning for the Board, and to finalize Board business. The Board Meeting will adjourn by 12 p.m. (noon).

Opportunity for public comment will be offered each day of the meeting. All meetings are open to the public. Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the Board meeting (by close of business Thursday, April 12, 2012). All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Extension, Education, and Economics Advisory Board Office.

Done at Washington, DC, this 14th day of February 2012.

Ann Bartuska,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 2012–4351 Filed 2–23–12; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Office of the Under Secretary, Research, Education, and Economics Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: The meeting dates are March 5–6, 2012, 8:30 a.m. to 5 p.m. each day.

ADDRESSES: U.S. Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004–1111.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; Email *AC21@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The next meeting of the AC21 has been scheduled for March 5–6, 2012. The AC21 consists of members representing the biotechnology industry, the organic food industry, farming communities, the seed industry, food manufacturers, state government, consumer and community development groups, as well as academic researchers and a medical doctor. In addition, representatives from the Department of Commerce, the Department of Health and Human Services, the Department of State, the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative have been invited to serve as ''ex officio'' members. The Committee meeting will be held from 8:30 a.m. to 5 p.m. on each day. The topics to be discussed will include:

progress of the four AC21 working groups on analyses relevant to the overall AC21 charge; how the commercial sector is addressing unintended presence now and managing risk; continuing overall discussions on the Committee charge and exploring current areas of agreement among members; and planning subsequent work.

Background information regarding the work and membership of the AC21 is available on the USDA Web site at *http://www.usda.gov/wps/portal/usda/usdahome?contentid=AC21Main.xml&contentidonly=true.* Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing or via Email at the indicated addresses at least three business days before the meeting. On March 5, 2012, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Fowler at (202) 720–4074 or by Email at *Dianne.fowler@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you are a person with a disability and request reasonable accommodations to participate in this meeting, please note the request in your registration. All reasonable accommodation requests are managed on a case by case basis.

Ann Bartuska,

Deputy Under Secretary, Research, Education and Economics.

[FR Doc. 2012–4349 Filed 2–23–12; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–806]

Certain Pasta From Turkey: Extension of Time Limit for the Preliminary Results of the Countervailing Duty Administrative Review

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

DATES: *Effective Date:* February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Mahnaz Khan or Yasmin Nair, 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) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2011, the U.S. Department of Commerce (''Department'') published a notice of initiation of administrative review of the countervailing duty order on certain pasta from Turkey, covering the period January 1, 2011, through December 31, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011). The preliminary results of this administrative review are currently due no later than April 1, 2012.[1]

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of a countervailing duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

The Department requires additional time to review and analyze submitted information and to issue supplemental questionnaires. Therefore, it is not practicable to complete the preliminary results of this review within the original time limit, and the Department is extending the time limit for completion of the preliminary results by 120 days. The preliminary results will now be due no later than July 30, 2012. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 16, 2012

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–4353 Filed 2–23–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] Because April 1, 2012 is a Sunday, the preliminary results of this review would be due no later than the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB022

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

ACTION: Notice.

SUMMARY: The SEDAR 28 assessments of the Gulf of Mexico and South Atlantic stocks of Spanish mackerel and cobia will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: Two SEDAR 28 Pre-Assessment, Post-Data webinars will be held; Wednesday, March 14, 2012 and Wednesday, April 4, 2012. Three Assessment webinars will be held between May 22nd and June 19th, 2012. Please see list below for exact dates and times. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the posted times.

Webinar	Date	Day	Time (Eastern)
1	March 14, 2012	Wednesday	1 pm–5 pm.
2	April 4, 2012	Wednesday	1 pm–5 pm.
3	May 22, 2012	Tuesday	1 pm–5 pm.
4	June 5, 2012	Tuesday	1 pm–5 pm.
5	June 19, 2012	Tuesday	1 pm–5 pm.

ADDRESSES: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Kari Fenske at SEDAR (See **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

FOR FURTHER INFORMATION CONTACT: Kari Fenske, SEDAR Coordinator, 4055 Faber Place Dr. Suite 201; phone (843) 571–4366. Email: *kari.fenske@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

Using datasets recommended from the Data Workshop, participants will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

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 these meetings. 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: February 21, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–4291 Filed 2–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA924

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

ACTION: Notice of SEDAR Data/Assessment Workshop for Highly Migratory Species (HMS) blacktip sharks.

SUMMARY: The SEDAR assessment of the HMS stocks of Gulf of Mexico blacktip sharks will consist of one workshop and a series of webinars.

DATES: The SEDAR Workshop will take place March 19–23, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Workshop will be held at Wyndham Bay Point Resort, 4114 Jan Cooley Drive, Panama City Beach, FL 32408, United States; telephone: (850) 236–6000.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen,

environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 29 Data/Assessment Workshop Schedule: *March 19, 2012: 1 p.m.–8 p.m.; March 20–22, 2012: 8 a.m.–8 p.m.; March 23, 2012: 8 a.m.–12 p.m.*

An assessment data set and associated documentation will be developed during the Workshop. Participants will evaluate proposed data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance. Using datasets selected, participants will develop population models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters. Participants will prepare a workshop report, documenting the data incorporated and all decisions made during the process, and complete results of the assessment.

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 these meetings. 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: February 21, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–4292 Filed 2–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA912

Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to training and research activities conducted within the Hawaii Range Complex (HRC) for the period of February 9, 2012, through January 5, 2014.

DATES: This Authorization is effective from February 9, 2012, through January 5, 2014.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

A copy of the application used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

Regulations governing the taking of marine mammals by the Navy incidental to training and research activities conducted within the Hawaii Range Complex (HRC) became effective on January 5, 2009 (74 FR 1456, January 12, 2009). An interim final rule (amending regulations to allow for greater flexibility in the types and amount of sound sources used by the Navy) became effective on February 7, 2011 (76 FR 6699, February 8, 2011), and was finalized on February 1, 2012 (77 FR 4917) in a final rule modification that also amended regulations to allow for multi-year LOAs. NMFS issued the Navy a 1-year LOA on January 10, 2012, which is superseded by the 2-year LOA detailed in this notice. For more information, please refer to those documents. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On August 15, 2011, NMFS received a request from the Navy for a 2-year renewal of an LOA issued on February 7, 2011, for the taking of marine mammals incidental to training and research activities conducted within the HRC under regulations issued on January 5, 2009 (74 FR 1456, January 12, 2009). The request also proposed additional mitigation measures tailored to the use of timed-delay firing devices (TDFDs) during mine neutralization training to ensure that effects to marine mammals resulting from these activities would not exceed what was originally analyzed in the final rule (74 FR 1456, January 12, 2009). The potential effects of mine neutralization training on marine mammals were comprehensively analyzed in the Navy's 2009 final rule and mine neutralization training has been included in the specified activity in the associated 2009, 2010, and 2011 LOAs. However, the use of TDFDs and the associated mitigation measures had not been previously contemplated, which is why NMFS provided the proposed modifications to the public for review. A detailed description of TDFDs, underwater detonation training, and how the Navy derived their new

mitigation measures was provided in the proposed LOA (76 FR 71322, November 17, 2011) and is not repeated here. The Navy has complied with the measures required in 50 CFR 216.174 and 216.175, as well as the associated 2010 LOA, and submitted the reports and other documentation required in the final rule and the 2010 LOA.

Comments and Responses

NMFS published a notice of receipt and request for public comments on November 17, 2011 (76 FR 71322). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), Cascadia Research Collective, and one individual generally opposed to Navy activities. Specific comments are addressed below.

Comment 1: The Commission recommends that NMFS ensure the regulations that govern the taking of marine mammals in the HRC are amended to allow for multi-year LOAs prior to renewing the LOA in question for a two-year period.

Response: The regulations that govern the taking of marine mammals in the HRC were amended on February 1, 2012 to allow for multi-year LOAs.

Comment 2: The Commission recommends that NMFS and the Navy investigate the underlying cause of the high rate of non-compliance with TDFDs being used and determine why it was not detected earlier.

Response: The Navy has not violated any provisions of their LOAs or rules. There were no prohibitions against using TDFDs in the earlier LOAs and rules issued to the Navy. The use of TDFDs was not identified in the Navy's initial LOA application and the explosives used in the mine neutralization training were treated as standard underwater detonations. Therefore, the use of TDFDs was not analyzed in the rulemaking and subsequent LOAs did not explicitly prohibit the use of TDFDs. After the Silver Strand Training Complex incident, the Navy's internal review of mine neutralization training events concluded that the original mitigation measures could not be effectively implemented when using TDFDs. As a result, the Navy suspended training with TDFDs on April 8, 2011 and required the use of ''positive control'' firing devices (with instant detonations) to ensure compliance with the mitigation measures prescribed in the 2011 LOA.

Comment 3: The Commission recommends that NMFS and the Navy jointly review the full scope of the applicable regulations and LOAs to ensure that the responsible Navy officials are aware of, understand, and are in compliance with all mitigation, monitoring, and reporting requirements.

Response: NMFS and the Navy worked together closely to develop all mitigation, monitoring, and reporting measures for the Navy's MMPA authorizations and regulations applicable to military readiness activities. The mitigation, monitoring, and reporting measures set forth are still considered to provide the best practicable protection to marine mammals.

Comment 4: The Commission recommends that NMFS require the Navy to conduct empirical sound propagation measurements to verify the adequacy of the sizes of the exclusion zones for 5-, 10-, and 20-lb charges and to expand those zones and the buffer zones derived from those zones as necessary.

Response: In 2002, the Navy conducted empirical measurements of underwater detonations at San Clemente Island and at the SSTC in California. During these tests, 2-lb and 15-lb net explosive weight charges were placed at 6 and 15 feet of water and peak pressures and energies were measured for both bottom placed detonations and detonations off the bottom. The Navy found that, generally, empirically measured single-charge underwater detonations were similar to or less than propagation model predictions (DoN 2006).

In 2009, 2010, and 2011, the Navy embarked marine mammal observers and conducted visual surveys in the HRC during several mine neutralization training events as part of its marine mammal monitoring program (see Navy's HRC annual monitoring reports for further details: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*). The Navy will explore the value of adding field measurements during monitoring of a future mine neutralization event after evaluating the environmental variables affecting sound propagation in the area (e.g., shallow depths, seasonal temperature variation, bottom sediment composition). If such data can be collected without unreasonable costs and impacts to training, the Navy will begin incorporating the measurements into the monitoring program for mine neutralization training in the HRC.

Comment 5: The Commission recommends that NMFS require the Navy to re-estimate the buffer zone sizes using the mean average swim speeds, plus at least one standard deviation for marine mammals that inhabit the shallow-water areas where TDFDs would be used.

Response: NMFS disagrees that the buffer zone sizes need to be re-estimated. The buffer zones already account for swim speeds above 3 knots by including at least an additional 200 yards when practicable. NMFS believes that there is a very low likelihood of an animal entering the buffer zone during the brief amount of time that exposure may occur without being detected. Given the Navy's available resources, and considering the small size of boats typically used for monitoring, the proposed buffer zones are the maximum distances that can be effectively monitored. Due to the type of training required during the use of TDFDs, the Navy has limited survey vessels and manpower available for monitoring. Scheduling additional vessels and crews would degrade the overall training readiness of the other unit(s) involved. If the Navy adopted a more precautionary swim speed and implemented larger buffer zones, surveillance resources could not be increased and the same number of boats would be spread out over a larger area, diluting the Navy's ability to effectively monitor the buffer zone.

It is worth noting that even in the absence of mitigation, the Navy's modeling suggests that zero animals are likely to randomly enter the safety radius in the small amount of times that the detonations actually occur. It is unlikely that an animal will swim into the zone during the brief amount of time that it might be exposed to a detonation without being detected by the multiple boats circling the detonation area and observing the buffer zone.

Comment 6: The Commission recommends that NMFS consider whether modifications to the LOAs alone are sufficient to satisfy the requirements of the MMPA and provide a thorough explanation of its rationale in the **Federal Register** notice taking final action on the proposed modifications, if it believes that regulatory modifications are not needed.

Response: The amount of incidental harassment authorized in the regulations governing mine neutralization in the HRC was based on thorough analyses and assessment of the Navy's activities and marine mammal distribution and occurrence in the vicinity of the action area. The estimated exposures are based on the probability of animals being present in the area when a training event is occurring, and this probability does not change based on the use of TDFDs or implementation of mitigation measures (i.e., the exposure model does not

account for how the charge is initiated and assumes no mitigation is being implemented). The amount of harassment currently authorized and NMFS' determination of negligible impact on the stock already assume a conservative estimate of potential harassment for these events. The enhanced mitigation measures for the use of TDFDs are expected to balance the potential additional risks that may rise from the Navy using TDFDs during mine neutralization training. The potential effects to marine mammal species and stocks as a result of the proposed mine neutralization training activities are the same as those analyzed in the final rule governing the incidental takes for these activities. In summary, the take limits are not expected to be exceeded with the use of TDFDs, but the additional mitigation and monitoring measures should offset the potential risks of using TDFDs. Consequently, NMFS believes that the take estimates analyzed in the existing final rule do not change as a result of the Navy using TDFDs and further revisions to the final rule are not warranted.

Comment 7: Regarding the proposed listing of the insular stock of false killer whales, the Commission recommends that the Navy enter into a conference pursuant to 50 CFR 402.10 and consider requesting that the conference follow formal consultation procedures.

Response: A ''conference'' is designed to assist the NMFS Endangered Species Act Interagency Cooperation Division and any applicant in identifying and resolving potential conflicts at an early stage in the planning process. The Navy has requested initiation of formal conference with NMFS for the effect of Navy training activities in the HRC on Hawaii insular false killer whales.

Comment 8: The Cascadia Research Collective points out that since the HRC rulemaking was issued, multiple stocks within the HRC have been designated for three species. Separate island-associated populations are now recognized for common bottlenose and spinner dolphins and two stocks are designated for false killer whales. The Cascadia Research Collective recommends that potential impacts of takes be reanalyzed on a stock-by-stock basis, taking into account the spatial bias of Navy activities within the HRC.

Response: Since 2009, multiple stocks of bottlenose dolphin (Hawaii Pelagic; Kauai and Niihau; Oahu; 4–Island Region; and Hawaii Island), spinner dolphin (Hawaii Pelagic; Hawaii Island; Oahu and 4–Island Region; Kauai and Niihau; Kure and Midway; Pearl and Hermes Reef), and false killer whale (Pelagic and Insular) have been designated. The Navy has been working with NMFS' science centers to evaluate potential methods for estimating impacts on a stock-by-stock basis. Current abundance data for common bottlenose dolphins does not allow for stock-by-stock analysis because of limited surveys and small sample sizes. There are currently no abundance estimates available for the six individual spinner dolphin stocks, so the status of all stocks has been combined when evaluating this species for management purposes. The Navy has, however, developed an approach to evaluate potential impacts on each of the two stocks of false killer whales.

NMFS currently recognizes two stocks of false killer whale in Hawaiian waters: The Hawaii pelagic and the Hawaii insular stocks (Fornet *et al.* 2010; Oleson *et al.* 2010; Caretta *et al.* 2011). NMFS considers all false killer whales within 40 km (22 nm) of the Hawaiian Islands as belonging to the insular stock, all false killer whales beyond 140 km (76 nm) as belonging to the pelagic stock, and notes that the two stocks overlap between the 40 km and 140 km boundaries. This 100-km (54 nm) overlap area is approximately where the majority of Navy training and testing has historically occurred. Since the Navy anticipates that both populations of false killer whales may be equally encountered during Navy training in the HRC, NMFS and the Navy agreed that it is reasonable to treat both populations equally when estimating take. The Navy derived take numbers for each stock based on the best estimates of population size in the 2011 Pacific Stock Assessment Report. Population estimates were used in the analysis because the Navy's activities potentially overlap with each stock's entire range.

The Navy's current 2-year LOA authorizes 102 Level B harassments of false killer whales between January 15, 2012 and January 5, 2014 (an annual average of 51 animals). The Navy's new analysis resulted in an annual estimated 13 Level B harassments of false killer whales from the insular stock (the insular stock population is 26 percent of the total false killer whale population; 26 percent of 51 authorized takes = 13) and 38 Level B harassments of false killer whales from the pelagic stock (the pelagic stock population is 74 percent of the total false killer whale population; 74 percent of 51 authorized takes = 38). NMFS will issue a new LOA specifying the amount of authorized take for each stock.

Summary of Activity Under the 2010 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2010, the training activities conducted by the Navy were within the scope and amounts authorized by the 2010 LOA and the levels of take remain within the scope and amounts contemplated by the final rule. The Navy conducted the monitoring required by the 2011 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and explosive exercises by dedicated MMOs, as well as deploying acoustic recording devices and tagging marine mammals. The Navy submitted their 2011 Monitoring Report, which is posted on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*), within the required timeframe. The Navy included a summary of the 2011 monitoring effort and results and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report.

Modifications to Mitigation and Monitoring Measures Related to Mine Neutralization Training

NMFS worked with the Navy to develop a series of modifications to the Navy's mitigation measures to minimize the risk of injury and mortality to marine mammals during the use of TDFDs. The following modifications are specific to mine neutralization training events conducted within HRC:

Mitigation Measures for Underwater Detonations Using Positive Control (RFDs)

1. Underwater detonations using positive control devices will only be conducted during daylight hours.
2. A mitigation zone of 700 yd will be established around each underwater detonation point.
3. A minimum of two boats will be deployed. One boat will act as an observer platform, while the other boat will typically provide diver support.
4. Two observers with binoculars on one small vessel will survey the detonation area and the mitigation zone for marine mammals beginning at least 30 min prior to the scheduled explosive event and lasting until at least 30 min following detonation.
5. In addition to the dedicated observers, all divers and boat operators engaged in detonation events can potentially monitor the area

immediately surrounding the point of detonation for marine mammals.

6. If a marine mammal is sighted within the 700-yd mitigation zone or moving towards it, underwater detonation events will be suspended until the marine mammal has voluntarily left the area and the area is clear of marine mammals for at least 30 min.

7. Immediately following the detonation, visual monitoring for marine mammals within the mitigation zone will continue for 30 min. Any marine mammal observed after the underwater detonation either injured or exhibiting signs of distress will be reported via Navy operational chain of command to Navy environmental representatives from U.S. Pacific Fleet, Environmental Office. Using Marine Mammal Stranding communication trees and contact procedures established for the HRC, the Navy will report these events to the Stranding Coordinator of NMFS' Pacific Islands Regional Office. These reports will contain the date and time of the sighting, location, species description, and indication of the animal's status.

Mitigation Measures for Underwater Detonations Using TDFDs

The Navy's mitigation zones will be divided into three distances to further minimize risk of marine mammal injury or mortality and to achieve a more practical execution of mitigation measures. The Navy will divide the span of training events into those requiring a 1,000-yd buffer zone (2 boats) and those requiring a 1,400-yd or greater buffer zone (2 boats and 1 helicopter). This was determined by rounding the Navy-modeled ''underwater zones of influence'' to the appropriate range category (1,000, 1,400, and 1,500) (Table 1). Training events requiring a 1,000-yd buffer zone would utilize a minimum of two boats for monitoring purposes. Training events requiring a 1,400 or 1,500-yd buffer zone would use a minimum of three boats or two boats and one helicopter for monitoring purposes. See the proposed LOA (76 FR 71322, November 17, 2011) for a more detailed description of how the Navy developed the new buffer zones. The mitigation measures for underwater detonations using TDFDs are summarized below.

TABLE 1—MITIGATION ZONE RADII FOR TDFDS BASED ON SIZE OF CHARGE AND LENGTH OF TIMED-DELAY.

Charge weight (lb)	Timed-delay					
	5 min	6 min	7 min	8 min	9 min	10 min
5	1,000 yd	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd
10	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd	1,400 yd
15–29	1,000 yd	1,000 yd	1,400 yd	1,400 yd	1,500 yd	1,500 yd

1,400 and 1,500 yd = minimum of three observation boats or two boats and one helicopter.

1. Underwater detonations using TDFDs will only be conducted during daylight hours.

2. Time-delays longer than 10 min will not be used. The initiation of the device will not start until the appropriate mitigation area is clear for a full 30 min prior to initiation of the timer.

3. A monitoring/mitigation zone will be established around each underwater detonation location, as indicated in Table 1, based on charge weight and length of time-delay used. When conducting surveys, boats will position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume/human safety zone) and travel in a circular pattern around the detonation location, surveying both the inner and outer areas. To the best extent practical, boats will try to maintain a 10-knot search speed to ensure adequate coverage of the mitigation zone. However, weather conditions and sea states may require slower speeds in some instances.

4. TDFD detonations with a mitigation zone of 1,000 yd:

- A minimum of two boats will be used to survey for marine mammals at a distance of 1,000 yd.
- Each boat will be positioned on opposite sides of the detonation location, separated by 180 degrees.

5. TDFD detonations with a mitigation zone of ≥1,400 yd:

- A minimum of three boats or two boats and one helicopter will be used to survey at distances ≥1,400 yd.
- When using at least three boats, each boat will be positioned equidistant from one another (120 degrees separation for three boats, 90 degrees separation for four boats, etc.)
- A helicopter, if available, can be used in lieu of one of the required boats. A helicopter search pattern is dictated by standard Navy protocols and accounts for multiple variables, such as the size and shape of the search area, size of the object being searched for, and local environmental conditions.

6. Two dedicated observers in each boat will conduct continuous visual surveys of the monitoring zone for the duration of the training event.

7. Monitoring zones will be surveyed beginning 30 min prior to detonation and for 30 min after detonation.

8. Other personnel besides boat observers may also maintain situational awareness of marine mammal presence within the monitoring zones to the best extent practical, given dive safety considerations. Divers placing the charges on mines will observe the immediate underwater area around a detonation site for marine mammals and report sightings to surface observers.

9. If a marine mammal is sighted within an established mitigation zone or moving towards it, underwater detonation events will be suspended until the marine mammal voluntarily leaves the area and the area is clear of marine mammals for at least 30 min.

10. Immediately following the detonation, visual monitoring for affected marine mammals within the monitoring zone will continue for 30 min.

11. Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress will be reported via Navy operational chain of command to Navy environmental representatives from U.S. Pacific Fleet, Environmental Readiness Office. Using Marine Mammal Stranding communication trees and contact procedures established for the HRC, the Navy will report these events to the Stranding Coordinator of NMFS' Pacific Islands Regional Office. These reports will contain the date and time of the sighting, location, species description, and indication of the animal's status.

Take Estimates

The additional mitigation and monitoring measures mentioned above will increase the buffer zone to account for marine mammal movement and increase marine mammal visual monitoring efforts to ensure that no

marine mammal will be in a zone where injury and/or mortality could occur as a result of time-delayed detonation. Furthermore, the estimated exposures are based on the probability of the animals occurring in the area when a training event is occurring, and this probability does not change based on the use of TDFDs or implementation of mitigation measures (i.e., the exposure model does not account for how the charge is initiated and assumes no mitigation is being implemented). The potential effects to marine mammal species and stocks as a result of the proposed mine neutralization training activities are the same as those analyzed in the final rule governing the incidental takes for these activities. Consequently, NMFS believes that the take estimates analyzed in the existing final rule do not change as a result of the modified LOA which includes mine neutralization training activities using TDFDs.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that would be ''taken'' by the specified activities (for example, takes by harassment or injury). This estimate informs the analysis that NMFS must perform to determine whether the activity would have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any other variables (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

Based on the analysis of the potential impacts from the proposed mine neutralization training exercises conducted within the HRC, which includes the modification of marine mammal monitoring and mitigation measures intended to minimize the risk of exposure to explosive detonations during the use of TDFDs, NMFS has determined that the modification of the Navy's LOA to include taking of marine mammals incidental to mine neutralization training using TDFDs will have a negligible impact on the marine mammal species and stocks present in the action area, provided that the additional mitigation and monitoring measures described above are implemented.

Endangered Species Act (ESA)

There are seven marine mammal species listed as threatened or endangered under the ESA with confirmed or possible occurrence in the HRC: blue whale (*Balaenoptera musculus*), north Pacific right whale (*Eubalaena japonica*), humpback whale (*Megaptera novaeangliae*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), sperm whale (*Physeter macrocephalus*), and Hawaiian monk seal (*Monachus schauinslandi*). Pursuant to section 7 of the ESA, NMFS has consulted internally on the issuance of the modified LOA under section 101(a)(5)(A) of the MMPA for these activities. Consultation was concluded on January 10, 2012.

National Environmental Policy Act (NEPA)

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the HRC. NMFS subsequently adopted the Navy's FEIS for the purpose of complying with the MMPA. NMFS has determined that there are no changes in the potential effects to marine mammal species and stocks as a result of the mine neutralization training events using TDFDs. Therefore, no additional NEPA analysis is required and the information in the existing FEIS remains sufficient.

Authorization

NMFS has determined that the marine mammal takes resulting from the 2011 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized. Further, the level of taking authorized in 2012 and 2013 for the Navy's HRC training and research activities is consistent with our previous findings made for the total taking allowed under the HRC regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2012 and 2013 HRC activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a 2-year LOA for Navy training and research activities conducted in the HRC from January 15, 2012, through January 5, 2014.

Dated: February 17, 2012.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–4340 Filed 2–23–12; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 3/26/2012.

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: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 12/23/2011 (76 FR 80346); 12/30/2011 (76 FR 82282–82283); and 1/6/2012 (77 FR 780), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. The action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Service, Eastern ARNG Aviation Training Site, Capital City Airport Hanger 2, 240 Airport Road, New Cumberland, PA.
NPA: Opportunity Center, Incorporated, Wilmington, DE.
Contracting Activity: Dept of the Army, W7NX USPFO Activity PA ARNG, Annville, PA.

Service Type/Location: Grounds Maintenance, National Weather Service, 5655 Hollywood Ave., Shreveport, LA.
NPA: Goodwill Industries of North Louisiana, Inc., Shreveport, LA.
Contracting Activity: Dept of Commerce, National Oceanic and Atmospheric Administration, Boulder, CO.

Service Type/Location: Janitorial, FAA Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., Oklahoma City, OK.
NPA: Dale Rogers Training Center, Inc., Oklahoma City, OK.
Contracting Activity: Dept of Transportation, Federal Aviation Administration, Oklahoma City, OK.

Service Type/Location: Custodial Service and Grounds Maintenance, Salmon Airbase, 8 Industrial Lane, US Forest Service, Salmon, ID.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: US Forest Service, Caribou-Targhee National Forest, Idaho Falls, ID.

Service Type/Location: Custodial and Grounds Maintenance, US Border Station, 160 Garrison Street, Eagle Pass, TX, US Border Station, 500 Adams Street, Eagle Pass, TX, VACIS Border Station, 500 Adams Street, Eagle Pass, TX.
NPA: Endeavors Unlimited, Inc., San Antonio, TX.
Contracting Activity: General Services Administration, Public Buildings Service, ACQ MGT SVC BR, Fort Worth, TX.

Service Type/Location: Mail Services, National Finance Center, (Offsite: 2762 Rand Rd., Indianapolis, IN), 13800 Old Gentilly Road, New Orleans, LA.
NPA: Anthony Wayne Rehabilitation Ctr for Handicapped and Blind, Inc., Fort Wayne, IN.
Contracting Activity: Dept of Agriculture, USDA, Office of the Chief Financial Officer, Washington, DC.

Deletions

On 10/14/2011 (76 FR 63905–63906); 10/21/2011 (76 FR 65501–65502); 10/28/2011 (76 FR 66913–66914); and 12/30/2011 (76 FR 82282–82283), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

Pad, Cooling, Chemical

NSN: 6530–00–133–4299.
NPA: Employ+Ability, Inc., Braintree, MA.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

NSN: 7490–01–483–8984—Paper Shredder, Cross Cut.
NSN: 7490–01–483–8985—Paper Shredder, Strip Cut.
NSN: 7490–01–483–8990—Paper Shredder, Strip Cut.
NSN: 7490–01–483–8991—Paper Shredder, Cross Cut.
NPA: L.C. Industries for the Blind, Inc., Durham, NC.
Contracting Activity: General Services Administration, New York, NY.

Services

Service Type/Location: Removal of Tool Identification Numbers, Tinker Air Force Base, OK.
NPA: Work Activity Center, Inc., Moore, OK.
Contracting Activity: Dept of the Air Force, FA8101 OC ALC PKO, Tinker AFB, OK.

Service Type/Location: Janitorial/Custodial, FAA NAVAIDS Communication, Building 1300, Spokane International Airport, Spokane, WA.
NPA: Career Connections, Spokane, WA.
Contracting Activity: Department of Transportation, Massena, NY.

Service Type/Location: Janitorial/Custodial, Naval & Marine Corps Reserve Center, 4087 West Harvard, Boise, ID.
NPA: Western Idaho Training Company, Caldwell, ID.
Contracting Activity: Dept of the Navy, Navy Region Northwest Reserve, Everett, WA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2012–4311 Filed 2–23–12; 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 a product and service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 3/26/2012.

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: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 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 product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product 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. 8501–8506) in connection with the product and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN: 6510–00–786–3736—Pad, Isopropyl Alcohol Impregnated, 1'' × 1.375''.
NPA: Lighthouse Central Florida, Orlando, FL.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.
Coverage: C–List for 25% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Service

Service Type/Location: Janitorial Service, U.S. Coast Guard Sector New Orleans, 200 Hendee Street, New Orleans, LA.
NPA: The Arc of Greater New Orleans, Metairie, LA.
Contracting Activity: Department of Homeland Security, U.S. Coast Guard, SILC East, Norfolk, VA.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2012–4312 Filed 2–23–12; 8:45 am]
BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0006]

Proposed Collection; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) and 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 information collection, as required by the Paperwork Reduction Act of 1995. The Bureau is soliciting comments on a request for background information and financial disclosure from nominees to serve on Advisory Boards, Groups, or Committees that the Bureau may establish, including the Consumer Advisory Board mandated by the Consumer Financial Protection Act.

DATES: Written comments must be received on or before April 24, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by agency name and Docket No. CFPB–2012–0006, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Chris Willey, Chief Information Officer, Consumer Financial Protection Bureau, 1500 Pennsylvania Avenue NW. (Attn: 1801 L Street), Washington, DC 20220.
- All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. In view of possible delays in mail delivery, please also notify Chris Willey by email *Chris.Willey@cfpb.gov,* or telephone 202–435–7741.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kimberly Miller, Management Analyst, Consumer Financial Protection Bureau; (202) 435–7451.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law No. 111–203, Title X, Section 1014 (12 U.S.C. 5494) requires the CFPB to establish a Consumer Advisory Board (CAB) to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information. In addition, the CFPB anticipates that it may establish additional advisory boards, groups, or committees in the future to advise and consult with the Bureau in the exercise of its functions.

This information collection will allow the CFPB to standardize the way it obtains information on the qualifications of individuals nominated to the CAB and to other CFPB advisory boards and committees that may be established by the Director of CFPB. For certain applicants who are being strongly considered for board or committee membership, CFPB will use this information to perform a background check, conduct a conflict of interest review and perform other similar due diligence activities associated with the selection of members on CFPB advisory boards and committees.

Title of Collection: Applications for Advisory Boards, Groups, and Committees.

Type of Review: New Collection.

Affected Public: Individuals.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 30 × 1 = 30 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. The public and other Federal agencies are invited to submitted written comments on: (a)

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimates of the burden of the 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.

Dated: February 21, 2012.

Chris Willey,

Chief Information Officer, Consumer Financial Protection Bureau.

[FR Doc. 2012–4337 Filed 2–23–12; 8:45 am]

BILLING CODE 3170–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 280. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 280 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* March 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mrs. Sonia Malik, 571–372–1276.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 279. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 280 are updated rates for Puerto Rico.

Dated: February 21, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	110		105		215	2/1/2012
ADAK						
01/01 - 12/31	120		79		199	7/1/2003
ANCHORAGE [INCL NAV RES]						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
BARROW						
01/01 - 12/31	159		95		254	10/1/2002
BETHEL						
01/01 - 12/31	157		99		256	7/1/2011
BETTLES						
01/01 - 12/31	135		62		197	10/1/2004
CLEAR AB						
01/01 - 12/31	90		82		172	10/1/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/1/2006
COPPER CENTER						
09/16 - 05/14	99		95		194	2/1/2012
05/15 - 09/15	149		99		248	2/1/2012
CORDOVA						
01/01 - 12/31	95		109		204	2/1/2012
CRAIG						
10/01 - 04/30	99		78		177	11/1/2011
05/01 - 09/30	129		81		210	11/1/2011
DELTA JUNCTION						
01/01 - 12/31	129		62		191	2/1/2012
DENALI NATIONAL PARK						
05/01 - 09/30	159		101		260	2/1/2012
10/01 - 04/30	89		94		183	2/1/2012

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
DILLINGHAM						
05/15 - 10/15	185		111		296	1/1/2011
10/16 - 05/14	169		109		278	1/1/2011
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		102		223	2/1/2012
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	6/1/2007
EIELSON AFB						
09/16 - 05/14	75		92		167	2/1/2012
05/15 - 09/15	175		102		277	2/1/2012
ELFIN COVE						
01/01 - 12/31	175		46		221	2/1/2012
ELMENDORF AFB						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
FAIRBANKS						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/1/2002
FT. GREELY						
01/01 - 12/31	129		62		191	2/1/2012
FT. RICHARDSON						
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
FT. WAINWRIGHT						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
GAMBELL						
01/01 - 12/31	105		39		144	1/1/2011
GLENNALLEN						
05/15 - 09/15	149		99		248	2/1/2012
09/16 - 05/14	99		95		194	2/1/2012
HAINES						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01	- 12/31	107		101		208	1/1/2011
HEALY							
10/01	- 04/30	89		94		183	2/1/2012
05/01	- 09/30	159		101		260	2/1/2012
HOMER							
05/05	- 09/15	79		108		187	2/1/2012
09/16	- 05/04	167		117		284	2/1/2012
JUNEAU							
05/16	- 09/15	149		104		253	2/1/2012
09/16	- 05/15	135		103		238	2/1/2012
KAKTOVIK							
01/01	- 12/31	165		86		251	10/1/2002
KAVIK CAMP							
01/01	- 12/31	150		69		219	10/1/2002
KENAI-SOLDOTNA							
09/01	- 04/30	79		92		171	2/1/2012
05/01	- 08/31	179		102		281	2/1/2012
KENNICOTT							
01/01	- 12/31	175		111		286	2/1/2012
KETCHIKAN							
10/01	- 04/30	140		97		237	2/1/2012
05/01	- 09/30	99		94		193	2/1/2012
KING SALMON							
05/01	- 10/01	225		91		316	10/1/2002
10/02	- 04/30	125		81		206	10/1/2002
KLAWOCK							
05/01	- 09/30	129		81		210	11/1/2011
10/01	- 04/30	99		78		177	11/1/2011
KODIAK							
05/01	- 09/30	152		93		245	2/1/2012
10/01	- 04/30	100		88		188	2/1/2012
KOTZEBUE							
01/01	- 12/31	219		115		334	2/1/2012
KULIS AGS							

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/16 - 09/30	181		104		285	2/1/2012
10/01 - 05/15	99		96		195	2/1/2012
MCCARTHY						
01/01 - 12/31	175		111		286	2/1/2012
MCGRATH						
01/01 - 12/31	165		69		234	10/1/2006
MURPHY DOME						
05/15 - 09/15	175		102		277	2/1/2012
09/16 - 05/14	75		92		167	2/1/2012
NOME						
01/01 - 12/31	140		132		272	2/1/2012
NUIQSUT						
01/01 - 12/31	180		53		233	10/1/2002
PETERSBURG						
01/01 - 12/31	110		105		215	2/1/2012
POINT HOPE						
01/01 - 12/31	200		49		249	1/1/2011
POINT LAY						
01/01 - 12/31	225		51		276	8/1/2011
PORT ALEXANDER						
01/01 - 12/31	150		43		193	8/1/2010
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/1/2002
PRUDHOE BAY						
01/01 - 12/31	170		68		238	1/1/2011
SELDOVIA						
05/05 - 09/15	79		108		187	2/1/2012
09/16 - 05/04	167		117		284	2/1/2012
SEWARD						
10/16 - 04/30	85		95		180	2/1/2012
05/01 - 10/15	172		103		275	2/1/2012
SITKA-MT. EDGECUMBE						
10/01 - 04/30	99		90		189	2/1/2012
05/01 - 09/30	119		92		211	2/1/2012

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
SKAGWAY						
05/01 - 09/30	99		94		193	2/1/2012
10/01 - 04/30	140		97		237	2/1/2012
SLANA						
05/01 - 09/30	139		55		194	2/1/2005
10/01 - 04/30	99		55		154	2/1/2005
SPRUCE CAPE						
10/01 - 04/30	100		88		188	2/1/2012
05/01 - 09/30	152		93		245	2/1/2012
ST. GEORGE						
01/01 - 12/31	129		55		184	6/1/2004
TALKEETNA						
01/01 - 12/31	100		89		189	10/1/2002
TANANA						
01/01 - 12/31	140		132		272	2/1/2012
TOK						
05/15 - 09/30	95		89		184	2/1/2012
10/01 - 05/14	85		88		173	2/1/2012
UMIAT						
01/01 - 12/31	350		64		414	2/1/2012
VALDEZ						
05/16 - 09/14	159		89		248	2/1/2012
09/15 - 05/15	119		85		204	2/1/2012
WAINWRIGHT						
01/01 - 12/31	175		83		258	1/1/2011
WASILLA						
05/01 - 09/30	153		90		243	2/1/2012
10/01 - 04/30	89		84		173	2/1/2012
WRANGELL						
10/01 - 04/30	140		97		237	2/1/2012
05/01 - 09/30	99		94		193	2/1/2012
YAKUTAT						
01/01 - 12/31	105		94		199	1/1/2011
AMERICAN SAMOA						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
AMERICAN SAMOA						
01/01 - 12/31	139		122		261	12/1/2010
GUAM						
GUAM (INCL ALL MIL INSTAL)						
01/01 - 12/31	159		86		245	7/1/2011
HAWAII						
[OTHER]						
01/01 - 12/31	104		109		213	7/1/2011
CAMP H M SMITH						
01/01 - 12/31	177		116		293	7/1/2011
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		116		293	7/1/2011
FT. DERUSSEY						
01/01 - 12/31	177		116		293	7/1/2011
FT. SHAFTER						
01/01 - 12/31	177		116		293	7/1/2011
HICKAM AFB						
01/01 - 12/31	177		116		293	7/1/2011
HONOLULU						
01/01 - 12/31	177		116		293	7/1/2011
ISLE OF HAWAII: HILO						
01/01 - 12/31	104		109		213	7/1/2011
ISLE OF HAWAII: OTHER						
01/01 - 12/31	180		116		296	7/1/2011
ISLE OF KAUAI						
01/01 - 12/31	243		127		370	7/1/2011
ISLE OF MAUI						
01/01 - 12/31	169		120		289	7/1/2011
ISLE OF OAHU						
01/01 - 12/31	177		116		293	7/1/2011
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	243		127		370	7/1/2011
KILAUEA MILITARY CAMP						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	104		109		213	7/1/2011
LANAI						
01/01 - 12/31	249		145		394	7/1/2011
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		116		293	7/1/2011
MCB HAWAII						
01/01 - 12/31	177		116		293	7/1/2011
MOLOKAI						
01/01 - 12/31	131		97		228	7/1/2011
NAS BARBERS POINT						
01/01 - 12/31	177		116		293	7/1/2011
PEARL HARBOR						
01/01 - 12/31	177		116		293	7/1/2011
SCHOFIELD BARRACKS						
01/01 - 12/31	177		116		293	7/1/2011
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		116		293	7/1/2011
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		62		187	7/1/2011
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	55		72		127	10/1/2002
ROTA						
01/01 - 12/31	130		93		223	7/1/2011
SAIPAN						
01/01 - 12/31	121		94		215	7/1/2011
TINIAN						
01/01 - 12/31	85		74		159	7/1/2011
PUERTO RICO						
[OTHER]						
01/01 - 12/31	62		57		119	10/1/2002
AGUADILLA						

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31		124		113		237	9/1/2010
BAYAMON							
01/01 - 12/31		195		128		323	9/1/2010
CAROLINA							
01/01 - 12/31		195		128		323	9/1/2010
CEIBA							
01/01 - 12/31		210		141		351	11/1/2010
CULEBRA							
01/01 - 12/31		150		98		248	3/1/2012
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]							
01/01 - 12/31		210		141		351	11/1/2010
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]							
01/01 - 12/31		195		128		323	9/1/2010
HUMACAO							
01/01 - 12/31		210		141		351	11/1/2010
LUIS MUNOZ MARIN IAP AGS							
01/01 - 12/31		195		128		323	9/1/2010
LUQUILLO							
01/01 - 12/31		210		141		351	11/1/2010
MAYAGUEZ							
01/01 - 12/31		109		112		221	9/1/2010
PONCE							
01/01 - 12/31		149		87		236	9/1/2010
SABANA SECA [INCL ALL MILITARY]							
01/01 - 12/31		195		128		323	9/1/2010
SAN JUAN & NAV RES STA							
01/01 - 12/31		195		128		323	9/1/2010
VIEQUES							
01/01 - 12/31		175		95		270	3/1/2012
VIRGIN ISLANDS (U.S.)							
ST. CROIX							
04/15 - 12/14		135		92		227	5/1/2006
12/15 - 04/14		187		97		284	5/1/2006

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. JOHN						
04/15 - 12/14	163		98		261	5/1/2006
12/15 - 04/14	220		104		324	5/1/2006
ST. THOMAS						
04/15 - 12/14	240		105		345	5/1/2006
12/15 - 04/14	299		111		410	5/1/2006
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	145		42		187	7/1/2011

[FR Doc. 2012–4339 Filed 2–23–12; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Education Advisory Committee (AEAC).

Date of Meeting: March 14–15, 2012.

Time of Meeting: 0800–1600.

Place of Meeting: Deputy Chief of Staff G–3/5/7 Conference Room, 950 Jefferson Ave., Building 950, 3rd Floor, Ft. Eustis, VA.

Proposed Agenda: Purpose of the meeting is to gather and review information, discuss, and deliberate issues related to shifting Army training from an instructor-centric to a learner-centric paradigm required by the Army 2020 learning environment. The agenda will include topics relating Arm Learning Model 2015 and to support context-based, collaborative, problem-centered instruction.

FOR FURTHER INFORMATION CONTACT: For information please contact Mr. Wayne Joyner, Designated Federal Officer, at *albert.w.joyner.civ@mail.mil,* (757) 501–5810, or to the following address: Army Education Advisory Committee, Designated Federal Officer, Attn: ATTG–OPS–EI (Joyner), 950 Jefferson Ave., Building 950, Ft. Eustis, Virginia 23604.

SUPPLEMENTARY INFORMATION: Meeting of the Advisory Committee is open to the public and any member of the public wishing to attend this meeting should contact the Designated Federal Officer previously listed at least ten calendar days prior to the meeting for information on base entry. Individuals without a DoD Government Common Access Card require an escort at the meeting location. Attendance will be limited to those persons who have notified the Committee Management Office of their intention to attend.

Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak, however, any member of the public wishing to provide input to the Committee should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address listed (see **FOR FURTHER INFORMATION CONTACT**). Statements being submitted in response to the agenda mentioned in this notice must be received at least ten calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Advisory Committee until its next meeting. The Designated Federal Officer will review all timely submissions with the Advisory Committee Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. After reviewing written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during open portion of this meeting or at a future meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–4304 Filed 2–23–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report for the Proposed Cambria Water Supply Project, San Luis Obispo County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Los Angeles District of the U.S. Army Corps of Engineers (Corps) and Cambria Community Services District (CCSD), the non-Federal sponsor under a Project Cooperation Agreement dated March 27, 2006, intend to jointly prepare an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to study, plan, and implement a project to provide for a reliable water supply for the community of Cambria in San Luis Obispo County. The relatively remote location of Cambria has resulted in the area relying solely upon local groundwater for its current water supply. The groundwater supplies from the Santa Rosa and San Simeon groundwater basins no longer are adequate to meet existing demand under extreme drought conditions or to meet projected future demand in most years.

DATES: Submit comments on or before March 24, 2012.

ADDRESSES: Kathleen Anderson, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (818) 776–9049 Ext. 2106; or Email at *kathleen.s.anderson@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Corps intends to prepare a joint EIS/EIR to assess the environmental effects associated with the proposed project. CCSD is the state lead agency for the EIR pursuant to the California Environmental Quality Act (CEQA).

1. *Authorization.* The proposed project would be conducted in accordance with Section 219 of the Water Resources Development Act (WRDA) of 1992 (Pub. L. 102–580), as amended, which states in part:

* * * (a) IN GENERAL—The Secretary is authorized to provide assistance to non-Federal interests for carrying out water-related environmental infrastructure and resource protection and development projects described in subsection (c), including waste water treatment and related facilities and water supply, storage, treatment, and distribution facilities. Such assistance may be in the form of technical and planning and design assistance. If the Secretary is to provide any design or engineering assistance to carry out a project under this section, the Secretary shall obtain by procurement from private sources all services necessary for the Secretary to provide such assistance, unless the Secretary finds that (1) the service would require the use of a new technology unavailable in the private sector, or (2) a solicitation or request for proposal has failed to attract 2 or more bids or proposals.

(f) ADDITIONAL ASSISTANCE—The Secretary may provide assistance under subsection (a) and assistance for construction for the following:

(48) CAMBRIA, CALIFORNIA—$10,300,000 for desalination infrastructure, Cambria, California.

2. *Background:* Cambria, an unincorporated community, is located in the coastal region of central California, in the northwestern portion of San Luis Obispo County. Cambria lies within the Santa Rosa Creek Valley. Located along Highway 1, Cambria is approximately 35 miles north of San Luis Obispo and approximately four miles south of San Simeon. The primary transportation corridor that bisects Cambria is Highway 1, which traverses the community in a north-south

orientation. Currently, Cambria has a population of approximately 6,400 permanent residents with a substantial tourist and second home population.

The CCSD provides water supply, wastewater collection and treatment, fire protection, garbage collection, and a limited amount of street lighting and recreation. The CCSD currently serves a population of about 6,400 as well as a large number of visitors to the Central Coast and covers approximately four square miles. The relatively remote location of Cambria has resulted in the area relying solely upon local groundwater for its water supply.

3. *Proposed Project.* To study, plan, and implement a project to provide for a reliable water supply for the community of Cambria in San Luis Obispo County, CA.

4. *Alternatives.* Potential water supply alternatives were compiled from studies conducted by the CCSD over a period of more than ten years identifying and evaluating potential sources of additional potable water for CCSD. The alternatives initially being considered for the proposed project include seawater desalination, local and imported surface water, groundwater, hard rock drilling, and seasonal reservoir storage.

5. *Scoping Process.*

a. Potential impacts associated with the proposed project will be fully evaluated. Resource categories that will be analyzed include: Physical environment, geology, biological resources, air quality, water quality, recreational usage, aesthetics, cultural resources, transportation, noise, hazardous waste, socioeconomics and safety.

b. The Corps intends to hold a public scoping meeting(s) for the EIS/EIR to aid in the determination of significant environmental issues associated with the proposed project. Affected federal, state and local resource agencies, Native American groups and concerned interest groups/individuals are encouraged to participate in the scoping process. Public participation is critical in defining the scope of analysis in the Draft EIS/EIR, identifying significant environmental issues in the Draft EIS/EIR, providing useful information such as published and unpublished data, and knowledge of relevant issues and recommending mitigation measures to offset potential impacts from proposed actions. The time and location of the public scoping meeting will be advertised in letters, public announcements and news releases.

c. Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts of the proposed project by submitting comments, suggestions, and requests to be placed on the mailing list for announcements to (see **ADDRESSES**) or the following email address: *kathleen.s.anderson@usace.army.mil.*

d. The project will require concurrence by the California Coastal Commission with the federal Coastal Consistency Determination in accordance with the Coastal Zone Management Act, as well as certification under Section 401 of the Clean Water Act from the Regional Water Quality Control Board. Depending upon the recommended alternative, the project may also require additional real property rights for construction and operation of a facility, and compliance with the Endangered Species Act.

6. *Scoping Meeting Date, Time, and Location.* The Public Scoping Meeting will take place on March 15, 2012, 7 p.m. to 9 p.m., Veterans Hall, 1000 Main Street, Cambria, CA 93428.

7. *Availability of the Draft EIS/EIR.* The Draft EIS/EIR is scheduled to be published and circulated in September 2012. Pursuant to CEQA, a public hearing on the EIS/EIR will be held by the CCSD following its publication.

Dated: February 15, 2012.

R. Mark Toy,

Colonel, U.S. Army, Commander and District Engineer, Los Angeles District.

[FR Doc. 2012–4313 Filed 2–23–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (EIS) for the Installation of a Terminal Groin Structure at Lockwood Folly Inlet and to Conduct Supplemental Beach Nourishment Along the Eastern Oceanfront Shoreline of Holden Beach, in Brunswick County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from the Town of Holden Beach to develop and implement a shoreline protection plan that includes the installation of a terminal groin structure on the west side of Lockwood Folly Inlet (a federally maintained navigational channel) and the nourishment of the oceanfront shoreline along the eastern end of Holden Beach.

DATES: A public scoping meeting for the Draft EIS will be held at Holden Beach Town Hall, located at 110 Rothschild Street in Holden Beach, on March 8, 2012 at 6 p.m. Written comments will be received until March 26, 2012.

ADDRESSES: Copies of comments and questions regarding scoping of the Draft EIS may be submitted to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number 2011–01914, 69 Darlington Avenue, Wilmington, NC 28403.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be directed to Mr. Mickey Sugg, Project Manager, Wilmington Regulatory Field Office, telephone: (910) 251–4811. Additional description of the Town's proposal can be found at the following link, *http://www.saw.usace.army.mil/WETLANDS/Projects/index.html,* under Holden Beach Terminal Groin and Nourishment Project.

SUPPLEMENTARY INFORMATION: 1. *Project Description.* Over the past decades, the eastern end of Holden Beach has experienced consistent and relatively severe erosional conditions along the oceanfront shoreline and primary dune system. As a result of chronic erosion, the Town has implemented, typically in coordination with the U.S. Corps of Engineers federal channel maintenance dredging, periodic beach nourishment activities within this eastern stretch and near the inlet. These measures have been short-term in nature; and it is the Town's desire to implement a long-term beach and dune stabilization strategy. As stated by the Town, this strategy would help protect public and private infrastructure from future storms. Their proposal includes constructing a terminal groin near the Lockwood Folly Inlet (western side) and conducting supplemental sand placement along the eastern end of the island. Final locations and placement of sand will be determined during the project design process. For the groin structure, final location and design has yet to be determined. No groin structure is proposed on the opposite, or eastern, side of Lockwood Folly Inlet.

2. *Issues.* There are several potential environmental and public interest issues that will be addressed in the EIS. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

a. Potential impacts to marine biological resources (benthic organisms, passageway for fish and other marine life) and Essential Fish Habitat.

b. Potential impacts to threatened and endangered marine mammals, birds, fish, and plants.

c. Potential impacts associated with using inlets as a sand source.

d. Potential impacts to adjacent shoreline changes on the east side Lockwood Folly Inlet, or along the Town of Oak Island.

e. Potential impacts to Navigation, commercial and recreational.

f. Potential impacts to the long-term management of the inlet and oceanfront shorelines.

g. Potential effects on regional sand sources and how it relates to sand management practices and North Carolina's Beach Inlet Management Practices.

h. Potential effects of shoreline protection.

i. Potential impacts on public health and safety.

k. Potential impacts to recreational and commercial fishing.

l. The compatibility of the material for nourishment.

m. Potential impacts to cultural resources.

n. Cumulative impacts of past, present, and foreseeable future dredging and nourishment activities.

3. *Alternatives.* Several alternatives and sand sources are being considered for the development of the protection plan. These alternatives will be further formulated and developed during the scoping process and an appropriate range of alternatives, including the no federal action alternative, will be considered in the EIS.

4. *Scoping Process.* A public scoping meeting (see **DATES**) will be held to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS. Participation in the public meeting by federal, state, and local agencies and other interested organizations and persons is encouraged.

The USACE will consult with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act; with the National Marine Fisheries Service under the Magnuson-Stevens Fishery Conservation and Management Act and the Endangered Species Act; and with the North Carolina State Historic Preservation Office under the National Historic Preservation Act. Additionally, the USACE will coordinate the Draft EIS with the North Carolina Division of Water Quality (NCDWQ) to assess the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and with the North Carolina Division of Coastal Management (NCDCM) to determine the projects consistency with the Coastal Zone Management Act. The USACE will closely work with NCDCM and NCDWQ in the development of the EIS to ensure the process complies with all State Environmental Policy Act (SEPA) requirements. It is the intention of both the USACE and the State of North Carolina to consolidate the NEPA and SEPA processes thereby eliminating duplication.

6. *Availability of the Draft PEIS.* The Draft EIS is expected to be published and circulated by early 2013. A public hearing will be held after the publication of the Draft EIS.

Dated: February 14, 2012.

S. Kenneth Jolly,

Chief, Regulatory Division.

[FR Doc. 2012–4305 Filed 2–23–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Revised Notice of Intent To Prepare a Draft Environmental Impact Statement for the Brunswick County Beaches, NC, Coastal Storm Damage Reduction Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District (Corps) is currently conducting a General Reevaluation Report (GRR) for the Brunswick County Beaches, NC, Coastal Storm Damage Reduction (CSDR) Project. The Corps intends to prepare a Draft Environmental Impact Statement (DEIS) to evaluate the impacts of the proposed CSDR alternatives to reduce coastal storm damages from beach erosion in the towns of Holden Beach, Oak Island, and Caswell Beach, North Carolina. An array of structural, non-structural, and no action alternatives are being evaluated. Current analyses suggest that the dune and berm beach fill alternative maximizes net CSDR benefits for the project area beaches and provides additional environmental and recreation benefits. An offshore borrow area has been identified within the Southwestern portion of Frying Pan Shoals (FPS) (located off the coast of Cape Fear, North Carolina) to provide beach compatible sediment for the 50-year life of the project.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders.

DATES: The earliest the DEIS will be available for public review would be August 2013.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Mr. Doug Piatkowski, Environmental Resources Section; U.S. Army Engineer District, Wilmington; 69 Darlington Avenue, Wilmington, North Carolina 28403; telephone: (910) 251–4908; email: *douglas.piatkowski@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Previous Notice of Intent (NOI) publication. This notice is a revision of an August 26, 2003, NOI (68 FR 51257) to prepare a DEIS and is prepared in response to changes in the proposed action, availability of new information relative to the proposal and associated impacts, and the significant amount of time which has passed since the last NOI.

2. Authority. Federal improvements for CSDR along a segment of the ocean shoreline in Brunswick County, North Carolina, were authorized by the Flood Control Act of 1966 (Pub. L. 89–789). The most applicable text is copied below.

> The project for hurricane-flood control protection from Cape Fear to the North Carolina—South Carolina State line, North Carolina, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 511, Eighty-ninth Congress.

3. Project Purpose. The project purpose is reduction of damages from beach erosion for the towns of Caswell Beach, Oak Island (the former towns of Long Beach and Yaupon Beach have been incorporated as the Town of Oak Island), and Holden Beach, North Carolina. If implemented, the project would also enhance the beach area available for recreation use and provide habitat for a variety of plants and animals.

Significant environmental resources to be addressed in the DEIS include, but are not limited to: (1) Endangered and threatened species; (2) Marine and estuarine resources; (3) Upland beach and dune resources; (4) Fish and wildlife and their habitats; (5) Essential Fish Habitat (EFH) and Cape Fear Sandy Shoals; (6) Water and air quality; (7) Socioeconomic resources; (8) Cultural

resources; and (9) Hazardous Toxic Radioactive Waste.

4. *Alternatives.* Project alternatives being evaluated consist of an array of structural and non-structural alternatives and no action. Structural alternatives include ''soft'' structures such as beach fill (i.e., beach nourishment) and ''hard'' structures such as breakwaters, seawalls, and groins. An array of ''soft'' structure beach fill alternatives are being evaluated, including berm only and multiple dune elevation and berm width combinations. The use of ''hard'' structures will be addressed within the updated planning paradigm in the state of North Carolina and relative to compliance with the Federal Coastal Zone Management Act. Non-structural alternatives considered include relocation of structures and acquisition and demolition of structures. Based upon analyses completed to date, the proposed action consists of a dune and berm beach fill alternative. The currently proposed beach fill alternative for Oak Island and Caswell Beach is a 14-foot-dune and 75-foot-berm extending along approximately 4.5 miles of total shoreline. The proposed beach fill alternative for Holden Beach is a 14-foot-dune and 50-foot-berm extending along approximately 4.2 miles of shoreline. The estimated total volume of beach compatible sediment needed for the 50-year project life, including initial construction and nourishment intervals, is approximately 42 million cubic yards.

Several inshore, offshore, and upland borrow sites were initially investigated for quantity and quality of beach compatible sediment to support the project. The currently proposed borrow site for initial construction and nourishment intervals is located along the southwestern portion of FPS, the cape associated shoals located southeast of Bald Head Island, North Carolina. The limits of the borrow area extend between 1–5 miles offshore and at depth contours between −10 and −30 feet.

5. *Scoping.* On January 24, 2000, in accordance with 40 CFR 1501.7, a scoping letter was sent to agencies, interest groups, and the public requesting identification of significant resources and issues of concern with respect to the proposed project. Considering the duration of time that had past and the decision to prepare an EIS based on comments received during the initial scoping effort, a second scoping letter was sent on 6 December 2004. All scoping comments received to date have been documented in the report and have been considered in the formulation of project alternatives. Additional scoping meetings have not been requested and are not anticipated at this time.

All affected federal, state, and local agencies, affected Indian tribes, and other interested private organizations and parties having an interest in the study are, hereby, notified of this revised NOI to prepare a DEIS.

6. Cooperating Agencies. The Corps is the lead agency for this project. Cooperating agency status has been initiated with the Bureau of Ocean Energy Management since the offshore limits of the proposed borrow area at FPS extend into the Outer Continental Shelf.

Steven A. Baker,

Colonel, U.S. Army, District Commander.

[FR Doc. 2012–4307 Filed 2–23–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund, Development Grants

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

ACTION: Notice.

Overview Information: Investing in Innovation Fund, Development grants Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411P (Development grants Pre-Application). 84.411C (Development grants Full Application).

Note: In order to receive an Investing in Innovation Fund (i3) Development grant, an entity must submit a pre-application. The pre-application is intended to reduce the burden of submitting a full i3 application. Pre-applications will be reviewed and scored by peer reviewers using selection criteria designated in this notice. Only entities that have submitted a top-rated pre-application will be eligible to submit a full i3 application.

DATES:

Pre-Applications Available: February 27, 2012.

Deadline for Notice of Intent to Submit Pre-Application: March 15, 2012.

Deadline for Transmittal of Pre-applications: April 9, 2012.

Full Applications Available: If you are selected to submit a full application, we will transmit the full application package and instructions to you.

Deadline for Transmittal of Full Applications: Only entities that submitted a top-rated pre-application as scored by the peer reviewers and as identified by the Department will be eligible to submit a full i3 application. The Department will announce on its Web site the deadline date for transmission of full applications.

Deadline for Intergovernmental Review: 60 calendar days after the deadline date for transmittal of full applications.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund, established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of this program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

These grants will (1) allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) support partnerships between eligible entities and the private sector and philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Under this program, the Department awards three types of grants: ''Scale-up'' grants, ''Validation'' grants, and ''Development'' grants. The three grant types differ in the evidence that an applicant is required to submit in support of its proposed project; the expectations for ''scaling up'' successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant is eligible to receive. This notice invites applications for Development grants. The Department anticipates publishing notices inviting applications for the other types of i3 grants (i.e., Validation and Scale-up grants) in the spring of 2012.

Development grants provide funding to support high-potential and relatively untested practices, strategies, or programs whose efficacy should be

systematically studied. An applicant must provide evidence that the proposed practice, strategy, or program, or one similar to it, has been attempted previously, albeit on a limited scale or in a limited setting, and yielded promising results that suggest that more formal and systematic study is warranted. An applicant must provide a rationale for the proposed practice, strategy, or program that is based on research findings or reasonable hypotheses, including related research or theories in education and other sectors. These requirements mean that applications for Development grants do not require the same level of evidence to support the proposed project as is required for Validation or Scale-up grants.

As it did in the FY 2011 i3 Development competition, the Department is including in the FY 2012 i3 Development competition competitive preference priorities that focus on technology and productivity. With the technology priority, the Department indicates its continuing interest in Development projects that have the potential to dramatically improve student achievement by taking full advantage of advances in diverse fields such as the learning sciences (*e.g.,* cognitive science, educational psychology), computer science, and personal technology. These advances offer real promise for affordable, personalized education, the benefits of which have been acknowledged for decades, notably in Benjamin Bloom's 1984 article ''The 2 Sigma Problem: The Search for Methods of Group Instruction as Effective as One-to-One Tutoring.''

More recently, the Department's *National Education Technology Plan* 2010 [1] highlighted the potential of ''connected teaching'' that makes it possible to extend the reach of the most effective teachers by using online tools. The *National Education Technology Plan* 2010 also highlighted the need for high-quality learning resources that can reach learners wherever and whenever they are needed. Similarly, the 2010 report of the President's Council of Advisors on Science and Technology, *Prepare and Inspire*,[2] called for ''deeply digital'' materials that combine simulations, probes, multimedia, and other digital resources in coherent ways; instructional platforms that provide customized paths for different learners, including integrated assessments and continuous feedback; and tools that help teachers grade work, solicit student feedback, and create lesson plans.

With respect to the productivity priority, because districts and schools remain under financial pressure, the Department is also particularly interested in approaches that achieve the same or better outcomes while substantially reducing costs. For this reason, we will again give priority to applications for projects designed to increase productivity.

We also remind LEAs of the continuing applicability of the provisions of the Individuals with Disabilities Education Act (IDEA) for students who may be served under i3 grants. Programs proposed in applications in which LEAs participate must be consistent with the rights, protections, and processes of IDEA for students who are receiving special education and related services or are being evaluated for such services.

As described later in this notice, in connection with making competitive grant awards, an applicant is required, as a condition of receiving assistance under this program, to make civil rights assurances, including an assurance that its program or activity will comply with Section 504 of the Rehabilitation Act of 1973 and the Department's section 504 implementing regulations, which prohibit discrimination on the basis of disability. Regardless of whether students with disabilities are specifically targeted as ''high-need'' students under a particular application for a grant program, recipients are required to comply with the nondiscrimination requirements of these laws. Among other things, the nondiscrimination requirements of these laws include an obligation that recipients ensure that students with disabilities are not discriminated against because benefits provided to all students under the recipient's program are inaccessible to students because of their disability. The Department also enforces Title II of the Americans with Disabilities Act and Title II implementing regulations, which prohibit discrimination on the basis of disability by public entities, with respect to certain public educational entities.

Changes for the FY 2012 i3 Development Competition: The Department has made several changes to the FY 2012 i3 Development competition that prospective applicants should note.

First, as previously described, the FY 2012 i3 Development competition will use a pre-application process. In the past, the i3 competition has received many more applications than it can fund, particularly in the Development category. Under the pre-application process, peer reviewers will read and score the shorter pre-application against an abbreviated set of selection criteria, and only the entities that submit the highest-scoring pre-applications will be invited to submit full applications. These entities will be given more time to complete their submission. The pre-application process thus requires fewer resources for applicants that are judged to be less competitive, while providing additional time for applicants that are judged to be more competitive to improve their proposal. We also anticipate that the shorter pre-application will simplify the application process for applicants from districts or other organizations with fewer resources.

An entity that is invited to submit a full application for a Development grant must include the following information in its full application: an estimate of the number of students to be served by the project; evidence of the applicant's ability to implement and appropriately evaluate the proposed project; and information about its capacity (i.e., qualified personnel, financial resources, management capacity) to further develop and bring the project to a larger scale directly or through partners, either during or following the grant period, if positive results are obtained. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs. However, all applicants can and should partner with others to disseminate and take to scale their effective practices, strategies, and programs.

The Department will screen pre- and full applications that are submitted for Development grants in accordance with the requirements in this notice, and it will determine which applications have met the eligibility and other requirements in the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071) (2010 i3 NFP). Peer reviewers will review all pre- and full applications for Development grants that are submitted by the established deadlines.

Applicants should note, however, that the Department may screen for eligibility at multiple points during the competition process, including before and after peer review, and applicants that are determined ineligible will not receive a grant regardless of peer reviewer scores or comments. If the Department determines that a full application for a Development grant is not supported by a reasonable

[1] *http://www.ed.gov/technology/netp-2010.*

[2] *http://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast-stemed-execsum.pdf.*

hypothesis for the proposed project, does not demonstrate the required prior record of improvement, or does not meet any other eligibility requirement, the Department will not consider the application for funding.

Second, the Development competition in FY 2012 includes an absolute priority focused on Parent and Family Engagement. The Department has added this absolute priority because of the critical role that parents and families play in increasing student achievement and supporting school improvement. As various States and districts implement new, more demanding academic content standards, parents' and families' understanding of those standards and the related assessments will be instrumental in helping children improve their academic performance. Therefore, there is a nationwide need for new practices, strategies, and models for building parents', families', and guardians' awareness of their role in improving their children's educational outcomes. There is also a nationwide need for enhancing parents', families', and guardians' knowledge, skills, and abilities to support student learning and school improvement. There is a corresponding need for school staff to support and cultivate environments welcoming to parents and to build relationships that increase parents', families', and guardians' capacity to support their children's educational needs. As with all i3 projects, prospective applicants choosing to address the Parent and Family Engagement priority should keep in mind the importance that i3 places on rigorous evaluation of how the activities that comprise a project, in this case increased parent and family engagement, lead to increased student achievement and school improvement.

Third, the absolute priority focused on teacher and principal effectiveness (Absolute Priority 1) now uses the language from the *Improving Effectiveness and Distribution of Effective Teachers or Principals* priority established in the May 12, 2011, **Federal Register** notice of final supplemental priorities and definitions for discretionary grant programs. The language in this supplemental priority offers greater flexibility for projects to improve teacher and principal effectiveness through targeted strategies that address components of the teacher and principal pipeline, rather than its entirety, as required by the *Innovations that Support Effective Teachers and Principals* priority in the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071) (2010 i3 NFP).

Fourth, the Department notes that the removal of an absolute priority focused on the implementation of high academic content standards and high-quality assessments does not indicate that projects with such a focus are not of interest. Many such projects may be responsive to other absolute priorities, and the Department continues to be interested in these projects. For example, strategies that help increase teacher effectiveness or that support increased parental or family engagement with student learning can and should align to the State's academic content standards and their associated assessments.

Priorities: This competition includes five absolute priorities and five competitive preference priorities. These priorities are from the 2010 i3 NFP [3] and from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637) (Supplemental Priorities).

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities.

Under this competition for Development grants, each of the five absolute priorities constitutes its own funding category. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted.

An applicant for a Development grant must choose one of the five absolute priorities contained in this notice and address that priority in its pre-application. Both pre-applications and full applications will be peer reviewed and scored; scores will be rank ordered by absolute priority, so an applicant must identify clearly the single absolute priority on which its proposed project focuses.

These absolute priorities are:

Absolute Priority 1—Improving the Effectiveness and Distribution of Effective Teachers or Principals

Projects that are designed to address one or more of the following priority areas:

(a) Increasing the number or percentage of teachers or principals who are effective or reducing the number or percentage of teachers or principals who are ineffective, particularly in high-poverty schools (as defined in this notice) including through such activities as improving the preparation, recruitment, development, and evaluation of teachers and principals; implementing performance-based certification and retention systems; and reforming compensation and advancement systems.

(b) Increasing the retention, particularly in high-poverty schools (as defined in this notice), and equitable distribution of teachers or principals who are effective.

For the purposes of this priority, teacher and principal effectiveness should be measured using:

(1) Teacher or principal evaluation data, in States or local educational agencies that have in place a high-quality teacher or principal evaluation system that takes into account student growth (as defined in this notice) in significant part and uses multiple measures, that, in the case of teachers, may include observations for determining teacher effectiveness (such as systems that meet the criteria for evaluation systems under the Race to the Top program as described in criterion (D)(2)(ii) of the Race to the Top notice inviting applications (74 FR 59803)); or

(2) Data that include, in significant part, student achievement (as defined in this notice) or student growth data (as defined in this notice) and may include multiple measures in States or local educational agencies that do not have the teacher or principal evaluation systems described in paragraph (1). (Supplemental Priorities) [4]

[3] The 2011 notice of final i3 revisions, which was published in the **Federal Register** on June 3, 2011 (76 FR 32073), provides the Secretary with the flexibility to choose one or more of the priorities established in the 2010 i3 NFP for use in any i3 competition.

[4] For purposes of this priority, the Supplemental Priorities define ''student achievement'' and ''student growth'' as follows:

''Student achievement'' means—a) For tested grades and subjects: (1) a student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: Alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Continued

Absolute Priority 2—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education

Under this priority, the Department provides funding to support projects that are designed to address one or more of the following areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM.

(c) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

(d) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are provided with access to rigorous and engaging coursework in STEM or who are prepared for postsecondary or graduate study and careers in STEM.

(e) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers or educators of STEM subjects and have increased opportunities for high-quality preparation or professional development. (Supplemental Priorities)

Absolute Priority 3—Improving School Engagement, School Environment, and School Safety and Improving Family and Community Engagement

Under this priority, the Department provides funding to support projects that are designed to improve student outcomes by improving parent and family engagement (as defined in this notice). (Supplemental Priorities)

Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to turn around schools that are in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program);[5] (b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA; or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools[6] are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Proposed projects must include strategies, practices, or programs that are designed to turn around Investing in Innovation Fund Absolute Priority 4 schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program (see Final Requirements for School Improvement Grants as Amended in January 2010 (January 28, 2010) at *http://www2.ed.gov/programs/sif/faq.html*); or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding or augmenting the school day, school week, or school year, or by increasing instructional time for core academic subjects (as defined in section 9101(11) of the ESEA); (2) integrating ''student supports'' into the school model to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (e.g., by operating schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for support and flexibility pertaining to when they attend school; awarding credit based on demonstrated evidence of student competency; and offering dual-enrollment options). (2010 i3 NFP)

Absolute Priority 5—Improving Achievement and High School Graduation Rates (Rural Local Educational Agencies)

Under this priority, the Department provides funding to support projects that are designed to address accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice). (Supplemental Priorities)

Note: Absolute Priority 5 aims to support projects that address the unique challenges of serving high-need students in rural LEAs (as defined in this notice). Based on the overall i3 program requirement, set out in Section III.1 of this Notice, and as with all i3 projects, applicants choosing to address this priority must specify how they will serve high-need students. In addition, applicants that choose to respond to Absolute Priority 5 may want to consider identifying in both the pre-application and full application all rural LEAs where the project will be implemented, or explain how the applicant will choose the rural LEAs where the project will be implemented. In full applications, applicants should also identify these rural LEAs on the i3 Applicant Information Sheet and provide information on the applicant's experience and skills, or the experience and skills of their partners, in serving high-need students in rural LEAs in responding to *Selection Criterion C. Quality of the Management Plan and Personnel.*

Competitive Preference Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive preference priority points will only be awarded in the review of full applications, not in the review of pre-applications. However, applicants may discuss the competitive priorities that are relevant to their projects in their pre-applications.

Applicants may address more than one of the competitive preference priorities; however, the Department will review and award points only for a maximum of two of the competitive preference priorities in the review of the full applications. Therefore, an entity that is invited to submit a full application must identify in the project narrative section of its full application the priority or priorities it wishes the

''Student growth'' means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State may also include other measures that are rigorous and comparable across classrooms.

Note that the definitions in this footnote apply only to Absolute Priority 1. Elsewhere in this notice the use of these term refers to the i3 definitions established in the 2010 i3 NFP that are provided in the *Definitions* section of this notice.

[5] Under the final requirements for the School Improvement Grants program, ''persistently lowest-achieving schools'' means, as determined by the State, (a) any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (b) any secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. *See http://www2.ed.gov/programs/sif/faq.html.*

[6] In this context, ''these schools'' refers to the schools described in (a) through (c)in this paragraph.

Department to consider for purposes of earning competitive preference priority points.

Note: The Department will not review or award points under any competitive preference priority for a full application that (1) fails to clearly identify the competitive preference priority or priorities the applicant wishes the Department to consider for purposes of earning competitive preference priority points, or (2) identifies more than two competitive preference priorities the applicant wishes the Department to consider for purposes of earning competitive preference priority points. An entity that is invited to submit a full application may identify and address a maximum of two competitive preference priorities in the full application that it wishes the Department to consider for purposes of earning competitive preference priority points, regardless of whether that entity identified or addressed any competitive preference priorities in its pre-application.

These competitive preference priorities are:

Competitive Preference Priority 6—Innovations for Improving Early Learning Outcomes (zero or one point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. To meet this priority, applications must focus on (a) improving young children's school readiness (including social, emotional, and cognitive readiness) so that children are prepared for success in core academic subjects (as defined in section 9101(11) of the ESEA); (b) improving developmental milestones and standards and aligning them with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade. (2010 i3 NFP)

Competitive Preference Priority 7—Innovations That Support College Access and Success (zero or one point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to enable kindergarten through grade 12 (K–12) students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. To meet this priority, applications must include practices, strategies, or programs for K–12 students that (a) address students' preparedness and expectations related to college; (b) help students understand issues of college affordability and the financial aid and college application processes; and (c) provide support to students from peers and knowledgeable adults. (2010 i3 NFP)

Competitive Preference Priority 8—Innovations to Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students (zero or one point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to address the unique learning needs of students with disabilities, including those who are assessed based on alternate academic achievement standards, or the linguistic and academic needs of limited English proficient students. To meet this priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students. (2010 i3 NFP)

Competitive Preference Priority 9—Improving Productivity (zero or one point)

We give competitive preference to applications for projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies. (Supplemental Priorities)

Competitive Preference Priority 10—Technology (zero or one point)

We give competitive preference to applications for projects that are designed to improve student achievement[7] or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials. (Supplemental Priorities)

Definitions:

These definitions are from the 2010 i3 NFP and the Supplemental Priorities. We may apply these definitions in any year in which this program is in effect.

Note: This notice invites applications for Development grants. The following definitions apply to the three types of grants under the i3 program (Scale-up, Validation, or Development). Therefore, some of the definitions included in this section, primarily those related to demonstrations of evidence, may be more applicable to applications for Scale-up and Validation grants.

Definitions Related to Evidence From the 2010 i3 NFP

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (e.g., the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (e.g., the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for

[7] For purposes of this priority, the Supplemental Priorities define student achievement as follows:

''Student achievement'' means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools; and

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Note that this definition for student achievement applies only to Absolute Priority 1 and Competitive Preference Priority 10. Elsewhere in this notice the use of this term refers to the i3 definition established in the 2010 i3 NFP that is provided in the *Definitions* section of this notice.

example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

Interrupted time series design[8] means a type of quasi-experimental study in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an ''interruption'' of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity) but have limited generalizability (i.e., moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (i.e., minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score (''cut score'') to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (i.e., studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of ''Reasons for Not Meeting Standards'' at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons*).

Other Definitions From the 2010 i3 NFP

Applicant means the entity that applies for a grant under this program on behalf of an eligible applicant (i.e., an LEA or a partnership in accordance with section 14007(a)(1)(B) of the ARRA).

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an i3 grant jointly with an eligible nonprofit organization.

Formative assessment means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Interim assessment means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (e.g., by course, grade level, school, or LEA) in order to inform

[8] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

teachers and administrators at the student, classroom, school, and LEA levels.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (i.e., economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender).

Nonprofit organization means an entity that meets the definition of ''nonprofit'' under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Official partner means any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA.

Other partner means any entity, other than the applicant and any official partner, that may be involved in a proposed project.

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (i.e., economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender). To be considered a regional-level project, a project must serve students in more than one LEA. The exception to this requirement would be a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Such a State would meet the definition of regional for the purposes of this notice.

Regular high school diploma means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: Alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Student growth means the change in student achievement data for an individual student between two or more points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

Definitions From Supplemental Priorities

High-poverty school means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Parent and family engagement means the systematic inclusion of parents and families, working in partnership with local educational agencies and school staff, in their child's education, which may include strengthening the ability of (a) Parents and families to support their child's education and (b) school staff to work with parents and families.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

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

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071). (c) The notice of final revisions to priorities, requirements, and selection criteria for this program, published in the **Federal Register** on June 3, 2011 (76 FR 32073) (2011 Notice of Final i3 Revisions). (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements or discretionary grants.

Estimated Available Funds: $140,452,000.

These estimated available funds are the total available for all three types of grants under the i3 program (Scale-up, Validation, and Development).

Contingent upon the availability of funds and the quality of the applications received, we may make additional awards in FY 2013 or later years from the list of unfunded applicants from this competition.

Estimated Range of Awards:
Scale-up grants: Up to $25,000,000.
Validation grants: Up to $15,000,000.
Development grants: Up to $3,000,000.

Estimated Average Size of Awards:
Scale-up grants: $24,000,000.
Validation grants: $14,500,000.
Development grants: $3,000,000.

Estimated Number of Awards:
Scale-up grants: 0–2 awards.
Validation grants: 1–5 awards.
Development grants: 10–20 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information

1. *Providing Innovations that Improve Achievement for High-Need Students:* All eligible applicants must implement practices, strategies, or programs for high-need students (as defined in this notice). (2010 i3 NFP)

2. *Eligible Applicants:* Entities eligible to apply for i3 grants include: (a) An LEA or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. An eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129. (2010 i3 NFP)

3. *Eligibility Requirements:* Except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows, to be eligible for an award, an eligible applicant must—

(1)(A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(B) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(2) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(3) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(4) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them as either official or other partners. An applicant must identify its specific partners before a grant award will be made. (2010 i3 NFP)

Note: An entity submitting a full application should provide, in Appendix C, under ''Other Attachments Form,'' of its full application, information addressing the eligibility requirements described in this section. An applicant must provide, in the full application, sufficient supporting data or other information to allow the Department to determine whether the applicant has met the eligibility requirements. If the Department determines that an applicant has provided insufficient information in its full application, the applicant will not have an opportunity to provide additional information.

Note: Instructions for the pre-application will be available on the i3 Web site. Entities invited to submit a full application will receive instructions about the full application package.

Note about LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico. (2010 i3 NFP)

Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization: The authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements in paragraphs (1) and (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its i3 grant an LEA or a consortium of schools that meets the requirements in paragraphs (1) and (2).

In addition, the authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraph (3) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement relating to private-sector matching. (2010 i3 NFP)

4. *Cost Sharing or Matching:* To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to at least 15 percent of its grant award.[9] Selected eligible applicants must submit evidence of the full amount of private-sector matching funds following the peer review of full applications. An award will not be made unless the applicant provides adequate evidence that the full amount of the private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

Note: An entity does not need to include a request for a reduction of the matching-level requirement in its pre-application. However, an applicant that does not provide a request for a reduction of the matching-level requirement in its full application may not submit that request at a later time.

5. *Other:* The Secretary establishes the following requirements for the i3 program. These requirements are from the 2010 i3 NFP. We may apply these requirements in any year in which this program is in effect.

• *Evidence Standards:* To be eligible for an award, an application for a Development grant must be supported by a reasonable hypothesis. (2010 i3 NFP)

Note: An entity invited to submit a full application should provide, in Appendix D, under ''Other Attachments Form,'' of its application, information addressing the required evidence standards. An applicant must either ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available; or, in the full application, include copies of evidence in Appendix D. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information to support its full application.

[9] The 2011 Notice of Final i3 Revisions modified the ''Cost Sharing and Matching'' requirement established in the 2010 i3 NFP by providing that the Secretary will specify the amount of required private-sector matching funds or in-kind donations in the notice inviting applications for the specific i3 competition. For this competition, the Secretary establishes a matching requirement of at least 15 percent of the grant award.

• *Funding Categories:* An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies. (2010 i3 NFP)

• *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners (as defined in this notice). (2010 i3 NFP)

• *Limits on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than $55 million in new grant awards under the i3 program in a single year. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

• *Evaluation:* A grantee must comply with the requirements of any evaluation of the program conducted by the Department. In addition, the grantee is required to conduct an independent evaluation (as defined in this notice) of its project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance will be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where such commonality is feasible and useful. Finally, the grantee must make broadly available through formal (e.g., peer-reviewed journals) or informal (e.g., newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements. (2010 i3 NFP)

• *Participation in ''Communities of Practice'':* Grantees are required to participate in, organize, or facilitate, as appropriate, communities of practice for the i3 program. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the i3 program will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects. (2010 i3 NFP)

IV. Application and Submission Information

1. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the i3 program, some applications may include proprietary information as it relates to confidential commercial information. Confidential commercial information is defined as information the disclosure of which could reasonably be expected to cause substantial competitive harm. Upon submission, applicants, in both pre-applications and full applications, should identify any information contained in their application that they consider to be confidential commercial information. Consistent with the process followed in the prior two i3 competitions, we plan on posting the project narrative section of funded Development applications on the Department's Web site. Identifying proprietary information in the submitted application will help facilitate this public disclosure process. Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in the appropriate Appendix section, under ''Other Attachments Form,'' of their applications. In addition to identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

2. *Address to Request Application Package:* You can obtain a pre-application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/innovation/index.html*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request a pre-application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411P.

Individuals with disabilities can obtain a copy of the pre-application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

Note: The full application package will be made available to entities invited to submit a full application and additional information will be available on the i3 Web site.

3. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Deadline for Notice of Intent to Submit Pre-Application: March 15, 2012.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit a pre-application by completing a web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address and (2) the one absolute priority the applicant intends to address. Applicants may access this form online at *http://go.usa.gov/Qvd*. Applicants that do not complete this form may still submit a pre-application.

Page Limit: For the pre-application, the project narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your pre-application. For the full application, the project narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your full applications.

Pre-Application page limit: Applicants should limit the pre-application narrative to no more than seven pages.

Full-Application page limit: Applicants invited to submit a full application should limit the application narrative [Part III] for a Development application to no more than 25 pages. Applicants are also strongly encouraged not to include lengthy appendices for the full application that contain information that could not be included in the narrative. Aside from the required forms, applicants should not include appendices in their pre-applications. Applicants for both pre- and full

applications should use the following standards:

• A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit for the full application does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support for the full application. However, the page limit does apply to all of the application narrative section [Part III] of the full application.

4. *Submission Dates and Times:*

Pre-Applications Available: February 27, 2012.

Deadline for Notice of Intent to Submit Pre-Application: March 15, 2012.

Informational Meetings: The i3 program intends to hold meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these meetings will be provided on the i3 Web site at *http://www2.ed.gov/programs/innovation/index.html*.

Deadline for Transmittal of Pre-Applications: April 9, 2012.

Deadline for Transmittal of Full Applications: The Department will announce on its Web site the deadline date for transmission of full applications. Under the pre-application process, peer reviewers will read and score the shorter pre-application against an abbreviated set of selection criteria, and only the entities that submit the highest-scoring pre-applications will be invited to submit full applications.

Pre- and full applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 8. *Other Submission Requirements* of this notice.

We do not consider a pre-application or full application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the pre-application or full application process, the individual's pre-application or full application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review of Full Applications: 60 calendar days after the deadline date for transmittal of full applications.

5. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

8. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications (both pre- and full applications) for grants under the i3 program, pre application CFDA 84.411P and full application CFDA number 84.411C (Development grants), must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant applications for i3 at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.411, not 84.411C).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carol Lyons, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W203, Washington, DC 20202–5930. FAX: (202) 205–5631.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411C), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service. If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411C), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* This competition has separate selection criteria for pre-applications and full applications. The selection criteria for the Development competition are from the 2010 i3 NFP and from 34 CFR 75.210.[10] The points assigned to each criterion are indicated in the parenthesis next to the criterion. An applicant may earn up to a total of 20 points based on the selection criteria for the pre-application. An applicant may earn up to a total of 100 selection criteria points and up to a total of two competitive preference points for the full application.

Note: In responding to the selection criteria, applicants, for pre- and full applications, should keep in mind that peer reviewers may consider only the information provided in the written application when scoring and commenting on the application. Therefore, applicants should draft their responses with the goal of helping peer reviewers understand:

- What the applicant is proposing to do, including the *single* Absolute Priority under which the applicant intends the application to be reviewed;
- How the proposed project will improve upon existing products, processes, or strategies for addressing similar needs;
- What the outcomes of the project will be if it is successful; and
- What the proposed project will cost and why the proposed project is an effective use of funds.

Selection Criteria for the Development Grant Pre-Application:

A. *Quality of Project Design (up to 10 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project. (2010 i3 NFP)

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (34 CFR 75.210)

Note: In responding to this criterion, the Secretary encourages the applicant to describe what the applicant proposes to do in the proposed project, how the applicant will do it, what the project costs are, and why those costs are sufficient and reasonable to achieve the goals, objectives, and outcomes.

B. *Significance (up to 10 points).*

The Secretary considers the significance of the project. In determining the significance of the project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (34 CFR 75.210)

(2) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (34 CFR 75.210)

Note: In responding to this criterion, the Secretary encourages applicants to address the likely impact of the proposed project if it is successful and how the project would move the field (as opposed to only the entities or individuals being served with grant funds) forward.

Selection Criteria for the Development Grant Full Application:

A. *Quality of the Project Design (up to 25 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project. (2010 i3 NFP)

(2) The eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 250,000, and 500,000 students. (2010 i3 NFP)

Note: The Secretary considers cost estimates both (a) to assess the reasonableness of the costs relative to the objectives, design, and potential significance for the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) to understand the possible costs for the eligible applicant or others (including other partners) to reach the scaling targets of 100,000, 250,000, and 500,000 students for Development grants. An eligible applicant is free to propose the number of students it will serve under its project, and is expected to reach that number of students by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the cost-effectiveness generally of proposed projects, particularly in cases where an initial investment may be required to support projects that operate at reduced cost in the future, whether

[10] The 2011 Notice of Final i3 Revisions establishes that the Secretary may use one or more of the selection criteria established in the 2010 i3 NFP, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209, or any combination of these when establishing selection criteria for each particular type of grant (Scale-up, Validation, and Development) in an i3 competition.

implemented by the eligible applicant or any other entity. Grantees are not required to reach these numbers during the grant period.

(3) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (34 CFR 75.210)

(4) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Development grant. (2010 i3 NFP)

Note: In responding to this criterion, the Secretary encourages the applicant to address what the applicant proposes to do for the proposed project, how the applicant will do it, what the project costs will be, why the project costs will be sufficient and reasonable to achieve the goals, objectives, and outcomes of the proposed project, and how the project costs would change if the project were scaled to serve a larger number of students (i.e., which of the costs are fixed regardless of how many students are served and which of the costs are variable and increase as more students are served). Additionally, an applicant may wish to address why the project costs are reasonable compared to what the project will accomplish, particularly in comparison to similar projects or alternative ways of achieving similar outcomes.

B. *Significance (up to 35 points).*

The Secretary considers the significance of the project. In determining the significance of the project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (34 CFR 75.210)

(2) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (34 CFR 75.210)

(3) The extent to which the eligible applicant demonstrates that, if funded, the proposed project likely will have a positive impact, as measured by the importance or magnitude of the effect, on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates. (2010 i3 NFP)

Note: In responding to this criterion, the Secretary encourages the applicant to explain what is exceptional about how the proposed project addresses the absolute priority under which the applicant is submitting its i3 application. Also, the Secretary encourages the applicant to explain how the proposed project fits into existing national and international theory, knowledge, or practice, and how it will move the field (as opposed to only the entities or individuals being served with grant funds) forward. Additionally, the Secretary encourages the applicant to quantify the impact if the proposed project is successful and why the applicant expects the proposed project to have the described impact (i.e., describe what existing evidence or theory supports that level of impact).

C. *Quality of the Management Plan and Personnel (up to 20 points).*

The Secretary considers the quality of the management plan and personnel for the proposed project. In determining the quality of the management plan and personnel for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as tasks related to the sustainability and scalability of the proposed project. (2010 i3 NFP)

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing projects of the size and scope of the proposed project. (34 CFR 75.210)

Note: In responding to this criterion, the Secretary encourages applicants to address how the team's prior experiences have prepared them for implementing the proposed project successfully.

D. *Quality of Project Evaluation (up to 20 points).*

The Secretary considers the quality of the project evaluation. In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes. (2010 i3 NFP)

(2) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project to facilitate further development, replication, or testing in other settings. (2010 i3 NFP)

(3) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively. (2010 i3 NFP)

Note: In responding to this criterion, the Secretary encourages applicants to describe the key evaluation questions and address how the proposed evaluation methodologies will allow the project to answer those questions. This may include whether the evaluation would produce information about the effectiveness of the proposed project with the specific student populations being served with grant funds. Further, the Secretary encourages applicants to identify what implementation and performance data the evaluation will generate and how the evaluation will provide data during the period to help indicate whether the project is on track to meet its goals. Finally, applicants should address whether the budget allocates sufficient resources to support the planned evaluation.

We encourage eligible applicants to review the following technical assistance resources on evaluation:

(1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

2. *Review and Selection Process:* In order to receive an i3 Development grant, an entity must submit a pre-application. The pre-application will be reviewed and scored by peer reviewers using two selection criteria established in this notice. Only entities that submitted top-rated pre-applications will be eligible to submit full applications. The Department will inform the entities that submitted pre-applications of their eligibility to submit full applications. Scores received on pre-applications will not carry over to the review of the full application.

As described earlier in this notice, before making awards, the Department will screen pre- and full applications submitted in accordance with the requirements in this notice and will determine which applications have met eligibility and other statutory requirements. This screening process may occur at various stages of the pre-application and full application processes and applicants that are determined ineligible will not receive a grant regardless of peer reviewer scores or comments.

The Department will use independent peer reviewers with various backgrounds and professions including pre-kindergarten–12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

Reviewers will read, prepare a written evaluation, and score the assigned pre-applications and full applications, using the respective selection criteria provided in this notice. For Development pre-applications, the

Department, depending on the number of submissions, may use a multi-tiered review process. For full applications submitted for Development grants, peer reviewers will review and score the applications based on all four selection criteria. If eligible applicants have chosen to address competitive preference priorities (a maximum of two) for purposes of earning competitive preference priority points, reviewers will review and score those competitive preference priorities as part of the peer review of the full applications. If competitive preference priority points are awarded, those points will be added to the eligible applicant's full application score.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your full application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your pre-application is not evaluated, or following the submission of your pre-application you are not invited to submit a full application, we notify you. If your full application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The overall purpose of the i3 program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the i3 Development grants.

Short-term performance measures: (1) The percentage of grantees whose projects are being implemented with fidelity to the approved design; (2) the percentage of programs, practices, or strategies supported by a Development grant with ongoing evaluations that provide evidence of their promise for improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Development grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of programs, practices, or strategies supported by a Development grant with a completed evaluation that provides evidence of their promise for improving student outcomes; (2) the percentage of programs, practices, or strategies supported by a Development grant with a completed evaluation that provides information about the key elements and approach of the project so as to facilitate further development, replication, or testing in other settings; and (3) the cost per student for programs, practices, or strategies that were proven promising at improving educational outcomes for students.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carol Lyons, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W203, Washington, DC 20202–5930. FAX: (202) 205–5631. Telephone: (202) 453–7122 or by email: *i3@ed.gov.*

If you use a TDD or a TTY, call toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in

text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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

Dated: February 21, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–4357 Filed 2–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Native Hawaiian Education Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Native Hawaiian Education Program.

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.362A.

DATES: Applications Available: February 24, 2012.

Deadline for Transmittal of Applications: April 24, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Native Hawaiian Education (NHE) program is to support innovative projects that enhance the educational services provided to Native Hawaiian children and adults. These projects may include those activities authorized under section 7205(a)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Congress expressly authorized that FY 2012 program funds may be used to support the construction, renovation, or modernization of any elementary school, secondary school, or structure related to an elementary school or secondary school, that is run by the Department of Education of the State of Hawaii that serves a predominately Native Hawaiian student body.

Priorities: This competition includes six competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), competitive preference priorities one through four are from section 7205(a)(2) of the ESEA (20 U.S.C. 7515(a)(2)). Competitive preference priorities five and six are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Competitive Preference Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 12 points to an application, depending on how well the application meets one or more of these priorities.

These priorities are:

Competitive Preference Priority 1—*Needs of At-risk Children and Youth.* (Up to 2 points).

Projects that are designed to address the needs of at-risk children and youth.

Competitive Preference Priority 2—*Native Hawaiian Underemployment.* (Up to 2 points).

Projects that are designed to address needs in fields or disciplines in which Native Hawaiians are underemployed.

Competitive Preference Priority 3—*Hawaiian Language Instruction.* (Up to 2 points).

Projects that are designed to address the use of the Hawaiian language in instruction.

Competitive Preference Priority 4—*Beginning Reading and Literacy.* (Up to 2 points).

Projects that are designed to address beginning reading and literacy among students in kindergarten through third grade.

Competitive Preference Priority 5—*Improving Early Learning Outcomes.* (Up to 2 points).

Projects that are designed to improve school readiness and success for high-need children (as defined in this notice) from birth through third grade (or for any age group of high-need children within this range) through a focus on one or more of the following priority areas:

(a) Physical well-being and motor development.

(b) Social-emotional development.

(c) Language and literacy development.

(d) Cognition and general knowledge, including early numeracy and early scientific development.

(e) Approaches toward learning.

Competitive Preference Priority 6—*Improving Achievement and High School Graduation Rates.* (Up to 2 points).

Projects that are designed to address one or more of the following priority areas:

(a) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice).

(b) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students with disabilities.

(c) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for English learners.

(d) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for high-need students (as defined in this notice).

(e) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates in high-poverty schools (as defined in this notice).

(f) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for all students in an inclusive manner that ensures that the specific needs of high-need students (as defined in this notice) participating in the project are addressed.

Note: In order to receive additional points under a competitive preference priority, an application must provide adequate and sufficient information that clearly substantiates its claim that it meets the competitive priority.

Definitions: These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving,

respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

High-poverty school means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the ESEA, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

Rural local education agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web Site at *http://www2.ed.gov/nclb/freedom/local/reap.html*.

Program Authority: 20 U.S.C. 7515.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,784,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2013 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000 to $950,000.

Estimated Average Size of Awards: $425,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Native Hawaiian educational organizations; Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and consortia of the previously mentioned organizations, agencies, and institutions.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.362A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: February 24, 2012.

Deadline for Transmittal of Applications: April 24, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Under section 7205(b) of the ESEA, not more than five percent of funds provided to a grantee

under this competition for any fiscal year may be used for administrative purposes. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the NHE program, CFDA number 84.362A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload *and* submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the NHE program at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.362, not 84.362A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable .PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must

obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW., room 3E214, Washington, DC 20202–6200. Fax: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.362A),
LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.362A),
550 12th Street SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260 .

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the following paragraphs. The maximum score for all criteria is 100 points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Need for project (20 points).* The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project (10 points).

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses (10 points).

(b) *Quality of the project design (30 points).* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (10 points).

(ii) The extent to which the design of the proposed project reflects up-to-date

knowledge from research and effective practice (10 points).

(iii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (10 points).

(c) *Adequacy of resources (15 points).* The Secretary considers the adequacy of the resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits (5 points).

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project (5 points).

(iii) The extent to which the budget is adequate to support the proposed project (5 points).

(d) *Quality of the management plan (20 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (10 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (5 points).

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project (5 points).

(e) *Quality of the project evaluation (15 points).* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are appropriate to the context within which the project operates (5 points).

(ii) The extent to which the methods of evaluation will provide timely guidance for quality assurance (5 points).

(iii) The extent to which the methods of evaluations include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (5 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for the grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for this program: (1) The percentage of Native Hawaiian students in schools served by the program who meet or exceed proficiency standards in reading, mathematics, and science on the State assessments; (2) The percentage of Native Hawaiian children participating in early education programs who consistently demonstrate school readiness in literacy as measured by the Hawaii School Readiness Assessment; (3) The percentage of Native Hawaiian students in schools served by the program who graduate from high school with a regular high school diploma, as defined in 34 CFR 200.19(b)(1)(iv), in four years; and (4) The percentage of students participating in a Hawaiian language program conducted under the Native Hawaiian Education program who meet or exceed proficiency standards in reading on a test of the Hawaiian language.

All grantees will be expected to submit an annual performance report that includes data addressing these performance measures, to the extent that they apply to the grantee's project.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those

applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue SW., room 3E214, Washington, DC 20202–6200. Telephone: (202) 401–1265 or by email: *Joanne.Osborne@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disk) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in the text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 21, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–4359 Filed 2–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy, DOE.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 24, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Portfolio Analysis and Management System (PAMS) Information Collection Request (ICR) by email at *pams-icr-comments@science.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Marina Amoroso by email at *marina.amoroso@science.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* New.

(2) *Information Collection Request Title:* Portfolio Analysis and Management System (PAMS) Submissions for Letter of Intent (LOI), Preproposals, Interagency Proposals, and DOE National Laboratory Proposals; System Registration by External Users.

(3) *Type of Request:* New.

(4) *Purpose:* The Department of Energy (DOE), Office of Science (SC) has chosen to leverage the use of Government, Off-the-Shelf (GOTS) software capabilities to implement a new consolidated system called Portfolio Analysis and Management System (PAMS). This new system is based on the Health Resources and Services Administration (HRSA) Electronic Handbooks software. Discretionary financial assistance proposals continue to be collected using Grants.gov but are imported into PAMS for use by the program offices. Under the proposed information collection, an external interface will be implemented in PAMS to allow two other types of proposal submission: DOE National Laboratories will be able to submit proposals for technical work authorizations directly into PAMS, while other Federal Agencies will be able to submit Proposals for interagency awards directly into PAMS. External users from all institution types will be able to submit Solicitation Letters of Intent and Preproposals directly into PAMS. All applicants, whether they submitted through Grants.gov or PAMS, will be able to register with PAMS to view the proposals that were submitted. They will also be able to maintain a minimal amount of information in their personal profile.

A letter of intent is an optional vehicle that constitutes a potential applicant's intent to submit a formal proposal. Institutions may submit a letter of intent if it is requested in the solicitation. Users will select an institution from a drop down list, if registered to more than one institution.

A Preproposal is a vehicle that constitutes the expression of a potential applicant's desire to submit a formal proposal. Preproposals can be either required or requested but optional, according to the rules of a solicitation. A preproposal allows the potential applicant to receive a response from the cognizant program office regarding the suitability of the proposed research project.

Lab technical proposals must be completed by DOE National Laboratories in order to receive funding from the DOE Office of Science. The form must be completed as instructed in the Solicitation. This form can also be filled out by Inter Agency Institutions that have been invited by the DOE Office of Science to submit a proposal for funding through an interagency agreement. Neither lab nor interagency awards are discretionary grants suitable for proposal submission through Grants.gov.

(5) *Annual Estimated Number of Respondents:* 10,000 PAMS registrants, 8,000 submitters of lab proposals, interagency proposals, preproposals, and Letters Of Intent (LOI) (assuming one person per estimated submission). 2,000 viewers of proposals submitted through Grants.gov (assuming ⅔ of the annual 3,000 applicants, calculated using the average of the number of financial assistance proposals received in fiscal year 2006 through fiscal year 2010).

(6) *Annual Estimated Number of Total Responses:* The Office of Science receives about 1,000 DOE national

laboratory and interagency proposals per year, based on a five-year average of estimated submission numbers (fiscal year 2006 through fiscal year 2010) and about 7,000 preproposals and letters of intent per year, based on an estimate of about 200 per solicitation and the number of solicitations per year (about 35, based on a five-year average between fiscal year 2006 and fiscal year 2010).

(7) *Annual Estimated Number of Burden Hours:* The time it takes to complete a form depends upon the type of form being completed. External users will need to register with PAMS in order to access the system. It takes approximately 30 minutes for external users to complete the forms required to become a registered PAMS user. Both LOI and pre-proposal forms take 15 minutes each, whereas completing a lab/interagency proposal will take about 2 hours. Based on the annual estimated number of responses, broken down by DOE national laboratory, letter of intent and preproposal, and the time required for external users to register with PAMS, the estimated annual number of burden hours is 5,450.

1,000 (lab proposals) × 2 hours + 7,000 (preproposals and letters of intent) × .25 hours + 10,000 (estimated number of respondents) × .5 hours = *8,750 total burden hours.*

(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.

Issued in Washington, DC on February 15, 2012.

Marina Amoroso,

Deputy Project Manager for Business Policy and Operations, Department of Energy Office of Science, SC–45.

[FR Doc. 2012–4308 Filed 2–23–12; 8:45 am]

BILLING CODE 6450–01–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: EC12–73–000.
Applicants: Tucson Electric Power Company.
Description: Application for Approval Pursuant to Section 203 of the Federal Power Act and Request for Expedited Treatment by April 16, 2012 of Tucson Electric Power Company.
Filed Date: 2/16/12.
Accession Number: 20120216–5114.
Comments Due: 5 p.m. ET 3/8/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–32–000.
Applicants: USG Nevada LLC.
Description: USG Nevada LLC Notice of Exempt Wholesale Generator.
Filed Date: 2/16/12.
Accession Number: 20120216–5115.
Comments Due: 5 p.m. ET 3/8/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2074–001; ER10–2097–003.
Applicants: Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company.
Description: Supplemental Information of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company.
Filed Date: 10/28/11.
Accession Number: 20111028–5169.
Comments Due: 5 p.m. ET 3/8/12.

Docket Numbers: ER12–1101–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to ISO NE FAP Related to Expiration of Load Response Program to be effective 6/1/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5026.
Comments Due: 5 p.m. ET 3/8/12.

Docket Numbers: ER12–1103–000.
Applicants: Tucson Electric Power Company.
Description: Tucson Electric Power Company submits tariff filing per 35.13(a)(2)(iii: Second Amended and Restated Participation Agreement and 230kV Attachment Agreement to be effective 12/31/9998.
Filed Date: 2/16/12.
Accession Number: 20120216–5061.
Comments Due: 5 p.m. ET 3/8/12.

Docket Numbers: ER12–1104–000.
Applicants: Robbins Energy, LLC.
Description: Robbins Energy, LLC submits tariff filing per 35.13(a)(2)(iii: Amended Tariff Filing to be effective 2/3/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5064.
Comments Due: 5 p.m. ET 3/8/12.

Docket Numbers: ER12–1105–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Original Service Agreement No. 3203; Queue No. W3–079 to be effective 1/20/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5085.
Comments Due: 5 p.m. ET 3/8/12.

Docket Numbers: ER12–1106–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Original Service Agreement No. 3201; Queue No. W3–076 to be effective 1/20/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5094.
Comments Due: 5 p.m. ET 3/8/12.

Docket Numbers: ER12–1107–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Original Service Agreement No. 3202; Queue No. W3–077 to be effective 1/20/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5100.
Comments Due: 5 p.m. ET 3/8/12.

Docket Numbers: ER12–1108–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.15: Notice of Cancellation of Service Agreement 2641 in Docket No. ER10–3313–000 to be effective 1/16/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5103.
Comments Due: 5 p.m. ET 3/8/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–1–001.
Applicants: Northeast Utilities Service Company, The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company Request for Modification of Order Pursuant to Section 204 of the Federal Power Act Authorizing the Issuance and Sale of Short-term Debt Securities.
Filed Date: 2/15/12.
Accession Number: 20120215–5180.
Comments Due: 5 p.m. ET 3/7/12.

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 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4301 Filed 2–23–12; 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: ER11–4266–003.
Applicants: Richland-Stryker Generation LLC.
Description: Supplement to Notice of Non-Material Change in Status of Richland-Stryker Generation LLC.
Filed Date: 2/14/12.
Accession Number: 20120214–5058.
Comments Due: 5 p.m. ET 3/6/12.

Docket Numbers: ER12–397–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Response to Deficiency Letter of Midwest Independent Transmission System Operator, Inc.
Filed Date: 2/13/12.
Accession Number: 20120213–5201.
Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: ER12–919–001.
Applicants: Rockland Wind Farm LLC.
Description: Rockland Wind Farm LLC submits tariff filing per 35.17(b): Supplemental Information Filing to be effective 3/28/2012.
Filed Date: 2/15/12.
Accession Number: 20120215–5151.
Comments Due: 5 p.m. ET 3/7/12.

Docket Numbers: ER12–1098–000.
Applicants: South Carolina Electric & Gas Company.
Description: Re-file of New Horizon Assignment of NITSA and NOA to be effective 8/30/2010.
Filed Date: 2/15/12.
Accession Number: 20120215–5080.
Comments Due: 5 p.m. ET 3/7/12.

Docket Numbers: ER12–1099–000.
Applicants: Midwest Independent Transmission System Operator, Inc., Wolverine Power Supply Cooperative, Inc.
Description: Wolverine-Consumers-Tremaine IA to be effective 2/16/2012.
Filed Date: 2/15/12.
Accession Number: 20120215–5136.
Comments Due: 5 p.m. ET 3/7/12.

Docket Numbers: ER12–1100–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): PJM SA No. 3198 and First Revised SA No. 2642; Queue T157/W4–037 to be effective 1/16/2012.
Filed Date: 2/15/12.
Accession Number: 20120215–5146.
Comments Due: 5 p.m. ET 3/7/12.

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 16, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4303 Filed 2–23–12; 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: RP12–383–000
Applicants: Transcontinental Gas Pipe Line Company, LLC
Description: Transco Tariff Clean-up Filing to be effective 3/18/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5045
Comments Due: 5 p.m. ET 2/28/12

Docket Numbers: RP12–384–000
Applicants: Wyoming Interstate Company, L.L.C.
Description: WIC's Transportation Service Agreements Filing to be effective 3/19/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5130
Comments Due: 5 p.m. ET 2/28/12

Docket Numbers: RP12–385–000
Applicants: Bobcat Gas Storage
Description: Termination of Non-conforming Agreements to be effective 4/1/2012.
Filed Date: 2/17/12.
Accession Number: 20120217–5022
Comments Due: 5 p.m. ET 2/29/12

Docket Numbers: RP12–386–000
Applicants: Gulf South Pipeline Company, LP
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Amendment Negotiated Rate Agreement—Virginia Natural 34695–6 to be effective 1/6/2012.
Filed Date: 2/17/12.
Accession Number: 20120217–5031
Comments Due: 5 p.m. ET 2/29/12

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: RP12–250–000
Applicants: Kern River Gas Transmission Company
Description: Response of Kern River Gas Transmission to Order Requesting Additional Information.
Filed Date: 2/14/12.
Accession Number: 20120214–5056
Comments Due: 5 p.m. ET 2/23/12

Docket Numbers: RP11–1873–002
Applicants: Eastern Shore Natural Gas Company
Description: Creditworthiness Revision—Sheet No 147 to be effective 4/7/2011.
Filed Date: 2/16/12.
Accession Number: 20120216–5174
Comments Due: 5 p.m. ET 2/23/12

Docket Numbers: RP12–359–001
Applicants: CenterPoint Energy Gas Transmission Company, LLC
Description: CEGT LLT—February 2010 Negotiated Rate Filing Amended 2–16–20 to be effective 2/1/2012.
Filed Date: 2/16/12.
Accession Number: 20120216–5149
Comments Due: 5 p.m. ET 2/28/12

Docket Numbers: RP11–1524–001
Applicants: Total Peaking Services, L.L.C.
Description: Total Peaking Services, LLC—Compliance Filing in Docket No. RP11–1524 to be effective 11/1/2010.
Filed Date: 2/17/12.

Accession Number: 20120217–5028
Comments Due: 5 p.m. ET 2/29/12

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 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–4344 Filed 2–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–10–000]

Reactive Power Resources; Notice of Technical Conference

The Federal Energy Regulatory Commission (Commission) in a recent order on a California Independent System Operator Corporation (CAISO) tariff filing pertaining to interconnection requirements stated that the CAISO's filing in this docket highlights potential issues regarding the need for reactive power capability among newly interconnecting asynchronous generators and raises questions concerning the need and efficacy of continuing the process established for wind resources under Order No. 661–A.[1] The order directed that Staff commence a technical conference to examine whether the Commission should reconsider or modify the reactive power provisions of Order No. 661–A. The order stated that, as part of that technical conference, Staff should examine what evidence could be developed under Order No. 661 to support a request to apply reactive power requirements more broadly than to individual wind generators during the interconnection study process.[2]

Take notice that such conference will be held on April 17, 2012 at the Commission's headquarters at 888 First Street NE., Washington, DC 20426, beginning at 9 a.m. (Eastern Time) in the Commission Meeting Room. The technical conference will be led by Commission staff.

At the conference, discussion items will include: the technical and economic characteristics of different types of reactive power resources, including synchronous and asynchronous generation resources, transmission resources and energy storage resources; the design options for and cost of installing reactive power equipment at the time of interconnection as well as retrofitting a resource with reactive power equipment; other means by which reactive power is currently secured such as through self-supply; and how a technology that is capable of providing reactive power but may not be subject to the generation interconnection process (e.g., FACTs) would be analyzed. The staff is further interested in gathering information on methods used to determine the reactive power requirements for a transmission system and how system impact and system planning studies take into account changes in technologies connected to the system.

Those interested in speaking at the conference should notify the Commission by close of business March 9, 2012 by completing an online form identifying from the above listed topics those that they wish to address: *https://www.ferc.gov/whats-new/registration/reactive-power-4-17-12-speaker-form.asp.* Due to time constraints, we may not be able to accommodate all those interested in speaking. The Commission will issue a subsequent notice that will provide the detailed agenda, including panel speakers.

Advance registration is not required, but is encouraged. You may register at the following Web page: *https://www.ferc.gov/whats-new/registration/reactive-power-4-17-12-form.asp.*

The conference will be transcribed and available by webcast. Transcripts will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). A free webcast of the technical conference in this proceeding is also available. Anyone with Internet access interested in viewing this conference can do so by navigating to the FERC Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

For more information on this conference, please contact Mary Cain at *mary.cain@ferc.gov* or (202) 502–6337, or Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8004.

Dated: February 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4302 Filed 2–23–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,186, *order on reh'g,* Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005).

[2] *California Independent System Operator Corporation,* 137 FERC ¶ 61,143 (2011).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9001–7]

Environmental Impacts Statements; Notice of Availability

AGENCY: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed 02/13/2012 Through 02/17/2012.

Pursuant to 40 CFR 1506.9.

Notices

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 EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20120037, Final EIS, NPS, CA, Extension of F-Line Streetcar Service to Fort Mason Center Project, To Provide High-Quality Rail Transit that Improves Transportation Access and Mobility, Golden Gate National Recreation Area, San Francisco Maritime National Historical Park, CA, Review Period Ends: 03/26/2012, Contact: Steve Ortega 415–561–2841.

EIS No. 20120038, Final EIS, USFS, SD, Steamboat Project, Proposes to Implement Multiple Resource Management Actions, Northern Hills Ranger District, Black Hills National Forest, Lawrence, Meade and

Pennington Counties, SD, Review Period Ends: 03/26/2012, Contact: Chris Stores 605–642–4622.

EIS No. 20120039, Draft EIS, USFS, WA, South George Vegetation and Fuels Management Project, To Improve Forest Health and Resilience to Fire, Insects and Disease in Upland Forests, Pomerory Ranger District, Umatilla National Forest, Asotin and Garfield Counties, WA, Comment Period Ends: 04/09/2012, Contact: Dan Castillo 509–843–1891.

EIS No. 20120040, Final Supplement, FHWA, TN, Kirby Parkway Project, Construction from Macon Road to Walnut Grove Road, US Army COE Section 401 and 404 Permits, Shelby County, TN, Review Period Ends: 03/26/2012, Contact: Charles J. O'Neill 615–781–5770.

EIS No. 20120041, Final EIS, USFS, MO, Integrated Non-Native Plant Control Project, Proposes a Forest-Wide Integrated Management Strategy to Control the Spread of Non-Native Invasive Plant Species (NNIPS), Mark Twain National Forest in Portions of Barry, Bellinger, Boone, Butler, Callaway, Carter, Christian, Crawford, Dent, Douglas, Howell, Iron, Laclede, Madison, Oregon, Ozark, Phelps, Pulaski, Reynolds, Ripley, Shannon, Ste. Genevieve, St. Francois, Stone, Taney, Texas, Washington, Wayne, and Wright Counties, MO, Review Period Ends: 04/09/2012, Contact: Brian Davidson (573) 341–7414.

EIS No. 20120042, Final EIS, USFS, UT, South Unit Oil and Gas Development Project, Master Development Plan, Implementation, Duchesne/Roosevelt Ranger District, Ashley National Forest, Duchesne County, UT, Review Period Ends: 04/09/2012, Contact: David Herron 435–781–5218.

Amended Notices

EIS No. 20050514, Final EIS, NIH, ME, National Emerging Infectious Diseases Laboratories, Construction of National Biocontainment Laboratory, BioSquare Research Park, Boston University Medical Center Campus, Boston, MA, Review Period Ends: 05/01/2012, Contact: Kelly Fennington 301–496–9838.

In support of this Final EIS, NIH is publishing a Draft Supplementary Risk Assessment for the Boston University National Emerging Infectious Diseases Laboratories (NEIDL). Comments on the risk assessment are due to NIH on 05/01/2012; For more information, please visit *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/default.asp.*

Dated: February 21, 2012.

Aimee Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012–4331 Filed 2–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0003; FRL–9338–6]

SFIREG EQI Working Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG), Environmental Quality Issues (EQI) Working Committee will hold a 2-day meeting, beginning on April 23, 2012 and ending April 24, 2012. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, April 23, 2012 from 8:30 a.m. to 5:00 p.m., and 8:30 a.m. to 12 noon on Tuesday April 24, 2012.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA. One Potomac Yard (South Bldg.), 2777 Crystal Dr., Arlington VA. 1st Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5561; fax number: (703) 305–1850; email address: *kendall.ron@epa.gov.* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; telephone number (302) 422–8152; fax (302) 422–2435; email address: Grier Stayton at *aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in pesticide regulation issues affecting States and any discussion between EPA and SFIREG on FIFRA field implementation issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and those who sell, distribute or use pesticides, as well as any Non Government Organization.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2012–0003. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Tentative Agenda Topics

1. Bed bugs update, EPA response to letter to Steve Bradbury and discussion.
2. Endangered Species Act—Rozol ESA, EPA response to letter to Steve Bradbury
3. Imprelis update.
4. United States Geological Survey (USGS) Toxics Pesticide Program—case example.
5. Discussion of process for EPA revising product labels and how states can have input based on water quality and other environmental issues.
6. FIFRA Science Advisory Panel (SAP) and white paper ''Characterizing Effects of Pesticides and Other Chemical Stressors to Aquatic Organisms''.

7. United States Department of Agriculture (USDA) Monitoring Programs funding and overview.

8. Discussion on the detections of fluridone downstream from permitted aquatic applications in New Jersey.

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection.

Dated: February 15, 2012.

Jay S. Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2012–4333 Filed 2–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9637–5]

Assessment of Potential Large-Scale Mining on the Bristol Bay Watershed of Alaska: Nomination of Peer Reviewers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Call for nominations.

SUMMARY: EPA anticipates releasing a draft report for public comment and external peer review describing impacts associated with potential large-scale mining development in the Nushagak and Kvichak watersheds of Bristol Bay, Alaska. An external, independent panel of experts will be formed to review and provide comments on EPA's draft report. EPA invites the public to nominate qualified experts to be considered for this external peer review panel.

DATES: Nominations will be accepted starting February 24, 2012 and the nomination period will close on March 9, 2012.

ADDRESSES: Nominations of potential members of the Bristol Bay Assessment peer review panel are being accepted and evaluated by an independent EPA contractor. Nominations are being accepted online through an Internet Web site only. Those interested in submitting nominations should complete the online form found at *http://www.versar.com/epa/bristolbaynominationform.html.* Questions concerning the online form should be directed to the EPA contractor, Versar, Inc., at 6850 Versar Center, Springfield, VA 22151; by email *bcolon@versar.com* (subject line: Bristol Bay Assessment Nomination Form); or by phone: (703) 642–6727 (ask for Betzy Colon, the Peer Review Coordinator).

FOR FURTHER INFORMATION CONTACT: For additional information concerning the Bristol Bay Assessment peer review panel nominations, contact Dr. Kate Schofield, Office of Research and Development, The National Center for Environmental Assessment. Telephone: 703–347–8533; or email: *schofield.kate@epa.gov.*

SUPPLEMENTARY INFORMATION: Alaska's Bristol Bay watershed provides habitat for one of the largest wild salmon populations in the world. In February 2011, EPA began a scientific assessment of the Bristol Bay watershed to understand how large-scale mining activities might affect water quality and habitat. EPA will focus primarily on the Kvichak and Nushagak River drainages, the primary areas in the watershed open to large-scale development.

This assessment was launched in response to concerns from federally recognized tribes and others, who petitioned the agency to evaluate potential impacts of large-scale mining on aquatic resources. The assessment will evaluate the potential for large-scale mining development to have adverse effects on salmon and resident fish populations of the Kvichak and Nushagak River drainages, and if these effects are likely to affect wildlife and human populations in the region. Additional information describing the assessment, progress to date, and status can be found at: *www.epa.gov/region10/bristolbay.*

Expertise Sought: EPA is seeking nominations of experts to serve on the external peer review panel for the Bristol Bay Assessment. Nominees should possess, and demonstrate, background knowledge and experience in one or more of the following areas: (1) Metals (particularly porphyry copper) mining, (2) salmon fisheries biology, (3) surface, subsurface, or watershed hydrology, (4) aquatic ecology, (5) biogeochemistry, (6) seismology, (7) ecotoxicology, (8) wildlife ecology, and/or (9) indigenous Alaskan cultures.

Selection Criteria: Selection criteria for members of the external review panel include the following: (1) Demonstrated expertise through relevant peer reviewed publications; (2) professional accomplishments, and recognition by professional societies; (3) demonstrated ability to work constructively and effectively in a committee setting; (4) absence of financial conflicts of interest; (5) no actual conflicts of interest or the appearance of impartiality; (6) willingness to commit adequate time for the thorough review of the assessment report commencing in late April 2012; and (7) availability to participate in-person in a peer review panel meeting in Anchorage, Alaska during August 2012.

Nominee Information: Any interested person or organization may nominate qualified persons to be considered for appointment to the peer review panel. Self-nominations will also be accepted. Nominations should be submitted online using the following URL: *http://www.versar.com/epa/bristolbaynominationform.html.* The following information should be provided on the nomination form: contact information for the person making the nomination; contact information for the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; and a biographical sketch of the nominee indicating current position, educational background, past and current research activities, and recent service on other advisory committees or professional organizations. Persons having questions about the nomination procedures should contact the designated contact above.

Notification of nominees: EPA's contractor, Versar, Inc., will notify candidates of selection or non-selection. The Contractor may add additional experts to the list of nominees to develop a balanced panel representing the expertise needed to fully evaluate EPA's draft assessment report. After the peer review panel has been finalized, a list of panel members will be posted on the project Web site at *www.epa.gov/region10/bristolbay.* Compensation of non-federal peer review panel members will be provided by EPA's contractor.

Authority: Clean Water Act Section 404.

Dated: February 17, 2012.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012–4325 Filed 2–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0036; FRL–9636–4]

Proposed Approval of the Central Characterization Project's Remote-Handled Transuranic Waste Characterization Program at the Savannah River Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 45 days on, the proposed approval of the radioactive, remote-handled (RH), transuranic (TRU) waste characterization program implemented by the Central Characterization Project (CCP) at the Savannah River Site (SRS) in Aiken, South Carolina. This waste is intended for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico.

In accordance with the WIPP Compliance Criteria, EPA evaluated the characterization of RH TRU debris waste from SRS–CCP during an inspection on August 30–September 1, 2011, with a follow-up inspection on December 6–7, 2011, at SRS. Using the systems and processes developed as part of the U.S. Department of Energy's (DOE's) Carlsbad Field Office (CBFO) program, EPA verified whether DOE could adequately characterize RH TRU waste consistent with the Compliance Criteria. The results of EPA's evaluation of SRS–CCP's RH program and its proposed approval are described in the Agency's inspection report, which is available for review in the public dockets listed in **ADDRESSES**. EPA will consider public comments received on or before the due date mentioned in **DATES**.

This notice summarizes the waste characterization processes evaluated by EPA and EPA's proposed approval. As required by the 40 CFR 194.8, at the end of a 45-day comment period EPA will evaluate all relevant public comments and revise the inspection report as necessary. If appropriate, the Agency will then issue a final approval letter and inspection report.

DATES: Comments must be received on or before April 9, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0036, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* To *a-and-r-docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2012–0036. The Agency'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.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov.* As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Rajani Joglekar or Ed Feltcorn, Radiation Protection Division, Center for Waste Management and Regulation, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202–343–9601; fax number: 202–343–2305; email address: <*joglekar.rajani@epa.gov*> or <*feltcorn.ed@epa.gov*>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

DOE is developing the WIPP, near Carlsbad in southeastern New Mexico,

as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials that have atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

TRU waste is itself divided into two categories, based on its level of radioactivity. Contact-handled (CH) TRU waste accounts for about 97 percent of the volume of TRU waste currently destined for the WIPP. It is packaged in 55-gallon metal drums or in metal boxes and can be handled under controlled conditions without any shielding beyond the container itself. The maximum radiation dose at the surface of a CH TRU waste container is 200 millirems per hour. CH waste primarily emits alpha particles that are easily shielded by a sheet of paper or the outer layer of a person's skin.

Remote-handled (RH) TRU waste emits more radiation than CH TRU waste and must therefore be both handled and transported in shielded casks. Surface radiation levels of unshielded containers of remote-handled transuranic waste exceed 200 millirems per hour. RH waste primarily emits gamma radiation, which is very penetrating and requires concrete, lead or steel to block it.

On May 13, 1998, EPA issued a final certification of compliance for the WIPP facility. The final rule was published in the **Federal Register** on May 18, 1998 (63 FR 27354). The Agency officially recertified WIPP on November 18, 2010 (75 FR 70584). Both the certification and recertification determined that WIPP complies with the Agency's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C, and is therefore safe to contain TRU waste.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than Los Alamos National Laboratories (LANL) until EPA determines that the site has established and executed a quality assurance program, in accordance with 194.22(a)(2)(i), 194.24(c)(3) and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR part 194). The Agency's approval process for waste generator sites is described in 194.8 (revised July 2004).

Condition 3 of the WIPP Certification Decision requires EPA to conduct independent inspections at DOE's waste generator/storage sites of their TRU waste characterization capabilities before approving their program and the waste for disposal at the WIPP. The Agency's inspection and approval process gives EPA (a) discretion in establishing technical priorities, (b) the ability to accommodate variation in the site's waste characterization capabilities, and (c) flexibility in scheduling site waste characterization inspections.

As described in Section 194.8(b), EPA's baseline inspections evaluate each waste characterization process component (equipment, procedures and personnel training/experience) for its adequacy and appropriateness in characterizing TRU waste destined for disposal at WIPP. During an inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability to comply with the regulatory limits and tracking requirements under 194.24. A baseline inspection may describe any limitations on approved waste streams or waste characterization processes [194.8(b)(2)(iii)]. In addition, a baseline inspection approval must specify what subsequent waste characterization program changes or expansion should be reported to EPA [194.8(b)(4)]. The Agency is required to assign a Tier 1 (T1) or Tier 2 (T2) designation to the reportable changes depending on their potential impact on data quality. A T1 designation requires that the site notify EPA of proposed changes to the approved components of an individual waste characterization process (such as radioassay equipment or personnel), and that EPA approve the change before it is implemented. A waste characterization element with a T2 designation allows the site to implement changes to the approved components of individual waste characterization processes (such as visual examination procedures) but requires EPA notification. The Agency may choose to inspect the site to evaluate technical adequacy before approval. EPA inspections conducted to evaluate T1 or T2 changes are follow-up inspections under the authority of 194.24(h). In addition to the follow-up inspections, EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of 194.24(h).

The site inspection and approval process outlined in 194.8 requires EPA to issue a **Federal Register** notice proposing the baseline compliance decision, docket the inspection report for public review, and seek public comment on the proposed decision for a period of 45 days. The report must describe the waste characterization processes EPA inspected at the site, as well as their compliance with 194.24 requirements.

III. Proposed Baseline Compliance Decision

EPA has performed a baseline inspection of RH TRU waste characterization activities at SRS–CCP (EPA Inspection No. EPA–SRS–CCP–RH–08.11–8). The purpose of EPA's inspection was to verify that the waste characterization program implemented at SRS–CCP for characterizing RH TRU, retrievably-stored, debris waste is technically adequate and meets the regulatory requirements at 40 CFR 194.24.

The inspection took place from August 30–September 1, 2011, with a follow-up inspection on December 6–7, 2011, at SRS. The Agency's inspection team evaluated: The use of acceptable knowledge (AK); dose-to-curie (DTC) in conjunction with radionuclide-specific scaling factors derived in part by measurement with the In Situ Object Counting System (ISOCS) and historical assays of containers from the CH counterpart waste stream at SRS (SRW027–FB–Pre-86–C); and real-time radiography (RTR) to confirm the physical form and waste material parameters (WMP) of waste drums.

The inspection's scope included one RH TRU waste stream, SR–RH–FBL.01, consisting of debris waste from the FB–Line at SRS. This waste was generated by glovebox operations, decontamination, housekeeping, maintenance and construction activities conducted from 1975 through 1984. EPA proposes to approve the SRS–CCP waste characterization program implemented to characterize RH debris waste from Waste Stream SR–RH–FBL.01 that was evaluated during this baseline inspection and is documented in this report. The proposed approval includes the following:

(1) The AK process for RH TRU debris waste streams that have companion [1] CH debris waste streams.

[1] A companion CH waste stream has the same summary category group, same waste stream

Continued

(2) The radiological characterization of eight drums in Waste Stream SR–RH–FBL.01 using the ORTEC/ISOCS prior to the baseline inspection and historical assays of companion CH debris waste streams for assigning radionuclide values, according to the limitations discussed in Section 8.2 of the inspection report.

(3) The radiological characterization process using DTC and scaling factors generated through use of the Mobile Characterization Services (MCS)/ISOCS and historical assays of companion CH debris waste streams for assigning radionuclide values for RH waste, as documented in CCP–AK–SRS–581, Revision 1, supported by the calculation packages (or equivalent documentation), and subject to the limitations discussed in Section 8.2 of this report.

(4) The RTR process to identify WMPs and the physical form of RH TRU debris waste.

Once this approval is final, SRS–CCP's RH TRU waste characterization program will be able to characterize RH waste from Waste Stream SR–RH–FBL.01 in accordance with the conditions and restrictions discussed in the accompanying inspection report and summarized in Table 1 below. After EPA finalizes the SRS–CCP RH waste characterization program approval, additional debris waste stream(s) having a companion CH waste stream(s) may be disposed of at WIPP provided that an approved radiological scaling factor development process is used.

Further, the MCS/ISOCS use is limited to the generation of specific radionuclide ratios (scaling factors), i.e., the activity of plutonium (Pu) isotopes plutonium-239 (^{239}Pu), plutonium-240 (^{240}Pu) and plutonium-241 (^{241}Pu) to americium-241 (^{241}Am). Its use for direct quantification of any radionuclides including plutonium-238 is prohibited.

A Tier 1 change approval is necessary when:

- The radiological scaling factors development process used for characterizing RH debris waste differs from the process approved;
- An RH TRU debris waste stream characterized for WIPP disposal does not have a companion CH waste stream;
- An RH TRU non-debris waste stream from a summary category group solids (S3000) or soils and gravel (S4000) is characterized for WIPP disposal; and
- Using the ORTEC/ISOCS for RH debris waste characterization in the future.

Table 1 below (which is outlined in the inspection report) identifies the proposed tiering changes based on the baseline inspection elements.

TABLE 1—TIERING OF RH TRU WASTE CHARACTERIZATION PROCESSES IMPLEMENTED BY SRS–CCP

[Based on August 20–September 1, 2011, and December 6–7, 2011, Baseline Inspection]

RH waste characterization process elements	SRS–CCP RH waste characterization process—T1 changes	SRS–CCP RH waste characterization process—T2 changes *
Acceptable Knowledge	Any new RH S3000 or S4000 waste stream ..... Any new RH S5000 waste stream that *does not* have a companion CH waste stream. Substantive modification(s) ** to CCP–AK–SRS–580 or CCP–AK–SRS–582 that have the potential to affect the characterization process (AK2, AK6).	Any new RH S5000 waste stream that *does* have a companion CH waste stream. Notification to EPA: • Upon completion of revisions to CCP–AK–SRS–580, CCP–AK–SRS–582, CCP–TP–005, or nonconformance and corrective action procedures that require CBFO approval *** (AK2, AK5, AK6). • Upon completion of revisions to any CCP–TP–005 attachments, including when Attachment 4 is generated to reflect the updated AKSR Source Document Reference List (AK5, AK11). • When the final or revised WSPF, CIS, CRR and related attachments are available and upon completion of any subsequent revisions to these documents (AK10). • When AK accuracy reports are completed, prepared annually at a minimum (AK11). • When Add Container Memoranda have been prepared (AK5). • When additional discrepancy resolution reports and nonconformance reports have been prepared (AK4).
Radiological Characterization, including Dose-to-Curie.	Use of the MCS/ISOCS to provide any information other than the relative determinations of ^{239}Pu, ^{240}Pu and ^{241}Pu to ^{241}Am (RC2). Future use of the ORTEC/ISOCS for any RH TRU waste (RC2). Application of a new scaling factor processes for isotopic determination other than those documented in CCP–AK–SRS–581, Revision 1 (applies to new RH waste streams and to the addition of containers to an approved waste stream) (RC1, RC4, RC5). Substantive modification(s) ** to CCP–TP–504 or CCP–AK–SRS–581 that have the potential to affect the characterization process (RC4, RC5).	Any new RH waste stream characterized using an approved scaling factor process for isotopic determination. Notification to EPA upon completion of revisions to CCP–AK–SRS–581 or CCP–TP–504 that require CBFO approval *** (RC1, RC5). Notification to EPA when calculation package(s) CCP–SRS–44, or equivalent record(s), are available.

definition, and same radiological and physical properties as the subject RH waste stream. In this case, the only difference between containers in the companion CH waste stream and those in the subject RH waste stream is the waste's external dose rate; i.e., less than or greater than 200 millirem per hour (mrem/hr), which makes the waste CH or RH, respectively.

TABLE 1—TIERING OF RH TRU WASTE CHARACTERIZATION PROCESSES IMPLEMENTED BY SRS–CCP—Continued

[Based on August 20–September 1, 2011, and December 6–7, 2011, Baseline Inspection]

RH waste characterization process elements	SRS–CCP RH waste characterization process—T1 changes	SRS–CCP RH waste characterization process—T2 changes *
Real-Time Radiography	RTR by any new process	Notification to EPA upon completion of changes to RTR procedure(s) that require CBFO approval *** (RTR1). Addition of a new SCG to any approved RTR process (RTR2).

* SRS–CCP will report all T2 changes to EPA every three months.

** Substantive modification refers to a change with the potential to affect SRS–CCP's RH waste characterization process; e.g., the use of an inherently different type of measurement instrument or the use of probes not described in CCP–TP–504, excluding changes related solely to safety or to address administrative concerns.

*** Notification to EPA is not necessary when document updates are editorial in nature or are required solely to address administrative concerns.

IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed the report discussing the results of the Agency's inspection of the SRS–CCP Site in the public docket as described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the proposed approval decision, as described in the inspection report. EPA will accept public comment on this notice and supplemental information as described in Section 1 above. The Agency will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comments and revise the inspection report as necessary. If appropriate, the Agency will then issue a final approval letter and inspection report, both of which will be posted on the WIPP Web site.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in Albuquerque, Carlsbad, and Santa Fe, New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Jonathan D. Edwards,

Acting Director, Office of Radiation and Indoor Air.

[FR Doc. 2012–4318 Filed 2–23–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 12–25; DA 12–236]

Mobility Fund Phase I Auction Limited Extension of Deadlines for Comments and Reply Comments on Census Block Eligibility Challenges

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission's Wireless Telecommunications and Wireline Competition Bureaus extend the deadline for filing comments and reply comments on census block eligibility challenges in AU Docket No. 12–25. The comment and reply comment deadlines for all other issues in this proceeding remain unchanged.

DATES: Comments due on Census Block Eligibility Challenges (deadline extended): March 16, 2012. Reply Comments due on Census Block Eligibility Challenges (deadline extended): March 26, 2012. Comments due on all other issues (not changed): February 24, 2012 and Reply Comments due on all other issues (not changed): 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:* Lisa Stover at (717) 338–2868 or Sayuri Rajapakse at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Mobility Fund Phase I Auction Limited Extension of Comment Deadlines Public Notice* (Public Notice) released on February 16, 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 800–

378–3160, 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 12–236 for this Public Notice. 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/*.

1. The Wireless Telecommunications and Wireline Competition Bureaus (the Bureaus) extend the deadline for filing comments and reply comments on census block eligibility challenges. Interested parties should file comments challenging the Bureaus' determinations with respect to the potential eligibility of specific census blocks for Mobility Fund Phase I support by March 16, 2012. Reply comments on such challenges should be filed no later than March 26, 2012. With respect to all other issues in this proceeding, the comment and reply comment deadlines are unchanged and respectively remain February 24, 2012, and March 9, 2012.

2. On February 2, 2012, the Bureaus released the *Auction 901 Comment Public Notice,* 77 FR 7152, February 10, 2012, which seeks comment on auction procedures and certain related program requirements for Auction 901, a reverse auction to award $300 million in one-time Mobility Fund Phase I support, scheduled for September 27, 2012. Auction 901 will award Mobility Fund Phase I support to carriers that commit to provide 3G or better mobile voice and broadband services in census blocks where such services are unavailable.

3. As required by the Commission in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011 and 76 FR 81562, December 28, 2011, the Bureaus announced in the *Auction 901 Comment Public Notice* that they would use January 2012 American Roamer data to determine the availability of 3G or better service at the centroid of individual census blocks. Because the Bureaus had not concluded their analysis of the January 2012 American Roamer data, they provided a preliminary list of such blocks based on their analysis of earlier data. On February 10, 2012, the Bureaus released the updated list of census blocks potentially eligible for Mobility Fund Phase I support, based on January 2012 American Roamer data. The *Auction 901 Comment Public Notice* asked commenters to identify any census blocks that should be added or subtracted from the updated list of potentially eligible census blocks and provide supporting evidence for their assertions. The *Auction 901 Comment Public Notice* stated that the Bureaus would consider such challenges only in the form of comments to that Public Notice.

4. On February 13, 2012, the Commission received two motions requesting additional time for the review of the American Roamer data and the filing of census block eligibility challenges. The Bureaus found that a limited extension of time for the consideration of census block eligibility challenges will serve the public interest and will not prejudice any interested party given the issues involved in identifying potentially eligible census blocks and in light of the Bureaus recent release of an updated list of potentially eligible blocks based on January 2012 American Roamer data. The Bureaus therefore extended to March 16, 2012, the deadline for filing comments challenging the potential eligibility of particular census blocks for Mobility Fund Phase I Funding and the reply comment deadline to March 26, 2012.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2012–4361 Filed 2–23–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

February 21, 2012.

TIME AND DATE: 10 a.m., Thursday, March 1, 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. *Black Beauty Coal Co.,* Docket No. LAKE 2008–477. (Issues include whether the judge erred in concluding that adequate berms had not been provided and that the violations were ''significant and substantial'' and due to unwarrantable failures to comply.)

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 INFORMATION: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–4487 Filed 2–22–12; 4:15 pm]

BILLING CODE 6735–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Draft National Plan To Address Alzheimer's Disease

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

ACTION: Comment period.

SUMMARY: HHS is soliciting public input on the draft National Plan to Address Alzheimer's Disease, which is available at *http://aspe.hhs.gov/daltcp/napa/NatlPlan.shtml.*

DATES: Submit input by email or USPS mail before March 30, 2012.

ADDRESSES: You may submit your comments in one of two ways:

1. *Electronically.* You may submit electronic comments to *napa@hhs.gov*

2. *By mail.* You may mail written comments to:

Helen Lamont, Ph.D., Office of the Assistant Secretary for Planning and Evaluation, Room 424E Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Helen Lamont (202) 690–7996, *helen.lamont@hhs.gov.*

SUPPLEMENTARY INFORMATION: Inspection of all Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received on the following Web site as soon as possible after they have been received: *http://aspe.hhs.gov/daltcp/napa/#comments.*

Background

On January 4, 2011, President Barack Obama signed into law the National Alzheimer's Project Act (NAPA), requiring the Secretary of the U.S. Department of Health and Human Services (HHS) to establish the National Alzheimer's Project to:

• Create and maintain an integrated national plan to overcome Alzheimer's disease.

• Coordinate Alzheimer's disease research and services across all federal agencies.

• Accelerate the development of treatments that would prevent, halt, or reverse the course of Alzheimer's disease.

• Improve early diagnosis and coordination of care and treatment of Alzheimer's disease.

• Improve outcomes for ethnic and racial minority populations that are at higher risk for Alzheimer's disease.

• Coordinate with international bodies to fight Alzheimer's globally.

The law also establishes the Advisory Council on Alzheimer's Research, Care, and Services and requires the Secretary of HHS, in collaboration with the Advisory Council, to create and maintain a national plan to overcome Alzheimer's disease (AD).

On February 22, 2012, HHS released a draft National Plan to Address Alzheimer's Disease. The draft National Plan has five goals:

1. Prevent and Effectively Treat Alzheimer's Disease by 2025.
2. Optimize Care Quality and Efficiency.
3. Expand Supports for People with Alzheimer's Disease and Their Families.
4. Enhance Public Awareness and Engagement.
5. Track Progress and Drive Improvement.

The draft National Plan includes strategies to achieve each goal and specific actions that HHS or its federal partners will take to drive progress towards achieving the goal.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012–4278 Filed 2–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''System Redesign for Value in Safety Net Hospitals and Delivery Systems.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 24, 2012.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitzAAHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

System Redesign for Value in Safety Net Hospitals and Delivery Systems

This proposed project is a case study of 8 safety net (SN) hospitals. The goals of the project are to:

(1) Identify the tools and resources needed to facilitate system redesign in SN hospitals; and

(2) Identify any barriers to adoption of these in SN environments, or any gaps that exist in the available resources.

These goals are consistent with The National Strategy for Quality Improvement in Health Care, published by the U.S. Department of Health and Human Services in March 2011, which articulated a need for progress toward three goals: (1) Better Care; (2) Healthy People/Healthy Communities; and (3) Affordable Care. SN hospitals and systems are critical to achieving all three. SN hospitals are hospitals and health systems which provide a significant portion of their services to vulnerable, uninsured and Medicare patients. While all hospitals face challenges in improving both quality and operating efficiency, safety net (SN) hospitals face even greater challenges due to growing demand for their services and decreasing funding opportunities.

Despite these challenging environmental factors, some SN hospitals and health systems have achieved financial stability and implemented broad-ranging efforts to improve the quality of care they deliver. However, while there have been successful quality improvement initiatives for SN providers, most initiatives aim at specific units within large organizations. The improvements introduced into these units have not often been spread throughout the organization. Additionally, these improvements often are hard to sustain. ''System redesign'' refers to aligned and synergistic quality improvement efforts across a hospital or health system leading to multidimensional changes in the management or delivery of care or strategic alignment of system changes with an organization's business strategy. System redesign, if done successfully, will allow SN providers to improve their operations, remain afloat financially, and provide better quality healthcare to vulnerable and underserved populations. Resources, as defined here, may include learning materials and environments developed to support, advance, and facilitate quality improvement efforts (e.g., tools, guides, webinars, learning collaboratives, training programs). The term ''resources'' should not be interpreted here to imply financial support for routine staffing or operations of Safety Net systems, but may include quality improvement grants, fellowships, collaboratives and trainings.

Many tools, guides, and other learning environments have been developed to support the implementation of individual quality improvement initiatives.

However, the development of resources to support alignment across multiple domains of a health system has been limited. Furthermore, the applicability of existing resources to SN environments is unknown.

This study is being conducted by AHRQ through its contractor, Boston University, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following activities and data collections will be implemented:

(1) In-person interviews will be conducted during a 2-day site visit with senior medical center leaders, clinical managers and staff involved in system redesign from each of the 8 participating SN hospitals. These interviews may be conducted one-on-one or in small groups, depending upon the participants' availability. The purpose

of these interviews is to learn directly from hospital leadership and staff about the resources they have used to support and guide their system redesign efforts and what, if any, gaps there are in the resources available to them.

(2) Collection of documentation from each SN hospital. The documentation to be collected includes annual reports, performance dashboards, reports on specific system redesign and quality improvement projects and hospital newsletters. The purpose of this task is to provide supplementary information about the hospitals and their quality improvement and system redesign efforts. Collection of documentation from participating hospitals will allow the research team to collect additional information that is readily available in hospital documents, but may not be known or readily accessible to interview subjects during their interviews.

The findings and recommendations developed from this project will be disseminated through AHRQ networks and through our partnership with the National Association of Public Hospitals and its membership group to ensure that findings are reaching administrators at public and SN hospitals directly. In addition, findings will be published in peer-reviewed and trade literatures so that they will be available to a wide range of SN delivery system managers and clinicians for use in hospitals and healthcare systems. Findings will be presented as illustrative of the issues facing SN hospitals engaging in system redesign—rather than as representing the quantity or distribution of conditions and practices within SN hospitals. All presentations and publications will state the limitations of our case-study methodology.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this data collection. In-person interviews will be conducted with a total of 160 hospital staff members (20 from each of the 8 participating SN hospitals) and will last about 1 hour. The collection of documentation will require 2 hours work from 1 staff member at each hospital. The total burden is estimated to be 176 hours.

EXHIBIT 1—ANNUALIZED BURDEN HOURS

Data Collection	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
In-person interviews	160	1	1	160
Collection of documentation	8	1	2	16
Total	168	n/a	n/a	176

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to provide the requested data. The total cost burden is estimated to be $9,242 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED BURDEN COST

Data Collection	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
In-person interviews	160	160	$56.23	$8,997
Collection of documentation	8	16	$15.30	$245
Total	168	176	na	$9,242

* The hourly rate of 56.23 is an average of the clinical personnel hourly wage of $91.10 for physicians and $32.56 for registered nurses, and the administrative personnel hourly wage of $45.03 for medical and health services managers. The hourly rate of $15.30 is median hourly rate for medical administrative support staff. All hourly rates are based on median salary data provided by the U.S. Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the government for this 3 year project. The total cost is $499,877 and includes the cost of data collection, data analysis, reporting, and government oversight of the contract. The costs associated with data collection activities are not all for the primary data collection of the case studies but include the review of existing literature and other available data sources.

TABLE 3—COST TO THE FEDERAL GOVERNMENT

Cost component	Total cost	Annualized cost
Project Development	$49,161	$16,377
Data Collection Activities	123,478	41,159
Data Processing and Analysis	109,433	36,478
Publication of Results	81,836	27,279
Project Management	18,438	6,146
Overhead	117,531	39,177
Government Oversight	13,710	4,570
Total	499,877	166,626

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 15, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–4254 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Nominations of Children's Healthcare Quality Measures for Potential Inclusion in the CHIPRA 2013 Improved Core Set of Health Care Quality Measures for Medicaid/CHIP

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Request for measures.

SUMMARY: Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act to enact section 1139A (42 U.S.C.1320b–9a). Section 1139A(b) charged the Department of Health and Human Services (HHS) with improving pediatric health care quality measures. The Agency for Healthcare Research and Quality (AHRQ) is soliciting the submission of measures of children's healthcare quality for potential inclusion in the CHIPRA 2013 Improved Core Set of Health Care Quality Measures (the ''Improved Core Set'') for potential voluntary use by Medicaid and the Children's Health Insurance Program. In addition, CHIPRA established the Pediatric Quality Measures Program to increase the portfolio of measures available to public and private purchasers of children's health care services, providers, and consumers. HHS anticipates that measures ultimately included in the Improved Core Set will also be used by public and private purchasers to measure pediatric healthcare quality. AHRQ is interested in information about the importance, scientific validity, and feasibility of the measures. If a measure is selected for inclusion, more information, including a copyright release (if applicable) and full measure specifications would be needed.

DATES: Please submit materials within 60 days of publication of this notice.

ADDRESSES: Electronic submissions are encouraged, preferably as an email with one or more electronic files in a standard word processing format as an email attachment. Submissions may also be in the form of a letter to: Denise Dougherty, Ph.D., Senior Advisor, Child Health and Quality Improvement, Agency for Healthcare Research and Quality, 540 Gaither Rd, Rockville, MD 20850, *Phone:* 301–427–1868, *Fax:* 301–427–1562, *Email: denise.DOUGHERTY @AHRQ.hhs.gov.*

It would be most helpful to the Agency if commenters would include the following information in their response: measure characteristics: measure name; measure description; denominator statement (if applicable); numerator statement (if applicable); data sources and exclusions; applicable proprietary rights (*e.g.,* patent or data rights); any confidentiality or trade secret protections; whether the measure is part of a measure hierarchy (*e.g.,* a collection of measures, a measure set, a measure subset as defined at *http://www.QUALITYMEASURES.AHRQ.gov/about/hierarchy.aspx*); detailed measure specifications; importance of the measure; settings, services, measure domains, and populations addressed by the measure; evidence for focus of the measure; scientific soundness of the measure; results of any efforts to demonstrate the capacity of the measure to produce results that stratify by race/ethnicity, socioeconomic status, special health care need, and/or rurality/urbanicity; feasibility of the measure (*e.g.,* availability of data in existing data systems); levels at which the measure can be aggregated (*e.g.,* State, health plan, provider); understandability to consumers and providers; health information technology readiness and sensitivity (*e.g.,* whether the measure has been tested in an electronic health record or other health information technology); followup contact information.

AHRQ would also be interested in a summary rationale for why the measure should be included in the 2013 Improved Core Set, taking into account a balance among desirable attributes of the measure. For example, you may be want to describe advantages that this measure has over alternative measures that were considered by the measure developer or advantages that this measure has over existing measures.

FOR FURTHER INFORMATION CONTACT: Denise Dougherty, Ph.D., Senior Advisor, Child Health and Quality Improvement, Agency for Healthcare Research and Quality, 540 Gaither Rd, Rockville, MD 20850, *Phone:* 301–427–1868, *Fax:* 301–427–1562, *Email: denise.DOUGHERTY@AHRQ.hhs.gov.*

SUPPPLEMENTARY INFORMATION: Section 401(a) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, amended the Social Security Act to enact section 1139A (42 U.S.C. 1320b–9a). Section 1139A(b) charged the Department of Health and Human Services (HHS) with improving pediatric health care quality measures. Since CHIPRA was passed, the Agency for Healthcare Research and Quality (AHRQ) and the Centers for Medicare & Medicaid Services (CMS) have been working together to implement selected provisions of the legislation related to children's health care quality (*www.AHRQ.gov/CHIPRA*). An initial core measure set for voluntary use by Medicaid and Children's Health Insurance Programs was posted December 29, 2009 (*http://www.GPO.gov/fdsys/PKG/FR–2009–12–29/html/E9–30802.htm*). In February 2010, CMS released a State Health Official letter which outlined the initial core measures and how they should be reported to CMS.

Subsequently, AHRQ and CMS established the CHIPRA Pediatric Quality Measures Program (PQMP) to enhance select pediatric quality measures and develop new measures as needed (*http://www.AHRQ.gov/CHIPRA*). CHIPRA stipulates that improved core measures be identified annually, beginning January 1, 2013. Under the PQMP, measures are being developed and improved by 7 AHRQ–CMS Centers of Excellence (*http://www.AHRQ.gov/CHIPRA/PQMPFACT.htm*). In addition, this notice seeks public nominations of measures for potential inclusion in Improved Core Sets.

In order to assist AHRQ and CMS to assess the importance, validity, and feasibility of submitted measures, a Subcommittee on Children's Healthcare Quality Measures of the AHRQ National Advisory Council on Healthcare Research and Quality (SNAC) has been established (*http://www.ahrq.gov/chipra/panellist11.htm*). The Subcommittee will consider measures submitted through this public call, and measures submitted by the 7 AHRQ–CMS Centers of Excellence.

CHIPRA asks that measures in the improved core sets be: evidence-based; able to identify disparities by race, ethnicity, socioeconomic status, and special health care need; risk-adjusted as appropriate; and designed to ensure that data are collected and reported in a standard format that permits comparison of quality and data at a State, plan, and provider level.

Dated: February 15, 2012.

Carolyn M. Clancy,

AHRQ Director.

[FR Doc. 2012–4267 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From UAB Health System Patient Safety Organization

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from the UAB Health System Patient Safety Organization of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on January 13, 2012.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither. Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from the UAB Health System Patient Safety Organization, PSO number P0042, which is a component entity of the UAB Health System to voluntarily relinquish its status as a PSO. Accordingly, the UAB Health System Patient Safety Organization was delisted effective at 12:00 Midnight ET (2400) on January 13, 2012.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Dated: February 15, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–4265 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Treatment Strategies for Patients With Peripheral Artery Disease (PAD)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for scientific information submissions

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of peripheral artery disease treatment medical devices. Scientific information is being solicited to inform our Comparative Effectiveness Review of Treatment Strategies for Patients with Peripheral Artery Disease (PAD), which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before March 26, 2012.

ADDRESSES:

Online Submissions

http://effectivehealthcare.AHRQ.gov/index.cfm/submitscientific-information-packets/. Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW. Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–494–0147 or Email: *ehcsrc@ohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency

for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for treatment strategies for patients with peripheral artery disease (PAD).

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on treatment strategies for patients with peripheral artery disease, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/index.cfm/search-for-GUIDESreviews-and-reports/?PAGEaction=displayproduct&productid=948#4546.*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

The Key Questions

KQ 1: In adults with peripheral artery disease (PAD), including asymptomatic patients and symptomatic patients with atypical leg symptoms, intermittent claudication (IC), or critical limb ischemia (CLI):

a. What is the comparative effectiveness of aspirin and other antiplatelet agents in reducing the risk of adverse cardiovascular events (e.g., all-cause mortality, myocardial infarction, stroke, cardiovascular death), functional capacity, and quality of life?

b. Does the effectiveness of treatments vary according to the patient's PAD classification or by subgroup (age, sex, race, risk factors, or comorbidities)?

c. What are the significant safety concerns associated with each treatment strategy (e.g., adverse drug reactions, bleeding)? Do the safety concerns vary by subgroup (age, sex, race, risk factors, comorbidities, or PAD classification)?

KQ2: In adults with symptomatic PAD (atypical leg symptoms or IC): a. What is the comparative effectiveness of exercise training, medications (cilostazol, pentoxifylline), endovascular intervention (percutaneous transluminal angioplasty, atherectomy, or stents), and/or surgical revascularization (endarterectomy, bypass surgery) on outcomes including vessel patency, repeat revascularization, wound healing, analog pain scale score, cardiovascular events (e.g., all-cause mortality, myocardial infarction, stroke, cardiovascular death), amputation, functional capacity, and quality of life?

b. Does the effectiveness of treatments vary by use of exercise and medical therapy prior to invasive management or by subgroup (age, sex, race, risk factors, comorbidities, or anatomic location of disease)?

c. What are the significant safety concerns associated with each treatment strategy (e.g., adverse drug reactions, bleeding, contrast nephropathy, radiation, infection, exercise-related harms, and periprocedural complications causing acute limb ischemia)? Do the safety concerns vary by subgroup (age, sex, race, risk factors, comorbidities, anatomic location of disease)?

KQ3: In adults with CLI due to PAD:

a. What is the comparative effectiveness of endovascular intervention (percutaneous transluminal angioplasty, atherectomy, or stents) and surgical revascularization (endarterectomy, bypass surgery) for outcomes including vessel patency, repeat revascularization, wound healing, analog pain scale score, cardiovascular events (e.g., all-cause mortality, myocardial infarction, stroke, cardiovascular death), amputation, functional capacity, and quality of life?

b. Does the effectiveness of treatments vary by subgroup (age, sex, race, risk factors, comorbidities, or anatomic location of disease)?

c. What are the significant safety concerns associated with each treatment strategy (e.g., adverse drug reactions, bleeding, contrast nephropathy, radiation, infection, and periprocedural complications causing acute limb ischemia)? Do the safety concerns vary by subgroup (age, sex, race, risk factors, comorbidities, or anatomic location of disease)?

Dated: February 15, 2012.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. 2012–4261 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Treatment of Atrial Fibrillation

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of atrial fibrillation medical devices. Scientific information is being solicited to inform our Comparative Effectiveness Review of the Treatment of Atrial Fibrillation, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program.

Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before March 26, 2012.

ADDRESSES: *Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submitscientific-information-packets/.* Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–494–0147 or Email: *ehcsrc@ohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for the treatment of atrial fibrillation.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on atrial fibrillation treatment, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://effectivehealthcare.AHRQ.gov/index.cfm/search-for-GUIDES-reviewsand-reports/?PAGEaction=displayproduct&productid=946.*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRO.gov/index.cfm/join-the-email-list1/.*

The Key Questions

Our first three KQs focus on rate-control therapies. Specifically:

KQ 1: What are the comparative safety and effectiveness of pharmacological agents used for ventricular rate control in patients with AF? Do the comparative safety and effectiveness of these therapies differ among specific patient subgroups of interest?

KQ 2: What are the comparative safety and effectiveness of a strict rate-control strategy versus a more lenient rate-control strategy in patients with AF? Do the comparative safety and effectiveness of these therapies differ among specific patient subgroups of interest?

KQ 3: What are the comparative safety and effectiveness of newer procedural and other nonpharmacological rate-control therapies compared with pharmacological agents in patients with AF who have failed initial pharmacotherapy? Do the comparative safety and effectiveness of these therapies differ among specific patient subgroups of interest?

Our next three KQs focus specifically on rhythm-control therapies:

KQ 4: What are the comparative safety and effectiveness of available antiarrhythmic agents and electrical cardioversion for conversion of AF to sinus rhythm? Do the comparative safety and effectiveness of these therapies differ among specific patient subgroups of interest?

KQ 5: What are the comparative safety and effectiveness of newer procedural rhythm-control therapies, other nonpharmacological rhythm-control therapies, and pharmacological agents (either separately or in combination with each other) for maintenance of sinus rhythm in patients with AF? Do the comparative safety and effectiveness of these therapies differ among specific patient subgroups of interest?

KQ 6: What are the comparative diagnostic accuracy, diagnostic thinking, therapeutic, and patient outcome efficacy of echocardiographic studies and other clinical parameters for predicting successful conversion, successful ablation, successful maintenance of sinus rhythm, and improved outcomes in patients with AF?

Our final KQ seeks to evaluate the comparison of the available rate- and rhythm-control therapies.

KQ 7: What are the comparative safety and effectiveness of rhythm-control therapies compared to rate-control therapies in patients with AF? Does the comparative safety and effectiveness of these therapies differ among specific patient subgroups of interest?

Dated: February 15, 2012.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2012–4260 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Local Therapies for Unresectable Colorectal Cancer Metastases to the Liver

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Scientific Information Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from manufacturers of unresectable colorectal cancer medical devices. Scientific information is being solicited to inform our Comparative Effectiveness Review of Local Therapies for Unresectable Colorectal Cancer Metastases to the Liver, which is currently being conducted by the Evidence-based Practice Centers for the AHRQ Effective Health Care Program. Access to published and unpublished pertinent scientific information on this device will improve the quality of this comparative effectiveness review. AHRQ is requesting this scientific information and conducting this comparative effectiveness review pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.

DATES: Submission Deadline on or before March 26, 2012.

ADDRESSES:

Online submissions: http://effectivehealthcare.AHRQ.gov/index.cfm/submit-scientific-information-packets/. Please select the study for which you are submitting information from the list of current studies and complete the form to upload your documents.

Email submissions: ehcsrc@ohsu.edu (please do not send zipped files—they are automatically deleted for security reasons).

Print submissions: Robin Paynter, Oregon Health and Science University, Oregon Evidence-based Practice Center, 3181 SW Sam Jackson Park Road, Mail Code: BICC, Portland, OR 97239–3098.

FOR FURTHER INFORMATION CONTACT: Robin Paynter, Research Librarian, Telephone: 503–494–0147 or Email: *ehcsrc@ohsu.edu.*

SUPPLEMENTARY INFORMATION: In accordance with Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173, the Agency for Healthcare Research and Quality has commissioned the Effective Health Care (EHC) Program Evidence-based Practice Centers to complete a comparative effectiveness review of the evidence for local therapies for unresectable colorectal cancer metastases to the liver.

The EHC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by systematically requesting information (e.g., details of studies conducted) from medical device industry stakeholders through public information requests, including via the **Federal Register** and direct postal and/or online solicitations. We are looking for studies that report on local therapies for unresectable colorectal cancer metastases to the liver, including those that describe adverse events, as specified in the key questions detailed below. The entire research protocol, including the key questions, is also available online at: *http://www.effectivehealthcare.AHRQ.gov/index.cfm/search-for-GUIDESreviews-and-reportsflPAGEaction=displayproduct&productid=949.*

This notice is a request for industry stakeholders to submit the following:

- A current product label, if applicable (preferably an electronic PDF file).
- Information identifying published randomized controlled trials and observational studies relevant to the clinical outcomes. Please provide both a list of citations and reprints if possible.
- Information identifying unpublished randomized controlled trials and observational studies relevant to the clinical outcomes. If possible, please provide a summary that includes the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to withdrawn/follow-up/analyzed, and effectiveness/efficacy and safety results.
- Registered ClinicalTrials.gov studies. Please provide a list including the ClinicalTrials.gov identifier, condition, and intervention.

Your contribution is very beneficial to this program. AHRQ is not requesting and will not consider marketing material, health economics information, or information on other indications. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter. In addition to your scientific information please submit an index document outlining the relevant information in each file along with a statement regarding whether or not the submission comprises all of the complete information available.

Please Note: The contents of all submissions, regardless of format, will be available to the public upon request unless prohibited by law.

The draft of this review will be posted on AHRQ's EHC program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *http://effectivehealthcare.AHRQ.gov/index.cfm/join-the-email-list1/.*

The Key Questions

Question 1

What is the comparative effectiveness of the various liver-directed therapies in patients whose disease is refractory to systemic therapy for unresectable colorectal cancer (CRC) metastases to the liver and who have minimal evidence of extrahepatic disease?

Question 2

What are the comparative harms of the various liver-directed therapies in patients whose disease is refractory to systemic therapy for unresectable CRC metastases to the liver and who have minimal evidence of extrahepatic disease?

Question 3

What is the comparative effectiveness of the various liver-directed therapies in patients who are candidates for liver-directed therapy as an adjunct to systemic therapy for unresectable CRC metastases to the liver and have no evidence of extrahepatic disease?

Question 4

What are the comparative harms of the various liver-directed therapies in patients who are candidates for liver-directed therapy as an adjunct to systemic therapy for unresectable CRC metastases to the liver and have no evidence of extrahepatic disease?

Dated: February 15, 2012.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. 2012–4256 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–12–0222]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c) (2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–7570 or send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Questionnaire Design Research Laboratory (QDRL) 2012–2014, OMB No. 0920–0222 expiration 3/31/2013)–Revision–National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data to support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

The Questionnaire Design Research Laboratory (QDRL) conducts questionnaire development, pre-testing, and evaluation activities for CDC surveys (such as the NCHS National Health Interview Survey, OMB No. 0920–0214) and other federally sponsored surveys. NCHS is requesting 3 years of OMB Clearance for this generic submission.

The QDRL conducts cognitive interviews, focus groups, usability tests, field tests/pilot interviews, and experimental research in laboratory and field settings, both for applied questionnaire development and evaluation as well as more basic research on response errors in surveys.

QDRL Staff use various techniques to evaluate interviewer administered, self-administered, telephone, Computer Assisted Personal Interviewing (CAPI), Computer Assisted Self-Interviewing (CASI), Audio Computer-Assisted Self-Interviewing (ACASI), and web-based questionnaires.

The most common questionnaire evaluation method is the cognitive interview. The interview structure consists of respondents first answering a draft survey question and then providing textual information to reveal the processes involved in answering the test question. Specifically, cognitive interview respondents are asked to describe how and why they answered the question as they did. Through the interviewing process, various types of question-response problems that would not normally be identified in a traditional survey interview, such as interpretive errors and recall accuracy, are uncovered. By conducting a comparative analysis of cognitive interviews, it is also possible to determine whether particular interpretive patterns occur within particular sub-groups of the population. Interviews are generally conducted in small rounds of 20–30 interviews; ideally, the questionnaire is re-worked between rounds, and revisions are tested iteratively until interviews yield relatively few new insights.

In addition to its traditional QDRL activities, NCHS is requesting approval for a large field test that will be conducted in 2012. This is a 5,000-case test which involves testing the use of ACASI in the full National Health Interview Survey (NHIS). The ACASI content included in the 5,000-case test is consistent with the content studied in two smaller approved tests. The module includes questions on sexual identity, alcohol consumption, HIV testing, mental health, height and weight, sleep, and financial worries. The objective of asking a question on sexual identity in the NHIS is to fill the gaps that exist in the state of knowledge about the general health behaviors, health status, and health care utilization of Lesbian, Gay, Bisexual, and Transgender (LGBT) persons.

The 5,000-case test will include one or more built-in experiments to assess the impact of ACASI, and components of ACASI, on prevalence estimates and data quality. First and foremost, test cases will be randomly assigned to receive the above described questions in either CAPI or ACASI. In particular, prevalence estimates for the sexual identity questions will be compared by mode of administration. Since a documented advantage of ACASI is the enhanced level of privacy it affords, we anticipate higher prevalence estimates of sexual minorities (Lesbian, Gay, Bisexual or Transgender persons) from this mode of administration. Estimates for sensitive items on mental health, alcohol consumption, HIV testing, height and weight, financial worries, and others will also be compared.

Cognitive interviewing is inexpensive and provides useful data on questionnaire performance while minimizing respondent burden. Cognitive interviewing offers a detailed depiction of meanings and processes used by respondents to answer questions—processes that ultimately produce the survey data. As such, the method offers an insight that can transform understanding of question validity and response error. Documented findings from these studies represent tangible evidence of how the question performs. Such documentation also serves CDC data users, allowing them to be critical users in their approach and application of the data.

Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. There are no costs to respondents other than their time.

ESTIMATED BURDEN TABLE

Projects	Number of respondents	Number of responses per respondent	Average hours per response	Response burden
QDRL Interviews	9000	1	1	9000
Focus groups	300	1	1.5	450
Total				9450

Kimberly Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–4378 Filed 2–23–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–12–12ET]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Communications Research to Inform Messages and Materials about Cytomegalovirus (CMV)—NEW—Prevention Research Branch, National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cytomegalovirus (CMV) is the most common congenital infection in the U.S., causing disabilities in more than 5,500 children born each year (CDC, 2010). Disabilities related to congenital CMV are more common than other well-known childhood conditions, such as Down syndrome, fetal alcohol syndrome, and neural tube defects, and can include hearing or vision loss, mental retardation, psychomotor delays, and speech and language impairment.

This is a multiphase communication research study that will help inform CDC's development materials and prevention messaging about congenital CMV. The information collection activities will consist of focus groups and an online survey. First, we plan to conduct 8 focus groups with 9 respondents each to identify potential messaging frames for communicating information about congenital CMV to the target audiences and adopting CMV preventive guidelines. We estimate that we will screen 144 women between the ages of 18–40 who are either pregnant or plan to get pregnant in the next 12 months, and who have a child under age 5, in order to recruit 72 participants for the focus groups. These focus groups will be conducted in Atlanta, Georgia (4) and San Diego, California (4). Findings from the focus groups will inform revisions to existing CDC messages and materials, which will be further tested in the second information collection activity, the online survey. Phase II research will include an online survey to test the revised messages and materials. This web survey will: (1) Examine baseline awareness and knowledge regarding CMV, (2) assess baseline CMV prevention behaviors prior to viewing CMV communication interventions (factsheet and video), (3) assess appeal and evaluate the impact of CMV communication interventions on their attitudes, beliefs, and behavioral intentions regarding prevention behaviors and (4) assess knowledge, attitudes and behaviors pre- and post-interventions with a larger target audience sample (N=500). We estimate that we will screen 3,000 women in order to recruit 500 respondents for the online survey.

All survey responses (100%) will be submitted through a secure survey Web site established for this project. No Information in Identifiable Form (IIF) collected will be transmitted to CDC. The only IIF being collected (respondent name, address, and phone number) is to be used by the focus group facilities to screen potential respondents to determine eligibility for the focus groups. The total estimated annual burden is 531 hours. There are no costs to the respondents other than their time.

This request is submitted to obtain OMB clearance for one year.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Phase I: Focus Groups					
Women (age 18–40)	Participant Screener	144	1	5/60	12
	Demographic questionnaire	72	1	15/60	18
	Informed consent form	72	1	15/60	18

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
	Focus group	72	1	90/60	108
Phase II: Web Survey					
Women (age 18–40)	Participant screener	3,000	1	5/60	250
	Web Survey	500	1	15/60	125
Total					531

Kimberly S. Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–4380 Filed 2–23–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-12–0210]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—Extension—Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cigarette smoking is the leading preventable cause of premature death and disability in the United States. Each year, more than 440,000 premature deaths occur as the result of diseases related to cigarette smoking. The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has the primary responsibility for the Department of Health and Human Services (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smoking Education Act of 1984 (CSEA, 15 U.S.C. 1336 or Pub. L. 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of cigarettes. The legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate) discussing the health effects of these ingredients.

HHS has delegated responsibility for implementing the CSEA's ingredient reporting requirements to CDC's Office on Smoking and Health (OSH). OSH has collected ingredient reports on cigarette products since 1986. Respondents are commercial cigarette manufacturers, packagers, or importers, or their designated representatives. Respondents are not required to submit specific forms, however, they are required to submit a list of all ingredients used in their products. CDC requires the ingredient report to be submitted by chemical name and Chemical Abstract Service (CAS) Registration Number, consistent with accepted reporting practices for other companies currently required to report ingredients added to other consumer products. Typically, respondents submit a summary report to CDC with the ingredient information for multiple products, or a statement that there are no changes to their previously submitted ingredient report. The estimated burden per response is 6.5 hours.

Ingredient reports for new products are due at the time of first importation. Thereafter, ingredient reports are due annually on March 31. Information is submitted to OSH by mailing a written report on the respondent's letterhead, by CD, three-inch floppy disk, or thumb drive. Electronic mail submissions are not accepted. Upon receipt and verification of the annual ingredient report, OSH issues a Certificate of Compliance to the respondent.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Cigarette Manufacturers, Packagers, and Importers	77	1	6.5	501

Kimberly Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–4373 Filed 2–23–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6034–N]

Medicaid Program; Announcement of Medicaid Recovery Audit Contractors (RACs) Contingency Fee Update

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

ACTION: Notice.

SUMMARY: This notice announces an increase to the maximum contingency fee, for which Federal financial participation (FFP) will be available, that may be paid to Medicaid Recovery Audit Contractors (RAC) by State Medicaid programs as authorized by section 1902(a)(42)(B) of the Social Security Act (the Act), as amended by the Affordable Care Act, requiring States to establish Medicaid RAC programs. In the September 16, 2011 **Federal Register** (76 FR 57808), we published a final rule that ties the Medicaid RAC contingency fee to the Medicare Recovery Audit Program with an opportunity for the States to request an exception to exceed the highest fee paid to a Medicare Recovery Auditor. Further, we indicated in the final rule that we would make States aware of any modifications to the payment methodology for contingency fee rates and Medicaid RAC maximum contingency fee rates by publishing a notice in the **Federal Register**. Therefore, this notice will inform States that Medicare has increased the maximum contingency fee paid to Recovery Auditors by 5 percent for the recovery of overpayments only for durable medical equipment claims (DME).

DATES: *Effective Date:* This notice is effective on March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Lori Bellan, (410) 786–2048; or Joanne Davis, (410) 786–5127.

SUPPLEMENTARY INFORMATION:

I. Background

In the September 16, 2011 **Federal Register** (76 FR 57808), we published a final rule entitled: ''Medicaid Program; Recovery Audit Contractors.'' This final rule finalized provisions related to the implementation of a Medicaid Recovery Audit Contractor (RAC) program and provided guidance to States related to Federal/State funding of State start-up, operation and maintenance costs of Medicaid RACs and the payment methodology for State payments to Medicaid RACs. In particular, and as stated in 42 CFR 455.510(b), States must determine the contingency fee rate to be paid to Medicaid RACs for the identification and recovery of Medicaid provider overpayments. We also indicated at 42 CFR 455.510(b)(4):

> [T]he contingency fee may not exceed that of the highest Medicare RAC, as specified by CMS in the **Federal Register**, unless the State submits, and CMS approves, a waiver of the specified maximum rate. If a State does not obtain a waiver of the specified maximum rate, any amount exceeding the specified maximum rate is not eligible for FFP, either from the collected overpayment amounts, or in the form of any other administrative or medical assistance claimed expenditure.

The September 16, 2011 final rule contains additional information about the process States must follow to obtain an exception to the specified maximum rate.

II. Provisions of the Notice

In the final rule at 42 CFR 455.510(b)(4), we stated that the contingency fee paid to the Medicaid RAC may not exceed that of the highest fee paid to a Medicare Recovery Auditor, unless the State submits, and CMS approves, an exception to the specified maximum rate, as specified in the **Federal Register**.

On June 1, 2011, we increased the contingency fee by 5 percent for the recovery of overpayments associated with DME claims that were identified by the Medicare Recovery Auditors. Therefore, the modification increases the maximum contingency fee paid to a Medicare Recovery Auditor to 17.5 percent for DME claims only. As a result of this modification, we now authorize States to pay their respective Medicaid RACs a contingency fee up to 17.5 percent of the recovered overpayment, the current highest contingency fee paid to Medicare Recovery Auditors, for the recovery of improper payments made for medical supplies, equipment and appliances suitable for use in the home found within the Medicaid home health services benefit authorized by section 1905(a)(7) of the Act. We note that this increase in the maximum fee for which FFP is available for payments to Medicaid RACs applies only to fees paid for the recovery of improper payments of this subset of claims. The current highest contingency fee paid to Medicare Recovery Auditors for the recovery of improper payments made on all other types of claims remains the same at 12.5 percent; thus, the maximum fee that may be paid to Medicaid RACs for the recovery of improper payments on other types of claims similarly remains at 12.5 percent. This policy is consistent with section 1902(a)(42)(B) of the Act, which requires States to contract with Medicaid RACs ''in the same manner as the Secretary enters into contracts'' with the Medicare Recovery Auditors. The policy is also consistent with guidance provided in the final rule which aligns the Medicare Recovery Audit Program and Medicaid RAC program, to the extent possible.

III. Collection of Information Requirements

This notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35). However, it does reference previously approved information collections. As stated in section I of this notice, States must submit justifications to CMS to receive an exception to pay Medicaid RACs a contingency fee that exceeds the highest fee paid to a Medicare Recovery Auditor.

Authority: Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program.

Dated: February 8, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–4364 Filed 2–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1591–N]

Medicare Program; Public Meetings in Calendar Year 2012 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

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

ACTION: Notice.

SUMMARY: This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2012 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. The discussion will be focused on responses to our specific preliminary recommendations and will include all items on the public meeting agenda.

DATES: *Meeting Dates:* The following are the 2012 HCPCS public meeting dates:

1. Tuesday, May 8, 2012, 9 a.m. to 5 p.m. eastern daylight time (e.d.t.)

(Drugs/Biologicals/Radiopharmaceuticals/Radiologic Imaging Agents).

2. Wednesday, May 9, 2012, 9 a.m. to 5 p.m. e.d.t.

(Supplies and Other).

3. Tuesday, June 5, 2012, 9 a.m. to 5 p.m. e.d.t.

(Orthotics and Prosthetics) and (Durable Medical Equipment (DME) and Accessories).

Deadlines for Primary Speaker Registration and Presentation Materials: The deadline for registering to be a primary speaker and submitting materials and writings that will be used in support of an oral presentation are as follows:

- April 24, 2012 for the May 8, 2012 and May 9, 2012 public meetings.
- May 22, 2012 for the June 5, 2012 public meeting.

Deadline for Attendees that are Foreign Nationals Registration: Attendees that are foreign nationals (as described in section IV. of this notice) are required to identify themselves as such, and provide the necessary information for security clearance (as described in section IV. of this notice) to the public meeting coordinator at least 12 business days in advance of the date of the public meeting date the individual plans to attend. Therefore, the deadlines for attendees that are foreign nationals are as follows:

- April 20, 2012 for the May 8, 2012 and May 9, 2012 public meetings.
- May 17, 2012 for the June 5, 2012 public meeting.

Deadlines for all Other Attendees Registration: All other individuals who plan to enter the building to attend the public meeting must register for each date that they plan on attending. The registration deadlines are different for each meeting. Registration deadlines are as follows:

- May 1, 2012 for the May 8, 2012 and May 9, 2012 public meeting dates.
- May 29, 2012 for the June 5, 2012 public meeting date.

Deadlines for Requesting Special Accommodations: Individuals who plan to attend the public meetings and require sign-language interpretation or other special assistance must request these services by the following deadlines:

- April 24, 2012 for the May 8, 2012 and May 9, 2012 public meetings.
- May 22, 2012 for the June 5, 2012 public meeting.

Deadline for Submission of Written Comments: Written comments must be received by the date of the meeting at which the code request is scheduled for discussion.

ADDRESSES: *Meeting Location:* The public meetings will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Submission of Written Comments: Written comments may either be emailed to *HCPCS@cms.hhs.gov* or sent via regular mail to Jennifer Carver or Laury Jackson, HCPCS Public Meeting Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Individuals wishing to participate or who need special accommodations or both must register by completing the on-line registration located at *www.cms.hhs.gov/medhcpcsgeninfo* or by contacting one of the following persons: Jennifer Carver at (410)786–6610 or *Jennifer.Carver@cms.hhs.gov;* or Laury Jackson at (410) 786–9222 or *Laury.Jackson@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT:

Jennifer Carver at (410) 786–6610 or *Jennifer.Carver@cms.hhs.gov.*

Laury Jackson at (410) 786–9222 or *Laury.Jackson@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. It is our intent to distribute any materials submitted to CMS to the Healthcare Common Procedure Coding System (HCPCS) workgroup members for their consideration. CMS and the HCPCS workgroup members require sufficient preparation time to review all relevant materials. Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any presentation materials a meeting speaker wishes us to consider. For this reason, our HCPCS Public Meeting Coordinators will only accept and review presentation materials received by the deadline for each public meeting, as specified in the **DATES** section of this notice.

The public meeting process provides an opportunity for the public to become aware of coding changes under consideration, as well as an opportunity for CMS to gather public input.

II. Meeting Registration

A. Required Information for Registration

The following information must be provided when registering:

- Name.
- Company name and address.
- Direct-dial telephone and fax numbers.

- Email address.
- Special needs information.

A CMS staff member will confirm your registration by email.

B. Registration Process

1. Primary Speakers

Individuals must also indicate whether they are the ''primary speaker'' for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide, and advise the HCPCS Public Meeting Coordinator regarding needs for audio/visual support. To avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accept tapes and disk files that are received by the deadline for submissions for each public meeting as specified in the **DATES** section of this notice. The sum of all materials including the presentation may not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page limit for relevant studies published between the application deadline and the public meeting date, in which case, we would like a copy of the complete publication as soon as possible. This exception applies only to the page limit and not the deadline submission.

The materials may be emailed or delivered by regular mail to one of the HCPCS Public Meeting Coordinators as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to provide 35 copies if materials are delivered by mail.

2. 5-Minute Speakers

To afford the same opportunity to all attendees, 5-minute speakers are not required to register as primary speakers. However, 5-minute speakers must still register as attendees by the deadline set forth under ''Deadlines for all Other Attendees Registration'' in the **DATES** section of this notice. Attendees can sign up only on the day of the meeting to do a 5-minute presentation. Individuals must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that they will address.

C. Additional Meeting/Registration Information

We were able this year to combine the Orthotics/Prosthetics and DME meeting into one public meeting date. That public meeting will be Tuesday, June 5, 2012.

The product category reported by the applicant may not be the same as that assigned by us. Prior to registering to attend a public meeting, all participants are advised to review the public meeting agendas at *www.cms.hhs.gov/medhcpcsgeninfo* which identify our category determinations, and the dates each item will be discussed. Draft agendas, including a summary of each request and our preliminary decision will be posted on our HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo* at least 4 weeks before each meeting.

Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 4 weeks before the first meeting date on the official HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo.* The document titled ''Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS)'' will be made available on the HCPCS Web site at least 4 weeks before the first public meeting in 2012 for all new public requests for revisions to the HCPCS. Individuals who intend to provide a presentation at a public meeting need to familiarize themselves with the HCPCS Web site and the valuable information it provides to prospective registrants. The HCPCS Web site also contains a document titled ''Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures,'' which is a description of the HCPCS coding process, including a detailed explanation of the procedures used to make coding determinations for all the products, supplies, and services that are coded in the HCPCS.

The HCPCS Web site also contains a document titled ''HCPCS Decision Tree & Definitions'' which illustrates, in flow diagram format, HCPCS coding standards as described in our Coding Procedures document.

A summary of each public meeting will be posted on the HCPCS Web site by the end of August 2012.

III. Presentations and Comment Format

We can only estimate the amount of meeting time that will be needed since it is difficult to anticipate the total number of speakers that will register for each meeting. Meeting participants should arrive early to allow time to clear security and sign-in. Each meeting is expected to begin promptly as scheduled. Meetings may end earlier than the stated ending time.

A. Oral Presentation Procedures

All primary speakers must register as provided under the section titled ''Meeting Registration.'' Materials and writings that will be used in support of an oral presentation should be submitted to one of the HCPCS Public Meeting Coordinators.

The materials may be emailed or delivered by regular mail to one of the HCPCS Public Meeting Coordinators as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to include 35 copies if materials are delivered by mail.

B. Primary Speaker Presentations

The individual or entity requesting revisions to the HCPCS coding system for a particular agenda item may designate one ''primary speaker'' to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and the presentation must incorporate the demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the speaker by increments of less than 15 minutes.

Individuals designated to be the primary speaker must register to attend the meeting using the registration procedures described under the ''Meeting Registration'' section of this notice and contact one of the HCPCS Public Meeting Coordinators, specified in the **ADDRESSES** section. Primary speakers must also separately register as primary speakers by the date specified in the **DATES** section of this notice.

C. ''5-Minute'' Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many 5-minute speakers can be accommodated.

D. Speaker Declaration

On the day of the meeting, before the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to the HCPCS Public Meeting Coordinator.

Each primary speaker and 5-minute speaker must declare in their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

E. Written Comments From Meeting Attendees

Written comments will be accepted from the general public and meeting registrants anytime up to the date of the public meeting at which a request is discussed. Comments must be sent to the address listed in the **ADDRESSES** section of this notice.

Meeting attendees may also submit their written comments at the meeting. Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of the public meeting at which the request is discussed.

IV. Security, Building, and Parking Guidelines

The meetings are held within the CMS Complex which is not open to the general public. Visitors to the complex are required to show a valid U.S. Government issued photo identification, preferably a driver's license, at the time of entry. Participants will also be subject to a vehicular search before access to the complex is granted. Participants not in possession of a valid identification or who are in possession of prohibited items will be denied access to the complex. Prohibited items on Federal property include but are not limited to, alcoholic beverages, illegal narcotics, explosives, firearms or other dangerous weapons (including pocket knives), dogs or other animals except service animals. Once cleared for entry to the complex participants will be directed to parking by a security officer.

In order to ensure expedited entry into the building it is recommended that participants have their ID and a copy of their written meeting registration confirmation readily available and that they do not bring laptops or large/bulky items into the building. Participants are reminded that photography on the CMS complex is prohibited. CMS has also been declared a tobacco free campus and violators are subject to legal action. In planning arrival time, we recommend allowing additional time to clear security. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes before the convening of the meeting each day.

Guest access to the complex is limited to the meeting area, the main lobby, and the cafeteria. If a visitor is found outside of those areas without proper escort they may be escorted out of the facility. Also be mindful that there will be an opportunity for everyone to speak and we request that everyone waits for the appropriate time to present their product or opinions. Disruptive behavior will not be tolerated and may result in removal from the meetings and escort from the complex. No visitor is allowed to attach USB cables, thumb drives or any other equipment to any CMS information technology (IT) system or hardware for any purpose at anytime. Additionally, CMS staff is prohibited from taking such actions on behalf of a visitor or utilizing any removable media provided by a visitor.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation. Special arrangements and approvals are required at least 2 weeks prior to each public meeting in order to bring pieces of equipment or medical devices. These arrangements need to be made with the public meeting coordinator. It is possible that certain requests made in advance of the public meeting could be denied because of unique safety, security or handling issues related to the equipment. A minimum of 2 weeks is required for approvals and security procedures.

Any request not submitted at least 2 weeks in advance of the public meeting will be denied.

CMS policy requires that every foreign national (as defined by the Department of Homeland Security is ''an individual who is a citizen of any country other than the United States'') is assigned a host (in accordance with the Department Foreign Visitor Management Policy, Appendix C, Guidelines for Hosts and Escorts). The host/hosting official is required to inform the Division of Critical Infrastructure Protection (DCIP) at least 12 business days in advance of any visit by a foreign national. Foreign nationals will be required to produce a valid passport at the time of entry.

Attendees that are foreign nationals need to identify themselves as such, and provide the following information for security clearance to the public meeting coordinator by the date specified in the **DATES** section of this notice:

- Visitor's full name (as it appears on passport).
- Gender.
- Country of origin and citizenship.
- Biographical data and related information.
- Date of birth.
- Place of birth.
- Passport number.
- Passport issue date.
- Passport expiration date.
- Dates of visits.
- Company Name.
- Position/Title.

Dated: February 13, 2012.

Marilyn Tavenner

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–3969 Filed 2–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3259–PN]

Medicare Program; Application by the American Association of Diabetes Educators (AADE) for Continued Recognition as a National Accreditation Organization for Accrediting Entities To Furnish Outpatient Diabetes Self-Management Training

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

ACTION: Proposed notice.

SUMMARY: This proposed notice announces the receipt of an application from the American Association of Diabetes Educators for continued recognition as a national accreditation program for accrediting entities that wish to furnish outpatient diabetes self-management training to Medicare beneficiaries. The statute requires that we publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 26, 2012.

ADDRESSES: In commenting, please refer to file code CMS–3259–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3259–PN, P.O. Box 8016, Baltimore, MD 21244–8016. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3259–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Jacqueline Leach, (410) 786–4282. Kristin Shifflett, (410) 786–4133. Maria Hammel, (410) 786–1775.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive outpatient Diabetes Self-Management Training (DSMT) when ordered by the physician (or qualified non-physician practitioner) treating the beneficiary's diabetes, provided certain requirements are met. Pursuant to our regulations at 42 CFR 410.141(e)(3), we use national accrediting organizations to assess whether provider entities meet Medicare requirements when providing services for which Medicare payment is made. If a provider entity is accredited by an approved accrediting organization, it is ''deemed'' to meet applicable Medicare requirements.

Under section 1865(a)(1)(B) of the Social Security Act (the Act), a national accreditation organization must have an agreement in effect with the Secretary and meet the standards and requirements specified by the Secretary in 42 CFR part 410, subpart H, to qualify for deeming authority. The regulations pertaining to application procedures for national accreditation organizations for DSMT are specified at § 410.142 (CMS process for approving national accreditation organizations).

A national accreditation organization applying for deeming authority must provide us with reasonable assurance that the accrediting organization requires accredited entities to meet requirements that are at least as stringent as our requirements.

We may approve and recognize a nonprofit organization with demonstrated experience in representing the interests of individuals with diabetes to accredit entities to furnish training. The accreditation organization, after being approved and recognized by us, may accredit an entity to meet one of the sets of quality standards in § 410.144 (Quality standards for deemed entities).

Section 1865(a)(2) of the Act further requires that we review the applying accreditation organization's requirements for accreditation, as follows:

- Survey procedures.
- Ability to provide adequate resources for conducting required surveys.
- Ability to supply information for use in enforcement activities.
- Monitoring procedures for providers found out of compliance with the conditions or requirements.
- Ability to provide us with necessary data for validation.

We then examine the national accreditation organization's accreditation requirements to determine if they meet or exceed the Medicare conditions as we would have applied them. Section 1865(a)(3)(A) of the Act requires that we publish a notice identifying the national accreditation body making the request within 30 days of receipt of a completed application. The notice must describe the nature of the request and provide at least a 30-day public comment period. We have 210 days from receipt of the request to publish a finding of approval or denial of the application. If we recognize an accreditation organization in this manner, any entity accredited by the national accreditation body's CMS-approved program for that service will be ''deemed'' to meet the Medicare conditions for coverage.

II. Provisions of the Proposed Notice

The purpose of this notice is to notify the public of the American Association of Diabetes Educators' (AADE) request for the Secretary's approval of its accreditation program for outpatient DSMT services. The AADE submitted all the necessary materials to enable us to make a determination concerning its request for re-approval as a deeming organization for DSMTs. AADE was initially accredited on March 27, 2009, for a period of 3 years. This application was determined to be complete on January 13, 2012. This notice also solicits public comments on the ability of the AADE to continue to develop standards that meet or exceed the Medicare conditions for coverage, and apply them to entities furnishing outpatient DSMT.

Conditions for Coverage and Requirements for Outpatient Diabetes Self-Management Training Services

The regulations specifying the Medicare conditions for coverage for outpatient diabetes self-management training services are located in 42 CFR parts 410, subpart H. These conditions implement section 1861(qq) of the Act, which provides for Medicare Part B coverage of outpatient DSMT services specified by the Secretary.

Under section 1865(a)(2) of the Act and our regulations at § 410.142 (CMS process for approving national accreditation organizations) and § 410.143 (Requirements for approved accreditation organizations), we review and evaluate a national accreditation organization based on (but not necessarily limited to) the criteria set forth in § 410.142(b).

We may conduct on-site inspections of a national accreditation organization's operations and office to verify information in the organization's application and assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing documentation of meetings concerning the accreditation process, evaluating accreditation results or the accreditation status decision making process, and interviewing the organization's staff.

Notice Upon Completion of Evaluation

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a notice in the **Federal Register** announcing the result of our evaluation.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: February 10, 2012.

Marilyn Tavenner,

Acting CMS Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–4277 Filed 2–23–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0145]

Agency Information Collection Activities; Proposed Collection; Comment Request; Improving Food Safety and Defense Capacity of the State and Local Level: Review of State and Local Capacities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a survey entitled ''Improving Food Safety and Defense Capacity of the State and Local Level: Review of State and Local Capacities.'' The data collection will obtain knowledge of State and local capacities including food safety defense staffing and expertise, laboratory capacities, and information systems to support food and feed safety and defense.

DATES: Submit either electronic or written comments on the collection of information by April 24, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Improving Food Safety and Defense Capacity at the State and Local Level: Review of State and Local Capacities—(OMB Control Number 0910—New)

The Food Safety Modernization Act (FSMA) (Pub. L. 111–353) states that a review must be conducted to assess the State and local capacities to show needs for enhancement in the areas or staffing levels, laboratory capacities, and information technology systems. This mandate is referenced again in FSMA section 110 stating that a review of current food safety and food defense capabilities must be presented to Congress no later than 2 years after the date of enactment (enactment date January 4, 2011). In order to facilitate this review, this team must distribute a

survey to State and local health and agriculture agencies. In doing so, this team will be able to analyze the gaps and trends to occur at these respective levels which will allow FSMA counterparts to develop ways to enhance food safety and food defense. In developing these strategies, FDA will be able to work with other Federal Agencies to improve and expand food safety and defense to ultimately reach a state of an integrated food safety system.

FDA will conduct the survey electronically which allows FDA to conduct streamlines analysis while creating a low-burden, user-friendly environment for respondents to complete the survey. Once the results have been tabulated, a report will be generated and given to FSMA section 110 to present to Congress as well as FSMA section 205(c)1 to develop the strategies to leverage and enhance current State and local capacities.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
Current State and local government employees	1,400	1	1,400	1	1,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This survey is slated to be a one-time survey. Through testing on six FDA employees who were formerly State employees, the survey development team has come to the conclusion that it should take no longer than 1 hour for the 1,400 current State and local government employees to complete the survey. FDA is requesting this data collection burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

Dated: February 17, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4289 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0148]

Draft Guidance for Industry on Complicated Urinary Tract Infections: Developing Drugs for Treatment; 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 ''Complicated Urinary Tract Infections: Developing Drugs for Treatment.'' The purpose of this guidance is to assist sponsors in the clinical development of drugs for the treatment of complicated urinary tract infections (cUTIs). Specifically, this guidance addresses FDA's current thinking regarding the overall drug development program for the treatment of cUTIs, including clinical trial designs to support approval of drugs.

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 May 24, 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. 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: Joseph G. Toerner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6244, Silver Spring, MD 20993–0002, 301–796–1300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Complicated Urinary Tract Infections: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist sponsors and investigators in the development of drugs for the treatment of cUTIs. This draft guidance revises and replaces the draft guidance for industry entitled ''Complicated Urinary Tract Infections and Pyelonephritis—Developing Antimicrobial Drugs for Treatment'' published in 1998.

Infections of the urinary tract occurring in patients with underlying functional or anatomic abnormalities of the urinary tract are defined as cUTIs. Infections of the kidney, called pyelonephritis, can occur in persons without underlying abnormalities of the urinary tract, but are also considered to be a subset of cUTI. Different types of bacteria can cause cUTI, but Gram-negative bacteria are most often associated with cUTI.

This draft guidance includes recommendations for an efficacy endpoint and noninferiority trial design. The efficacy endpoint, based on resolution of clinical symptoms and eradication of bacteria from the urinary tract, was derived from previously conducted trials for the treatment of cUTI. The draft guidance provides a scientific justification for a noninferiority margin based on historical observational data compared to the results of previously conducted clinical trials. The draft guidance also provides a discussion about patients with unmet need who have an infection caused by bacterial pathogens that show resistance to most antibacterial drugs on in vitro susceptibility testing.

This draft guidance is being issued 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 this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collections of information referred to in the guidance for clinical trial sponsors ''Establishment and Operation of Clinical Trial Data Monitoring Committees'' have been approved under OMB control number 0910–0581.

III. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 17, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4290 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0610]

Guidance for Industry on Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During an Influenza Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During an Influenza Pandemic.'' The guidance discusses FDA's intended approach to enforcement of adverse event reporting requirements for drugs, biologics, medical devices, and dietary supplements during an influenza pandemic. The Agency makes recommendations to industry for focusing limited resources on reports related to products indicated for the prevention and treatment of influenza and other specific types of reports indicated in the guidance.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding pandemic influenza: Carmen Maher, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4146, Silver Spring, MD 20993–0002, 301–796–8510.

Regarding human drug products: Toni Piazza-Hepp, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4480, Silver Spring, MD 20993–0002, 301–796–0520.

Regarding human biological products: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

Regarding medical device products: Deborah Moore, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3230, Silver Spring, MD 20993–0002, 301–796–6106.

Regarding dietary supplements: John Sheehan, Center for Food Safety and Applied Nutrition (HFS–315), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1488.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Postmarketing Adverse Event Reporting for Medical Products and Dietary Supplements During an Influenza Pandemic.'' FDA anticipates that during an influenza pandemic, industry and FDA workforces may be reduced while reporting of adverse events related to widespread use of medical products indicated for the treatment and prevention of influenza may increase, although the extent of these possible changes is unknown. The guidance discusses FDA's intended approach to enforcement of adverse event reporting requirements for drugs, biologics, medical devices, and dietary supplements during an influenza pandemic.

The guidance provides recommendations for planning, notification, and documentation for firms that report postmarketing adverse events. The guidance recommends that each firm's pandemic influenza continuity of operations plan include instructions for reporting adverse events and a plan for the submission of stored reports that were not submitted within regulatory timeframes. The guidance recommends that firms that are unable to fulfill normal adverse event reporting requirements during an influenza pandemic do the following:

- Document the conditions that prevent them from meeting normal reporting requirements,
- Notify the appropriate FDA organizational unit responsible for adverse event reporting compliance when these conditions exist and when the reporting process is restored, and
- Maintain records to identify what reports have been stored.

This guidance does not address monitoring and reporting of adverse events that might be imposed as a condition of authorization for products authorized for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360bbb–3). This guidance also does not address monitoring and reporting of adverse events as required by regulations establishing the conditions for investigational use of drugs, biologics, and devices. (See 21 CFR parts 312 and 812.)

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on postmarketing adverse event reporting for medical products and dietary supplements during pandemic influenza. 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. The Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0701.

The guidance also refers to previously approved collections of information found in FDA's adverse event reporting requirements in 21 CFR 310.305, 314.80, 314.98, 600.80, 606.170, 640.73, 1271.350, and 21 CFR part 803. These regulations contain collections of information that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and are approved under OMB control numbers 0910–0116, 0910–0291, 0910–0230, 0910–0308, 0910–0437, and 0910–0543. In addition, the guidance also refers to adverse event reports for nonprescription human drug products marketed without an approved application and dietary supplements required under sections 760 and 761 of the FD&C Act (21 U.S.C. 379aa and 379aa–1), which include collections of information approved under OMB control numbers 0910–0636 and 0910–0635.

IV. 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/Guidances/default.htm, http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm, http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm,* or *http://www.regulations.gov.*

Dated: February 17, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4288 Filed 2–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: STAR METRICS (Science and Technology for America's Reinvestment: Measuring the EffecTs of Research on Innovation, Competitiveness and Science)

Summary: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Oct 5, 2011 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: STAR METRICS (Science and Technology for America's Reinvestment: Measuring the EffecTs of Research on Innovation, Competitiveness and Science). *Type of Information Collection Request:* Extension of OMB number 0925–0616, expiration date 03/31/2012. *Need and Use of Information Collection:* The aim of STAR METRICS is twofold. The goal of STAR METRICS is to continue to provide mechanisms that will allow participating universities and Federal agencies with a reliable and consistent means to account for the number of scientists and staff that are on research institution payrolls, supported by federal funds. In subsequent generations of the program, it is hoped that STAR METRICS will allow for measurement of science impact on economic outcomes (such as job creatfon), on knowledge generation (such as citations, and patents) as well as on social and health outcomes.

Frequency of Response: Quarterly.~

Affected Public: Universities and other research institutions.

Type of Respondents: University administrators.

The annual reporting burden is as follows:

Estimated Number of Respondent: 100.

Estimated Number of Responses per Respondent: 4.

Average Burden Hours per Response: 2.5.

Estimated Total Annual Burden Hours Requested: 1,315.

The annualized cost to respondents is estimated to be $65,750. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

A.12–1—ESTIMATES OF ANNUAL BURDEN HOURS

	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
Stage I: One time data input	7	1	45	315
Stage 2: Ongoing quarterly data input	100	4	2.5	1,000
Total				1,315

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functioning of the National Cancer Institute, including whether the information will have practical utility; (2) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: George Chacko, Office of Planning, Analysis, and Evaluation, Center for Scientific Review, 6701 Rockledge Drive, Suite 3030, Bethesda, MD 20892 or call non-toll-free at 301–435–1111 or email your request, including your address to: *chackoge@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

George Chacko,

Director, Office of Planning, Analysis, and Evaluation, Center for Scientific Review, National Institutes of Health.

[FR Doc. 2012–4271 Filed 2–23–12; 8:45 am]

BILLING CODE 4104–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; a Multi-Center International Hospital-Based Case-Control Study of Lymphoma in Asia (AsiaLymph) (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: A Multi-Center International Hospital-Based Case-Control Study of Lymphoma in Asia (AsiaLymph) (NCI). *Type of Information Collection Request:* Emergency. *Need and Use of Information Collection:* Incidence rates of certain lymphomas have increased in the United States and in many other parts of the world. The contribution of environmental, occupational, and genetic factors to the cause of lymphoma has generated a series of novel findings from epidemiological studies conducted in the United States that have attempted to explain this increase. However, none of the chemical associations have been conclusively established and the identification of the key, functional alleles in gene regions associated with risk of NHL requires further elucidation. Further, the ability to follow-up, confirm, and extend these observations in the United States is limited by the low prevalence and limited range of several important chemical and viral exposures and the high to complete linkage disequilibrium among key candidate genetic loci in Western populations. To optimize the ability to build on and clarify these findings, it is necessary to investigate populations that differ from those in the West in both exposure patterns and underlying genetic structure. A multidisciplinary case-control study of lymphoma in Asia, where lymphoma rates have also risen, provides an opportunity to replicate and extend recent and novel observations made in studies in the West in a population that is distinctly different with regard to patterns of key risk factors, including range of exposures, prevalence of exposures, correlations between exposures, and variation in gene regions of particular interest. It will also improve the ability to understand the causes of certain types of rare lymphoma tumors in the United States that occur at much higher rates in Asia. As such, AsiaLymph will confirm and extend previous findings and yield novel insights into the causes of lymphoma in both Asia and in the United States. The major postulated risk factors for evaluation in this study are chemical exposures (i.e., organochlorines, trichloroethylene, and benzene) and genetic susceptibility. Other factors potentially related to lymphoma, such as viral infections, ultraviolet radiation exposure, medical conditions, and other lifestyle factors will also be studied. Patients from 19 participating hospitals will be screened and enrolled. There will be a one-time computer-administered interview, and patients will also be asked to provide a one-time blood and buccal cell mouth wash sample and lymphoma cases will be asked to make available a portion of their pathology sample. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* Newly diagnosed patients with lymphoma or patients undergoing surgery or other treatment for non-cancer related medical issues who live in Taiwan and in Hong Kong, Chengdu and Tianjin, China will be enrolled at treating hospitals. The annual reporting burden is estimated at 5,302 hours (see Table below). There are $77,000 in Capital Costs, Operating Costs, and/or Maintenance Costs to report.

ESTIMATES OF ANNUAL BURDEN HOURS

Category of respondents	Types of respondents	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Individuals	Patients to be Screened	3,100	1	5/60	258
	Patients with Lymphoma	1,100	1	105/60	1,925
	Other Patients	1,100	1	105/60	1,925
	Study Pathologists	19	58	5/60	92
	Interviewers	19	116	30/60	1,102
Total					5,302

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nathaniel Rothman, Senior Investigator for the Occupational and Environmental Epidemiology Branch, Division of Epidemiology and Genetics, National Cancer Institute, 6120 Executive Boulevard, Room 8118, Rockville, MD 20892 or call non-toll-free number 301–496–9093 or email your request, including your address to: *rothmann@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: February 21, 2012.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–4347 Filed 2–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Polyclonal Antibodies Useful for the Detection of Vangl1 and Vangl2 Proteins Which Play a Role in Developmental Processes

Description of Technology: Vangl1 (Van Gogh like 1) and Vangl2 (Van Gogh like 2) are two core proteins mediating establishment of Planar Cell Polarity (PCP), which refers to the polarity of epithelial cells within a plane orthogonal to their apical-basal axis. Disruption of core PCP proteins leads to many developmental defects, including open neural tube, misorientation of sensory hair cells in the inner ear, polycystic kidney disease and skeletal deformations. In humans, mutations in Vangl1 and Vangl2 have been identified in patients with neural tube defects, such as spina bifida, the most common permanently disabling birth defect in the United States. NHGRI researchers have recently generated rabbit polyclonal antibodies against Vangl1 and phosphorylated Vangl2 proteins that are suitable for endogenous Vangl1 and Vangl2 detection.

Potential Commercial Applications: Anti-Vangl1 and Vangl2 antibodies could be used in the development of diagnostic and therapeutic treatments for PCP-related developmental defects.

Development Stage:

- Pre-clinical.
- In vitro data available.

Inventors: Yingzi Yang and Bo Gao (NHGRI); Yingzi Yang and Hai Song (NHGRI).

Publications:

1. Gao B, et al. Wnt signaling gradients establish planar cell polarity by inducing Vangl2 phosphorylation through Ror2. Dev Cell. 2011 Feb 15;20(2):163–176. [PMID 21316585]

2. Song H, et al. Planar cell polarity breaks bilateral symmetry by controlling ciliary positioning. Nature. 2010 Jul 15;466(7304):378–382. [PMID 20562861]

Intellectual Property: HHS Reference Nos. E–135–2011/0 and E–136–2011/0—Research Tools. Patent protection is not being pursued for these technologies.

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Novel Biomarkers for Alcohol-Induced Liver Disease (ALD)

Description of Technology: Alcohol-induced liver disease (ALD) is a leading cause of non accident-related deaths worldwide. ALD is reversible if identified in the early stages, but early diagnosis is difficult with existing tools. One problem associated with developing a new diagnostic tool is the genetic background associated heterogeneity in physiological responses to chronic alcohol consumption. The inventors of the present technology have solved this problem and have discovered background-independent novel biomarkers for ALD. In the current studies, the inventors generated two genetically distinct lines of PPARalpha-null mice and evaluated the levels of urine metabolites after alcohol exposure. The inventors have identified indole-3-lactic acid and phenyllactic acid as putative biomarkers for ALD. Indole-3-lactic acid and phenyllactic acid levels were significantly elevated in both lines of PPARalpha-null mice after two to three months of alcohol administration. The inventors had identified indole-3-lactic acid and phenyllactic acid to be background independent markers for ALD.

Potential Commercial Applications: Useful for early non-invasive screening of ALD in large numbers of subjects irrespective of their genetic background.

Competitive Advantages:

- Easily adaptable for the development of highly sensitive spectroscopy-based assay kits.
- Amenable for the development of high-throughput mass spectrometric analysis of urine samples to detect early onset of ALD.

Development Stage:

- Early-stage.
- Pre-clinical.
- In vivo data available (animal).

Inventors: Soumen Kanti Manna and Frank J. Gonzalez (NCI).

Publications:

1. Manna SK, et al. UPLC–MS-based urine metabolomics reveals indole-3-lactic acid and phenyllactic acid as conserved biomarkers for alcohol-induced liver disease in the Ppara-null mouse model. J Proteome Res. 2011 Sep 2;10(9):4120–4133. [PMID 21749142]

2. Manna SK, et al. Identification of noninvasive biomarkers for alcohol-induced liver disease using urinary metabolomics and the Ppara-null

mouse. J Proteome Res. 2010 Aug 6;9(8):4176–4188. [PMID 20540569]

Intellectual Property: HHS Reference No. E–172–2011/0—U.S. Provisional Application No. 61/507,573 filed 13 Jul 2011.

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov.*

Biomarkers for Niemann-Pick Disease Type C and Related Disorders of Oxysterol Accumulation

Description of Technology: Niemann-Pick disease type C (NPC) is a lethal lysosomal storage disorder characterized by liver disease and progressive neurodegeneration. Lysosomal storage is impaired by oxidized cholesterol (oxysterol) accumulation. Presenting signs and symptoms are nonspecific, and the diagnosis is frequently difficult and delayed. The inventors established a rapid ELISA assay to evaluate biomarker levels in serum. The ELISA assay tests a novel combination of two biomarkers significantly elevated in NPC patients, Cathepsin D and Galectin-3. Other diseases can cause oxysterol accumulation, including other lysosomal storage diseases, cholesterol trafficking diseases, and neurodegenerative diseases. At least for the lysosomal storage diseases, the combination of elevated Cathepsin D and Galectin-3 appears specific for NPC. Cathepsin D is a lysosomal enzyme involved in protein degradation. The secreted Galectin-3 is mostly known as a chemoattractant for immune cells.

Potential Commercial Applications:

- NPC diagnosis.
- NPC patient disease progression monitoring.
- NPC therapeutic efficacy testing in Clinical Trials.
- Application of above methods to related diseases.

Competitive Advantages:

- Fast and non-invasive ELISA serum assay.
- Potential for high sensitivity.
- Cost effective.

Development Stage:

- Pilot.
- Early-stage.
- In vivo data available (animal).
- In vivo data available (human).

Inventor: Forbes D. Porter (NICHD).

Intellectual Property: HHS Reference No. E–302–2011/0—U.S. Provisional Application No. 61/576,062 filed 15 Dec 2011.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Dated: February 21, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–4310 Filed 2–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared High End Instrumentation: NMR and X-ray.

Date: March 13–14, 2012.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kathryn M Koeller, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Hematology.

Date: March 13–14, 2012.

Time: 11:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 301 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; P 41 Competitive Revision.

Date: March 14, 2012.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.

Date: March 21, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: General Services Administration (GSA), 301 7th Street SW., 1511, Washington, DC 20407.

Contact Person: Ross D. Shonat, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–225: Program Project: Center for Macromolecular Modeling and Bioinformatics.

Date: March 21–23, 2012.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: University of Illinois at Urbana-Champaign, Urbana-Champaign, IL.

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Developmental System Biology.

Date: March 22–23, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.

Date: March 22, 2012.

Time: 11 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: General Services Administration, Washington DC, 301 7th Street SW., 1511, Washington, DC 20407.

Contact Person: David R Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Cell Biology and Development.

Date: March 23–29, 2012.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Kenneth Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7717, Bethesda, MD 20892, 301–435–1789, *kenneth.ryan@nih.hhs.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4345 Filed 2–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Fellowships and Dissertation Grants

Date: March 9, 2012

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive BLVD, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4342 Filed 2–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 a meeting of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Populations Sciences Subcommittee.

Date: March 15–16, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4341 Filed 2–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–11–002: Building Interdisciplinary Research Careers in Women's Health K12s.

Date: March 12, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ''Genetics and Epigenetics of Disease.''

Date: March 13, 2012.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–495–4511, *ronald.adkins@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Translational Research in Diabetes, Obesity and Endocrine Disorders.

Date: March 14, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell, Computational, and Molecular Biology.

Date: March 15, 2012.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: General Services Administration Crystal City, Crystal City Plaza 4 (CP4), 2200 Crystal Drive, L–121, Arlington, VA 22202.

Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Regulation of Mitochondrial Oxidative Metabolism.

Date: March 20–21, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718, *jakobir@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Muscle Disease and Function.

Date: March 21–22, 2012.

*Time:*9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 16, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4346 Filed 2–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; Host Targeted Interventions As Therapeutics For Infectious Diseases.

Date: March 13, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–3679, *schleefrr@niaid.nih.gov*.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee.

Date: March 14–15, 2012.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sujata Vijh, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–594–0985, *vijhs@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Host Targeted Interventions As Therapeutics For Infectious Diseases.

Date: March 15, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–3679, *schleefrr@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Host Targeted Interventions As Therapeutics For Infectious Diseases.

Date: March 16, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–3679, *schleefrr@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 17, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4343 Filed 2–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Availability of the Draft Supplementary Risk Assessment for the Boston University (BU) National Emerging Infectious Diseases Laboratories (NEIDL); Public Hearing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; public hearing announcement.

SUMMARY: The National Institutes of Health has placed in the docket for public review and comment the Draft Supplementary Risk Assessment for the NEIDL, which is intended to respond to the concerns of the local community, courts, the National Research Council, and the general public regarding possible impacts of the laboratory. The purpose of the Draft Supplementary Risk Assessment for the NEIDL is to present the human health consequences of a potential accidental event or malevolent action resulting in the release of a pathogen or loss of biological containment at the NEIDL. Furthermore, this risk assessment compares the potential public health consequences resulting from the potential loss of biocontainment in a

range of population density areas that represent urban, suburban, and rural environments. The urban, suburban, and rural sites that were selected for the purposes of the comparative analysis include the Boston University Medical Campus (BUMC) BioSquare Research Park, Boston, where the NEIDL has been constructed; the BU Corporate Education Center in Tyngsborough, Massachusetts; and the BU Sargent Center for Outdoor Education near Peterborough, New Hampshire. The Risk Assessment also examines whether locating the NEIDL in Boston would have a disproportionately high and adverse impacts on low-income and minority populations.

DATES: Comments on the Draft Supplementary Risk Assessment for the NEIDL must be postmarked no later than May 1, 2012. A public hearing to solicit public comment on the document will be held on April 19, 2012, from 6:30–9:30 p.m. at Roxbury Community College, 1234 Columbus Avenue, Boston, MA 02120.

ADDRESSES: Written comments should be sent to The National Institutes of Health, Office of Biotechnology Activities, ATTN: NEIDL Risk Assessment, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland, 20892. Email comments should be sent to *NIH_BRP@od.nih.gov.* Please note that comments sent by email must be received by 11:59 p.m. on the last day of the comment period May 1, 2012.

FOR FURTHER INFORMATION CONTACT: National Institutes of Health Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland, 20892. Telephone number: 301–496–9838. Electronic mail address: *NIH_BRP@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The National Institutes of Health awarded a construction grant to Boston University Medical Campus to partly fund the design and construction of one of two National Biocontainment Laboratories. These advanced biomedical research laboratories are essential to the civilian biodefense initiative, providing critically needed Biosafety Levels 2, 3 and 4 research space. The basic and translational research to be conducted in these laboratories over the next 20 years would result in development of new rapid diagnostic assays, vaccines and therapeutics for protection of the American public against intentional misuse or release of harmful biological agents or toxins and naturally emerging and re-emerging infectious diseases.

The NIH completed and published a final Environmental Impact Statement (EIS) and published a Record of Decision as required for major federal actions under the National Environmental Policy Act. Construction of the NEIDL began at the BioSquare II Research Park on Albany Street, Boston, Massachusetts adjacent to the BUMC.

During the preparation of the EIS, the NIH conducted a thorough review of the possible impacts of the NEIDL on the public and the environment. Based on that review, the NIH concluded that the construction and operation of the NEIDL in its current location posed a negligible risk to the surrounding community in which the laboratory was sited.

Several residents and public interest groups filed a federal lawsuit challenging the adequacy of the final EIS prepared for the NEIDL and whether the potential risks of the research would vary depending on the location of the facility in a suburban or rural area. A state lawsuit was also filed challenging the adequacy of a separate environmental review prepared pursuant to a Massachusetts law.

The Draft Supplementary Risk Assessment for the NEIDL addresses the issues raised by the public and the courts regarding pathogen release, facility location, and environmental justice concerns.

Throughout the preparation of the Draft Supplementary Risk Assessment for the NEIDL, NIH has sought the input of the public regarding scenarios and pathogens they wished to see included in the Risk Assessment. In addition, NIH established an independent Blue Ribbon Panel (BRP) to provide scientific and technical advice to the agency in assessing any potential public health risks associated with the operation of the NEIDL and to assess strategies for mitigation. The BRP was convened with 16 members having expertise in relevant fields, including infectious diseases, public health and epidemiology, risk assessment, environmental justice, risk communications, bioethics, biodefense, biosafety, and infectious disease modeling. The NIH has also sought guidance from the National Research Council (NRC) committee that was critical of the draft of an earlier risk assessment prepared by the NIH.

Availability of Copies and Electronic Access

Given the highly technical nature of the report and in order to assist the reader, a reader's guide will be provided with each copy of the draft supplementary risk assessment .

Copies of the Draft Supplementary Risk Assessment Report for the Boston University National Emerging Infectious Diseases Laboratory and the reader's guide document may be obtained at no cost by calling 301–496–9838, or by emailing requests to *NIH_BRP@od.nih.gov.* The document will also be available electronically at: *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/default.asp.*

A copy of the draft supplementary risk assessment and the reader's guide will also be available for review at each of the following locations. Central Branch of the Boston Public Library, 700 Boylston Street, Boston, MA, South End Library, 685 Tremont Street, Boston, MA, Grove Hall Library, 42 Geneva Avenue, and Dudley Library, 65 Warren Street, Boston, MA.

Public Meeting: The National Institutes of Health will hold a public meeting on Thursday, April 19, 2012, from 6:30–9:30 p.m. at Roxbury Community College, 1234 Columbus Avenue, Boston, MA 02120. The purpose of the meeting is to solicit public comments regarding the Draft Supplementary Risk Assessment for the National Emerging Infectious Diseases Laboratories. Comments provided during the meeting, as well as those received during the public comment period will be considered in the Final Supplementary Risk Assessment for the National Emerging Infectious Diseases Laboratories. Individuals wishing to provide oral comments at the meeting must sign-in prior to the start of the meeting. Sign-in will begin at 5:30 p.m. In order to ensure everyone has the opportunity to speak, comments must be limited to no longer than three minutes. This public meeting is part of the 67-day public comment period initiated with the publication of a Notice of Availability in the **Federal Register** on February 24, 2012. The 67-day comment period began on February 24, 2012 and will end on May 1, 2012. Comments can also be sent to: The National Institutes of Health, Attn: NEIDL Risk Assessment, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, or emailed to *NIH_BRP@od.nih.gov.* For further information concerning this meeting, please contact Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, telephone 301–496–9838, email: *BRP_NIH@od.nih.gov.*

Dated: February 16, 2012.

Amy Patterson,

Associate Director for Science Policy, National Institutes of Health.

[FR Doc. 2012–4266 Filed 2–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0133]

Merchant Marine Personnel Advisory Committee: Intercessional Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee working group meeting.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will conduct an intercessional meeting so that a working group may discuss Task Statement 76, entitled ''Review of Performance Measures (Assessment Criteria).''

This meeting will be open to the public.

DATES: A MERPAC working group will meet on March 12, 2012, from 8 a.m. until 5 p.m. Please note that the meeting may adjourn early if all business is finished. Written comments to be distributed to working group members and placed on MERPAC's Web site are due by March 5, 2012.

ADDRESSES: The working group will meet at the Hilton San Francisco Airport Bayfront Hotel, 600 Airport Blvd., Burlingame, CA 94010.

For information on facilities or services for individuals with disabilities or to request special assistance, contact Ms. Theresa Alas at telephone 650–373–4004 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the working group, which are listed in the ''Agenda'' section below. Written comments must be identified by Docket No. USCG–2012–0133 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–372–1918.
- *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.
- *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.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov.*

This notice may be viewed in our online docket, USCG–2012–0133, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rogers Henderson, Alternate Designated Federal Officer (ADFO), telephone 202–372–1408. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463).

MERPAC is an advisory committee authorized under section 871 of the Homeland Security Act of 2002, Title 6, United States Code, section 451, and chartered under the provisions of the FACA. The Committee will act solely in an advisory capacity to the Secretary of the Department of Homeland Security (DHS) through the Commandant of the Coast Guard and the Director of Commercial Regulations and Standards on matters relating to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards. The Committee will advise, consult with, and make recommendations reflecting its independent judgment to the Secretary.

Agenda

March 12, 2012

The agenda for the March 12, 2012 working group meeting is as follows:

(1) Discuss and prepare proposed recommendations for the full committee to consider concerning Task Statement 76, entitled ''Review of Performance Measures (Assessment Criteria).'' The work group will specifically address performance measures (assessment criteria) for mariners seeking an endorsement as Officer in Charge of a Navigational Watch and Master on ships of less than 500 Gross Tonnage as measured under the International Tonnage Convention (ITC) while engaged on near-coastal voyages;

(2) Public comment period; and

(3) Adjournment of meeting.

Procedural: A copy of all meeting documentation is available at the *https://www.fido.gov* Web site or by contacting Rogers Henderson. Once you have accessed the MERPAC Committee page, click on the meetings tab and then the ''View'' button for the meeting dated March 12, 2012 to access the information for this meeting. Minutes will be available 90 days after this meeting. Both minutes and documents applicable for this meeting can also be found at an alternative site using the following Web address: *https://homeport.uscg.mil* and use these key strokes: Missions; Port and Waterways Safety; Advisory Committees; MERPAC; and then use the event key.

A public oral comment period will be held during the working group meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment period may end before the prescribed ending time of the meeting. Contact Rogers Henderson as indicated above to register as a speaker.

Dated: February 22, 2012.

J. G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–4446 Filed 2–22–12; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2012–0010; OMB No. 1660–0062]

Agency Information Collection Activities: Proposed Collection; Comment Request, State/Local/Tribal Hazard Mitigation Plans

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 State, Local and Tribal mitigation plan requirements. While there has been no change to the information being collected, this proposed adjustment is due to a change in methodology used to estimate burden.

DATES: Comments must be submitted on or before April 24, 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–2012–0010. 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–2012–0010 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: Frederick Sharrocks, Branch Chief, Assessment and Planning Branch, Risk Analysis Division, Federal Insurance and Mitigation Administration, FEMA, (202) 646–2796 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: Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165, as amended by the Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106–390, provides new and revitalized approaches to mitigation planning. The Stafford Act provides a framework for linking pre-and post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. Title 44 CFR part 201 provides the mitigation planning requirements for State, local and Indian Tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide-range of resources.

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: OMB No. 1660–0062.

Form Titles and Numbers: None.

Abstract: The purpose of State, Local and Tribal Hazard Mitigation Plan requirements is to support the administration of the Federal Emergency Management Agency Mitigation grant programs, and contemplate a significant State, Local and Tribal commitment to mitigation activities, comprehensive mitigation planning, and strong program management. Implementation of plans, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals, priorities to reduce risks from natural hazards.

Affected Public: State, local, or Tribal Government.

Estimated Total Annual Burden Hours: 781,152 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form number	No. of respondents	No. of responses per respondent	Total No. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Local or Tribal Government	New Plan (Local and Tribal)	56	5	280	2,080	582,400	$44.44	$25,881,856
Local or Tribal Government	Plan Updates (Local and Tribal)	56	9	504	320	161,280	44.44	7,167,283
State Government	State Reviews of Local and Tribal plans.	56	14	784	8	6,272	44.44	278,728
State Government	Standard State Plan Updates	16	1	16	1,560	24,960	44.44	1,109,222
State Government	Enhanced State Plan Updates	3	1	3	2,080	6,240	44.44	277,306
Total		56		1,587		781,152		34,714,395

Note: Contract support from the private sector in developing, updating, and reviewing the plans is not captured in this table.

Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Note: This table assumes that no grant dollars are paying for the Mitigation Plans. Mitigation Plans may be paid for using FEMA mitigation grant programs, which usually has a 75 percent Federal cost share.

Note: The No. of Responses per Respondent is based on estimates, which are rounded to whole plans.

Note: The No. of Respondents is based on the number of governments preparing State-level mitigation plans and is inclusive of States, U.S. Territories, and the District of Columbia.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $34,714,395. There are no operations and maintenance costs for technical services. There are no annual start-up or capital costs. The estimated annual cost to the Federal Government is $1,506,562.

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.

Dated: February 14, 2012.

John G. Jenkins, Jr.,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–4268 Filed 2–23–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19515]

Intent to Request Renewal From OMB of One Current Public Collection of Information: Air Cargo Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0040, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. This ICR involves five broad categories of affected populations: airports, passenger aircraft operators, foreign air carriers, indirect air carriers operating under a security program, and all-cargo carriers. The collections of information that make up this ICR are security programs, security threat assessments (STA), known shipper data via the Known Shipper Management System (KSMS), Air Cargo Data Management System (ACDMS), Cargo Reporting Tool for cargo screening reporting, and evidence of compliance recordkeeping. TSA seeks continued OMB approval in order to secure passenger aircraft carrying cargo as authorized in the Aviation and Transportation Security Act.

DATES: Send your comments by April 24, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at www.reginfo.gov. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0040 Air Cargo Security requirements, 49 CFR parts 1540, 1542, 1544, 1546, and 1548. TSA is seeking renewal of an expiring collection of information. Congress set forth in the Aviation and Transportation Security Act (ATSA), Public Law 107–71, two specific requirements for TSA in the area of air cargo security: (1) To provide for screening of all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft; and (2) to establish a system to screen, inspect, report, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft as soon as practicable. In the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Public Law 110–53, Congress required that 50 percent of cargo transported on passenger aircraft be screened by February 2009, and 100 percent of such cargo be screened by August 2010. Collection of information associated with the 9/11 Act requirements fall under OMB control number 1652–0053.

While aviation security requirements have greatly reduced the vulnerability of the air cargo system, TSA, in cooperation with industry stakeholders, identified additional gaps in the existing cargo security requirements that must be filled to reduce the likelihood of cargo tampering or unauthorized access to the aircraft. TSA must proceed with this ICR for this program in order to meet the Congressional mandates and maintain current regulations (49 CFR 1542.209, 1544.205, 1546.205, and part 1548) that enable them to accept, screen, and transport air cargo. The uninterrupted collection of this information will allow TSA to continue to ensure implementation of these vital security measures for the protection of the traveling public.

Data Collection

This information collection requires the ''regulated entities,'' which may include passenger and all-cargo aircraft operators, foreign air carriers, and indirect air carriers (IACs), to implement a standard security program or to submit modifications to TSA for approval, and update such programs as necessary. The regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct STAs on individuals with unescorted access to cargo. This includes each individual who is a general partner, officer, or director of an IAC or an applicant to be an IAC, and certain owners of an IAC or an applicant to be an IAC; and any individual who has responsibility for screening cargo under 49 CFR parts 1544, 1546, or 1548. Aircraft operators, foreign air carriers, and IACs must report the volume of accepted and screened cargo transported

on passenger aircraft. Further, TSA will collect identifying information for both companies and individuals whom aircraft operators, foreign air carriers, and IACs have qualified to ship cargo on passenger aircraft, also referred to as ''known shippers.'' This information is collected electronically via the KSMS and the Indirect Air Carrier Management System (IACMS). Whenever the information cannot be entered on KSMS or IACMS, the regulated entity must conduct a physical visit of the shipper using the Aviation Security Known Shipper Verification Form and subsequently enter that information into these systems. These regulated entities must also maintain records, including records pertaining to security programs, training, and compliance. The forms used in this collection of information include the Aviation Security Known Shipper Verification Form, Cargo Reporting Template, and the Security Threat Assessment Application.

Estimated Burden Hours

The hour burden associated with the initial submission of security programs is estimated by TSA to be 4 hours for each of the 152 aircraft operator, foreign air carrier and IAC average annual regulated entites for an average annual hour burden of 606 hours.

The hour burden associated with the security program updates is estimated by TSA to be 4 hours for each of the 4,509 aircraft operators, foreign air carriers, and IACs for an average annual hour burden of 18,036 hours. TSA estimates one percent of IACs (42) will file an appeal at 5 hours per appeal for an average annual hour burden of 210 hours.

For the STA requirement, based on a 15-minute estimate for each of the average 40,003 annual responses, TSA estimates that the average annual burden will be 10,001 hours.

For the record keeping requirement, based on a 5-minute estimate for each of the 40,003 annual responses, TSA estimates that the total average annual burden will be 3,320 hours.

For the KSMS, given that the IAC or aircraft operator must input a name, address, and telephone number, TSA estimates it will take 2 minutes for the 792,000 electronic submissions for a total annual burden of 26,400 hours. Also for KSMS, TSA estimates it will take one hour for the 8,000 manual submissions for a total annual burden of 8,000 hours.

TSA estimates out of the 480 total aircraft operators and foreign air carriers impacted by TSA regulations, 135 aircraft operators and foreign air carriers will submit cargo screening reporting information because not all aircraft operators and foreign air carriers transport cargo. TSA estimates this will take an estimated one hour per week (52 hours per year) for a total average annual burden of 6,994 hours. For recordkeeping, based on a 5-minute estimate for each of the 40,003 average annual responses, TSA estimates that the total average annual burden will be 3,320 hours.

Issued in Arlington, Virginia, on February 17, 2012.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–4273 Filed 2–23–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0018]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Certified Cargo Screening Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0053, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collections include: (1) Applications from entities that wish to become Certified Cargo Screening Facilities (CCSF); (2) personal information to allow TSA to conduct security threat assessments on key individuals employed by the CCSFs; (3) acceptance of a standard security program or submission of a proposed modified security program; (4) information on the amount of cargo screened; and (5) recordkeeping requirements for CCSFs. TSA is seeking the renewal of the ICR for the continuation of the program in order to secure passenger aircraft carrying cargo.

DATES: Send your comments by April 24, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0053, Certified Cargo Screening Program, 49 CFR parts 1515, 1520, 1540, 1544, 1546, 1548, and 1549. TSA is seeking renewal of an expiring collection of information. Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53, 121 Stat. 266, 278, August 3, 2007) required the development of a system to screen 50 percent of the cargo transported on a passenger aircraft by February 2009, and to screen 100 percent of such cargo by August 2010. In September 2009, TSA issued an interim final rule (IFR) amending 49 CFR to implement this statutory requirement. See 74 FR 47672 (September 16, 2009). In August 2011, TSA issued the Air Cargo Screening Final Rule (Final Rule) to finalize the statutory requirement for 100 percent screening of air cargo. See 76 FR 51848 (August 18, 2011). The Final Rule removed all provisions regarding validation firms and validators, as TSA has determined that it has the resources

to continue to conduct assessments of facilities applying for certification under the Certified Cargo Screening Program (CCSP). The Final Rule deleted the requirement that aircraft operators would have to become certified in order to screen cargo off airport. Aircraft operators are already screening cargo on airport, under a TSA-approved security program, and additional certification of aircraft operators is not necessary. TSA received approval from OMB for the collections of information contained in the IFR and now seeks to extend this approval from OMB on this Final Rule. Accordingly, TSA must proceed with this ICR for this program in order to continue to meet the Congressional mandate. The ICR allows TSA to collect several categories of information as explained below.

Data Collection

TSA certifies qualified facilities as CCSFs. Companies seeking to become CCSFs are required to submit an application for a security program and for certification to TSA at least 90 days before the intended date of operation. All CCSF applicants submit applications and related information either electronically through email, through the online Air Cargo Document Management System, or by postal mail.

TSA requires CCSF applicants to ensure that individuals performing screening and related functions under the Final Rule have successfully completed a security threat assessment (STA) conducted by TSA. In addition, Security Coordinators and their alternates for CCSFs must undergo STAs. CCSFs must submit personally identifiable information on these individuals to TSA so that TSA can conduct an STA. TSA also requires CCSFs to accept and implement a standard security program provided by TSA or to submit a proposed modified security program to the designated TSA official for approval. The CCSF must also submit to an assessment of its facility by TSA. Once TSA approves the security program and determines that the applicant is qualified to be a CCSF, TSA will send the applicant a written notice of approval and certification to operate as a CCSF.

Once certified, CCSFs must provide information on the amount of cargo screened and other cargo screening metrics at an approved facility. CCSFs must also maintain screening, training, and other security-related records of compliance with the Final Rule and make them available for TSA Inspectors.

The forms used for this collection of information include the CCSF Facility Profile Application (TSA Form 419B), CCSF Principal Attestation (TSA Form 419D), Security Profile (TSA Form 419E), Security Threat Assessment Application (TSA Form 419F), Aviation Security Known Shipper Verification (TSA Form 419H), and the Cargo Reporting Template.

Estimated Burden Hours

As noted above, TSA has identified several separate information collections for the Final Rule under this ICR. These collections will affect an estimated total of 2,309 unique respondents, over the three years of the PRA analysis. Collectively, these five information collections represent an estimated average of 127,050 responses annually, for an average annual hour burden of 143,768 hours.

1. *CCSF Application.* TSA estimated that it will receive 2,902 applications in 3 years, for an average of 967 applications annually (this includes submissions from new applicants and CCSFs applying to renew their certification). TSA further estimated that these applications will require an average of 2 hours each to complete, resulting in an annual burden of approximately 1,934 hours (967 × 2).

2. *STA Applications.* All CCSP participants subject to 49 CFR parts 1544, 1546, 1548, and 1549 will be required to have certain employees undergo security threat assessments (STAs). TSA estimated it will receive a total of 153,516 applications in 3 years, for an average of 51,172 applications annually. TSA further estimated that STA applications will require approximately 15 minutes each to complete, resulting in an annual burden of approximately 12,793 hours (51,172 × 0.25).

3. *Security Programs.* TSA estimated that a total of 1,778 CCSFs will be required to maintain and update their security programs in 3 years, for an average of 593 CCSFs annually. Each firm will devote approximately 42 hours to create their initial security program, resulting in an estimated annual burden of 24,906 hours (593 × 42). TSA estimated 3,701 security program updates in the first three years for an average of 1,234 updates per year. TSA further estimated that security program updates will require approximately 4 hours each to complete, resulting in an annual burden of approximately 4,936 hours (1,234 × 4).

4. *Recordkeeping Requirements.* All CCSFs will be required to maintain records of compliance with the FR. TSA estimated a time burden of approximately five minutes (0.083 hours) annually per employee who is required to have an STA for each CCSF to file the training records and other records of compliance. TSA estimated an annual burden of approximately 4,247 hours (51,172 × 0.083).

5. *Cargo Reporting.* TSA estimated that all CCSFs will complete monthly cargo volume reports at an estimated time of one hour each per week. The average annual responses, based on one response per firm per month, are 21,912 (1,826 × 12). The estimated annual burden is 94,952 hours (1,826 × 52).

Issued in Arlington, Virginia, on February 17, 2012.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–4272 Filed 2–23–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of a Currently Approved Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form 70–003, 70–004, IDENT/IAFIS Interoperability State Department of Corrections Officials and Facilities Assessment; OMB Control No. 1653–0040.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 31, 2011, Vol. 76 No. 62 pp. 17936, allowing for a 60 day comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until March 26, 2012.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to

oira_submission@omb.eop.gov or faxed to (202) 395–6974.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension, without change, of a previously approved collection. The type of information collection as previously reported in the 60-day **Federal Register** Notice at 76 FR 62 pp. 17936, March 31, 2011 has changed due to the elimination of the proposed new forms 75–001 and 75–002.

(2) *Title of the Form/Collection:* IDENT/IAFIS Interoperability State Department of Corrections Officials and Facilities Assessment.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 70–003, 70–004; U.S. Immigration and Customs Enforcement. Forms 75–001 and 75–002, previously indicated as being a part of this collection in the 60-day **Federal Register** Notice at 76 FR 62 pp. 17936, March 31, 2011, are no longer being added to this collection and the information proposed to be collected on these forms will not be collected.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State. Local or Tribal Government; 8 U.S.C. 1231(a) gives the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) authority to remove criminal aliens who have been ordered as such. DHS/ICE is improving community safety by transforming the way the Federal government cooperates with state and local law enforcement agencies to identify, detain, and remove all criminal aliens held in custody. Secure Communities revolutionizes immigration enforcement by using technology to share information between law enforcement agencies and applying risk-based methodologies to focus resources on assisting all local communities remove high-risk criminal aliens. In order for the Secure Communities Initiatives to meet its goals, ICE must collect detailed business requirements and input from its state and local law enforcement partners. This assessment determines the fingerprint procedures and technological capabilities of state and local jails governance, as well as basic jail booking statistics. This information is used in order to prioritize local sites and deliver the implementation strategy of the Secure Communities Initiative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,000 responses at 20 minutes (.3333 hours) per response. The total number of responses of 7,356 previously reported in the 60-day **Federal Register** Notice at 76 FR 62 pp. 17936, March 31, 2011, has been corrected to represent the elimination of proposed forms 75–001 and 75–002.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,334 annual burden hours. The total number of burden hours of 2,453 previously reported in the 60-day **Federal Register** Notice at 76 FR 62 pp. 17936, March 31, 2011, has been corrected to represent the elimination of proposed forms 75–001 and 75–002.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: John Ramsay, Forms Program Manager, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Mail Stop 5705, Washington, DC 20536.

John Ramsay,

Forms Program Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–4276 Filed 2–23–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of a Currently Approved Collection; Comment Request

ACTION: 60-Day Notice of Information Collection; Form G–79A, Information Relating to Beneficiary of Private Bill; OMB Control No. 1653–0026.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 24, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), John Ramsay, Program (Forms) Manager, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4367.

Comments are encouraged and will be accepted for sixty days until [Insert date of the 60th day from the date that this notice is published in the **Federal Register**]. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Information Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–79A, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; The information in this collection is taken to compose reports on immigration related private bills to Congress to determine whether the bill is necessary or if the subject is worthy of the proposed relief.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: John Ramsay, Program (Forms) Manager, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4367.

John Ramsay,

Forms Program Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–4275 Filed 2–23–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–N–08]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 16, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2012–4155 Filed 2–23–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5615–N–01]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: In compliance with Section 202(c)(5) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW., Room B–133/3150, Washington, DC 20410–8000; telephone 202–708–2224 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)), requires that HUD ''publish in the **Federal Register** a description of and the cause for administrative action against a [HUD-approved] mortgagee'' by the Department's Mortgagee Review Board (''Board''). In compliance with the requirements of Section 202(c)(5), this notice advises of actions that have been taken by the Board from February 14, 2011, to July 20, 2011.

I. Settlement Agreements, Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, Reprimands, and Administrative Payments

1. Action Mortgage Corporation, Cranston, RI [Docket No. 10–1855–MR]

Action: On June 15, 2011, the Board issued a Notice of Administrative Action permanently withdrawing the FHA approval of Action Mortgage Corporation (''AMC'').

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: AMC entered into an agreement with HUD on August 5, 2010, to resolve violations of HUD/FHA requirements regarding its use of the official HUD seal on its Web site. AMC agreed to pay a civil monetary penalty. AMC failed to remit the entire amount owed to HUD pursuant to the settlement agreement.

2. Allen Mortgage LC, Centennial Park, AZ [Docket No. 11–1152–MR]

Action: On September 14, 2011, the Board entered into a Settlement Agreement with Allen Mortgage, LC (''Allen'') that required Allen to pay a civil money penalty in the amount of $12,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Allen failed to notify the Department that Allen, its principals, and its originators had entered into a consent order with the state of Washington that required the payment of an $11,000 fine for originating mortgages in the state without originator licenses; failed to notify the Department that it entered into a consent order with the state of Arkansas, which required the payment of a $1,500 penalty for failing to file its annual report; and falsely certified on its 2010 Yearly Verification Report that it had not been involved in a state proceeding that resulted in adverse action and had not relinquished a license in any jurisdiction in which it originates or services FHA-insured mortgages.

3. AmericaHomeKey, Inc., Dallas, TX [Docket No. 11–1156–MR]

Action: On June 15, 2011, the Board entered into a Settlement Agreement with AmericaHomeKey, Inc. (''AHK'')

that required AHK to pay a civil money penalty in the amount of $138,900, without admitting fault or liability.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: AHK failed to timely remit upfront mortgage insurance premiums to HUD/FHA.

4. Branch Bank and Trust Company, Wilson, NC [Docket No. 10–2000–MR]

Action: On June 10, 2011, the Board entered into a Settlement Agreement with Branch Bank and Trust Company (''BB&T'') that required BB&T to pay a civil money penalty in the amount of $215,000, without admitting fault or liability, and to remit outstanding MIPs and late fees owed by BB&T and/or its subsidiary, Liberty Mortgage Corporation.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: BB&T and its subsidiary, Liberty Mortgage Corp., failed to timely remit mortgage insurance premiums to HUD/FHA, and failed to notify HUD/FHA within 15 days of the termination of contracts of mortgage insurance.

5. Cornerstone Mortgage Company, Houston, TX [Docket No. 10–1995–MR]

Action: On March 1, 2011, the Board entered into a Settlement Agreement with Cornerstone Mortgage Company (''Cornerstone'') that required Cornerstone to pay a civil money penalty in the amount of $7,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Cornerstone failed to timely remit mortgage insurance premiums to HUD.

6. First American Mortgage Trust, Brookline, MA [Docket No. 10–1960–MR]

Action: On April 7, 2011, the Board entered into a Settlement Agreement with First American Mortgage Trust (''FAMT'') that required FAMT to indemnify the Department for losses on five loans; refund $9,368.38 in impermissible fees charged to borrowers; and pay a civil money penalty in the amount of $72,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: FAMT failed to implement an adequate Quality Control (''QC'') Plan during the years 2006, 2007, 2008 and 2009; failed to report to the Department serious deficiencies and patterns of noncompliance in twenty loans that FAMT discovered during QC reviews; approved loans that did not meet FHA's minimum credit requirements; approved a loan with a total fixed payment-to-income ratio that exceeded FHA benchmarks without significant compensating factors and without documentation sufficient to support those factors; failed to properly calculate the income used to qualify the borrowers in two loans; failed to ensure that parties were not charged fees that were excessive or unreasonable for the services provided; and failed to provide adequate documentation to support the excessive interest rate and discount points charged to borrowers.

7. First Guaranty Mortgage Corporation, McLean, VA [Docket No. 10–2019–MR]

Action: On April 14, 2011, the Board entered into a Settlement Agreement with First Guaranty Mortgage Corporation (''FGMC'') that required FGMC to indemnify the Department for its existing and future losses on twenty-one loans, including losses totaling $91,008.12; refund $17,702.25 in improper fees charged to borrowers; and pay a civil money penalty in the amount of $127,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: FGMC approved 30 FHA-insured mortgage loans for borrowers who did not meet HUD/FHA's minimum credit requirements; approved four loans with debt-to-income ratios that exceed HUD's benchmarks without documentation of significant compensating factors; failed to adequately document the source of gift funds used to close a loan; failed to ensure that a credit qualification on a streamline refinance loan transaction was completed as required; permitted loan correspondents to be improperly compensated with mortgage broker fees; failed to ensure that commitment fees were properly charged in accordance with HUD requirements; and failed to conduct pre-insurance reviews or ensure the accuracy of data submitted to HUD through FHA Connection, as required by HUD's Lender Insurance Program.

8. Gateway Funding Diversified Mortgage Services, LP, Horsham, PA [Docket No. 11–1150–MR]

Action: On June 15, 2011, the Board entered into a Settlement Agreement with Gateway Funding Diversified Mortgage Services, LP (''GFDMS'') that required GFDMS to pay a civil money penalty in the amount of $16,950, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: GFDMS failed to timely remit upfront mortgage insurance premiums to HUD.

9. James B. Nutter & Company, Kansas City, MO [Docket No. 11–1158–MR]

Action: On June 23, 2011, the Board entered into a Settlement Agreement with James B. Nutter & Company (''JBN'') that required JBN to pay a civil money penalty in the amount of $19,000, without admitting fault or liability.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: JBN failed to timely remit upfront mortgage insurance premiums to HUD.

10. MCS Mortgage Bankers, Inc., Patchogue, New York [Docket No. 11–1154–MR]

Action: On July 20, 2011, the Board entered into a Settlement Agreement with MCS Mortgage Bankers, Inc. (''MCS'') that required MCS to pay a civil money penalty in the amount of $23,500 and indemnify HUD/FHA for any losses incurred on three HUD/FHA-insured loans, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: MCS disseminated a misrepresentative advertisement to the public; failed to properly analyze borrowers' credit in connection with two HUD/FHA-insured mortgage loans; failed to resolve inconsistencies and/or discrepancies when originating and/or underwriting a HUD/FHA-insured mortgage loan; failed to ensure compliance with HUD's 203(k) program by failing to demonstrate that the completed construction would meet FHA's minimum property standards and/or comply with the local building code; originated a HUD/FHA 203(k) mortgage on an ineligible property; accepted and closed loans that were originated by individuals who were not exclusively employed by MCS; and failed to properly verify rental income by obtaining the required tax documentation.

11. Peoples Home Equity Inc., Brentwood, TN [Docket No. 10–2016–MR]

Action: On March 25, 2011, the Board entered into a Settlement Agreement with Peoples Home Equity Inc. (''Peoples Home'') that required Peoples Home to buy down the principal balance of a loan in the amount of

$2,868; indemnify the Department on this loan for a period of five years; and pay a civil money penalty in the amount of $7,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Peoples Home failed to comply with HUD/FHA's rules prohibiting property flipping; failed to ensure that the borrowers made the required minimum investment in the property; originated a loan that exceeded the maximum insured mortgage amount; and charged an impermissible tax service fee.

12. PHH Mortgage Corporation, Mount Laurel, NJ [Docket No. 10–1997–MR]

Action: On April 14, 2011, the Board entered into a Settlement Agreement with PHH Mortgage Corp. (''PHH'') that required PHH to pay a civil money penalty in the amount of $256,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: PHH failed to timely remit mortgage insurance premiums to HUD/FHA, and failed to notify HUD/FHA within 15 calendar days of the termination of mortgage insurance contracts.

13. Priority Bank, Ozark, AR [Docket No. 10–1795–MR]

Action: On February 14, 2011, the Board entered into a Settlement Agreement with Priority Bank that required Priority Bank to pay a civil money penalty in the amount of $50,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Priority Bank failed to maintain and implement a Quality Control Plan in accordance with HUD/FHA's requirements, and paid compensation in the form of commissions to an employee performing underwriting activities.

14. ResMac, Inc., Sunrise, FL [Docket No. 11–1126–MR]

Action: On April 15, 2011, the Board entered into a Settlement Agreement with ResMac, Inc. (''ResMac'') that required ResMac to pay a civil money penalty in the amount of $50,000, without admitting fault or liability. In addition, ResMac was required to submit to HUD restated financial statements for fiscal year ended December 31, 2009, in which ResMac reclassified the net book value of all intangible assets.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: ResMac misrepresented the identity of its president on its January 2, 2009, application for FHA approval; failed to timely notify HUD of a state regulatory sanction imposed upon its president; and failed to submit an acceptable Independent Public Accountant's Computation of Adjusted Net Worth for the end of fiscal year 2009.

15. Universal Lending Corporation, Denver, CO [Docket No. 10–2003–MR]

Action: On April 14, 2011, the Board entered into a Settlement Agreement with Universal Lending Corporation (''Universal'') that required Universal to: indemnify HUD for any future losses on six FHA-insured mortgage loans; reimburse HUD for losses in the amount of $496,727.53 for mortgage insurance claims paid by HUD; and pay a civil money penalty in the amount of $45,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Universal improperly entered incorrect information as ''cash reserves'' into HUD's automated underwriting system in order to receive approvals for seven loans; failed to adequately document the stability of borrowers' employment or income and failed to adequately document other income used to qualify borrowers; failed to consider mortgage payment debt and liabilities when underwriting and approving FHA-insured loans; failed to adequately document the source of gift funds for one loan; and failed to obtain confirmation concerning cash saved at home with regard to two other loans.

II. Lenders That Failed To Timely Meet Requirements for Annual Recertification of HUD/FHA Approval and Have Cured

Action: The Board entered into settlement agreements with each of the lenders listed below requiring each of the lenders to pay $3,500 in civil money penalties, without admitting fault or liability.

Cause: The Board took this action because the lenders failed to timely comply with HUD's annual recertification requirements, but subsequently came into compliance.

1. American Homestar Mortgage, LLC, League City, TX *[Docket No. 11–1196–MR]*
2. Merrill Lynch Mortgage Lending, Inc., New York, NY *[Docket No. 11–1138–MRT]*
3. Southpoint Financial Services, Inc., Alpharetta, GA *[Docket No. 11–1197–MR]*
4. United Bank, Charleston, WV *[Docket No. 11–1141–MRT]*
5. Wendover Financial Services Corporation, Chesterbrook, PA *[Docket No. 11–1198–MR]*
6. World Alliance Financial Corp., Melville, NY *[Docket No. 11–1143–MRT]*

Dated: February 16, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2012–4328 Filed 2–23–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

[Docket No. ONRR–2012–002]

Notice Seeking Comment on the Extractive Industries Transparency Initiative

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) requests comments and suggestions from affected parties and the interested public prior to convening a multi-stakeholder group tasked to implement the Extractive Industries Transparency Initiative (EITI). This notice solicits comments and suggestions for review by a third party neutral facilitator for possible stakeholders who should be considered for inclusion in the multi-stakeholder group. Getting feedback upfront and involving all affected stakeholders in the EITI process are the hallmarks of good government and smart business practice. Additionally, this notice seeks comments for the facilitator on effective and productive processes for convening the multi-stakeholder group. Finally, this notice seeks comments and suggestions for the facilitator for effective collaboration by the multi-stakeholder group in order to implement EITI. The Department will announce any public listening sessions in a future **Federal Register** notice.

DATES: You must submit your comments by April 9, 2012.

ADDRESSES: You may submit comments on this notice by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ONRR–2012–002, then click search. Follow the instructions to submit public comments and view supporting and related

materials available for this. The Department will post all comments.

• *Mail, overnight courier, or hand-carry comments to:* EITI Comments; c/o U.S. Department of the Interior; 1801 Pennsylvania Ave. NW., Suite 400, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Karen Senhadji; Senior Advisor to the Assistant Secretary for Policy, Management and Budget; 1849 C Street NW., Washington, DC 20240, telephone (202) 254–5573, fax number (202) 254–5589, email *eiti@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: In September 2011, President Barack Obama announced the United States' commitment to participate in the Extractive Industries Transparency Initiative (EITI). EITI is a signature initiative of the U.S. national action plan for the international Open Government Partnership. On October 25, concurrent with the EITI board meeting in Jakarta, President Obama named Secretary of the Interior Ken Salazar as the U.S. Senior Official responsible for implementing USEITI. In response, Secretary Salazar posted a White House blog the same day, committing to work with industry and civil society to implement USEITI.

Thirty-five countries are in various stages of implementing EITI, most of them developing countries who have been encouraged to join by industry, civil society and the World Bank. EITI offers a voluntary framework for governments and companies to publicly disclose in parallel the revenues paid and received for extraction of oil, gas and minerals owned by the state. The design of each framework is country-specific, and is developed through a multi-year, consensus based process by a multi-stakeholder group comprised of government, industry and civil society.

EITI will strengthen relationships among the U.S. government, industry, and civil society; deliver a more transparent, participatory, and collaborative government; ensure the full and fair return to the American people for the use of its public resources; and enable the U.S. to lead by example internationally on transparency and good governance. For further information on EITI, please visit the Department of the Interior's EITI Web page at *http://www.doi.gov/EITI*.

Accordingly, the Department of the Interior is seeking public comment and recommendations on the following specific issues:

• The EITI requires a multi-stakeholder group to be formed to oversee implementation. Who are the key sectors or stakeholders that need to be involved in the multi-stakeholder group?

• How best can a balance, with regards to interests and perspectives, be achieved in the formation of the multi-stakeholder group?

• In your opinion, what are the key attributes of both a successful multi-stakeholder group and the successful implementation of USEITI?

• What key concerns, if any, do you have about implementing the USEITI process?

Executive Order 13175 requires the Federal Government to consult and collaborate with the Indian community (tribes and individual Indian mineral owners) in the development of Federal policies that impact the Indian community. The locations of the public listening sessions will be chosen to allow for increased participation by the Indian community.

We encourage stakeholders and members of the public to participate. The listening session will be open to the public without advance registration; however, attendance may be limited to the space available at each venue. For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: February 16, 2012.

Amy Holley,

Acting Assistant Secretary, Policy, Management and Budget.

[FR Doc. 2012–4316 Filed 2–23–12; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVCO0000.L16100000.DO0000. LXSS155F0000; 12–08807; MO# 4500030996; TAS: 14X1109]

Notice of Intent To Prepare a Revision to the Carson City District Resource Management Plan and Associated Environmental Impact Statement, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Carson City District (CCD), Carson City, Nevada, intends to prepare a Resource Management Plan (RMP) revision with an associated Environmental Impact Statement (EIS) for the Carson City District, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The BLM will also seek nominations for Areas of Critical Environmental Concern (ACEC) and information on lands that may possess wilderness characteristics. The RMP will replace the existing Carson City Field Office Consolidated RMP (2001).

DATES: This notice initiates the public scoping process for the RMP with associated EIS. Comments on issues may be submitted in writing until April 24, 2012. Public scoping meetings will be held in Reno, Carson City, Yerington, Fallon, Hawthorne, and Minden, Nevada. The meeting times and addresses will be announced through the local news media, newsletters, mailings and the BLM project Web site: *www.blm.gov/nv/st/en/fo/carsoncity_field.html* at least 15 days prior to the event. All comments must be received prior to the close of the 60-day scoping period or 30 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft RMP/EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the Carson City RMP/EIS revision by using any of the following methods:

• *Web site: www.blm.gov/nv/st/en/fo/carsoncity_field.html.*

• *Email: BLM_NV_CCDO_RMP@blm.gov.*

• *Fax:* 775–885–6147 Attention: Carson City RMP.

• *Mail:* Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701 Attention: Carson City RMP.

Documents pertinent to this proposal may be examined at the Carson City District Office during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: And/or to have your name added to the mailing list, call Colleen Sievers, Project Manager, 775–885–6000, or email *csievers@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Carson City District intends to prepare an RMP with an associated EIS for the Carson City District Planning Area,

announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in portions of 12 counties within 2 States (Washoe, Storey, Carson City, Douglas, Lyon, Churchill, Mineral, and Nye counties within Nevada; and Sierra, Alpine, Plumas, and Lassen counties within California), and encompasses approximately 5 million acres of public land. The planning area includes all lands regardless of jurisdiction; however the BLM will only make decisions on lands or interest in land under the BLM's jurisdiction, including subsurface minerals. The decision area includes only public land or interest in land managed by the BLM. The purpose of the public scoping process is to determine relevant issues that may influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel, Federal, State, and local agencies, and other stakeholders. The issues include, but are not limited to: Managing vegetative and water resources, including noxious and invasive species management; identifying terrestrial and aquatic wildlife and fish priority habitats; identifying and evaluating Areas of Critical Environmental Concern; identifying lands with wilderness characteristics; determining eligibility for Wild and Scenic Rivers, National Scenic and Historic Trail management, identifying off-highway vehicle designations and travel management, and special recreation management areas to meet increasing recreation demands; managing and protecting cultural, historical, and paleontological resources, as well as Native American religious and traditional values; visual resource management; managing renewable energy development for geothermal, solar and wind; identifying land tenure adjustments to meet community growth needs and sustainable development, and to facilitate the management of public lands; managing minerals, including stipulations to protect sensitive resources. Additional management concerns identified by the BLM include: Urban mining; grazing allotments near urban areas; and access to public lands. Preliminary planning criteria include: (1) The RMP revision will comply with FLPMA and all other applicable laws, regulations, and policies; (2) The RMP revision will analyze impacts from all alternatives in accordance with regulations at 43 CFR part 1610 and 40 CFR part 1500; (3) Decisions in the RMP revision will only apply to public lands and the mineral estate managed by the BLM; (4) The RMP revision process will follow the BLM Land Use Planning Handbook H–1601–1; (5) The RMP revision planning process will include broad-based public participation; (6) The RMP revision process will consider the identification and management of lands with wilderness characteristics; and (7) The RMP revision decisions will consider and incorporate existing plans and policies to the maximum extent possible of adjacent local, State, Federal, and tribal agencies to the extent consistent with Federal law and regulations applicable to public lands; (8) The RMP revision process will rely on available inventories of the lands and resources as well as data gathered during the planning process; (9) The RMP revision process will follow requirements to address sage-grouse habitat and conservation as outlined in the National Sage-Grouse Habitat Conservation Strategy, the Greater Sage-Grouse Notice of Intent (FR 2011–36152, December 9, 2011), and the most current BLM guidance and instruction memoranda; (10) The RMP revisions process will use Geographic Information Systems and corporate geospatial data to the extent practicable and Federal Geographic Data Committee standards and other applicable BLM data standards will be followed; (11) The RMP revision EIS will be developed through the BLM's ePlanning system to the extent consistent with the current functionality of the system and schedule considerations; (12) The RMP revision will incorporate and observe the principles of multiple use and sustained yield; (13) The RMP planning process will involve consultation with Native American tribal governments; (14) The RMP revision will recognize valid existing rights and incorporate valid existing management from the existing Carson City Field Office Consolidated RMP (2001) as appropriate; (15) The RMP revision will include a review of eligibility findings and tentative classification of waterways as eligible for inclusion in the National Wild and Scenic River System and follow the criteria contained in 43 CFR part 8351.

The BLM will collaborate with tribes, State and local governments, Federal agencies, local stakeholders, and others with interest in the RMP revision process. You may submit comments on issues and planning criteria to the BLM using one of the methods listed in the **ADDRESSES** section above. Before including an address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate the identified issues to be addressed in the RMP and will place them into one of three categories:

1. Issues to be resolved by the RMP;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this RMP.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue is placed in category two or three. The public is also encouraged to help identify management questions and concerns that should be addressed in the RMP. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the RMP in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Wildlife and fisheries; threatened and endangered species; special status species; vegetation; invasive and noxious weeds; renewable energy; lands and realty; minerals management; outdoor recreation; off highway vehicle and transportation; air resources; visual resources; cultural resources and Native American concerns; paleontology; hydrology; public safety; law enforcement; fire ecology and management; forestry; rangeland management; sociology and economics; and Geographic Information Systems.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Amy Lueders,

Nevada State Director.

[FR Doc. 2012–4198 Filed 2–23–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAKF02000.16100000.MR0000.L.X.S.S. 094L0000]

Notice of Availability for the Eastern Interior Draft Resource Management Plan/Environmental Impact Statement, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Eastern Interior Planning Area (Alaska), and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/EIS by July 23, 2012. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Eastern Interior Draft RMP/EIS by any of the following methods:

- *Web site: http://www.blm.gov/ak/st/en/prog/planning.html.*
- *Fax:* 907–474–2282.
- *Mail:* Eastern Interior Field Office, Attention—Eastern Interior Draft RMP/EIS, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709.

Copies of the Eastern Interior Draft RMP/EIS are available at the Fairbanks District Office at the above address; at the Alaska State Office, Public Information Center, Bureau of Land Management, 222 West 7th Avenue, Anchorage, Alaska 99513; and on the following Web site: *http://www.blm.gov/ak/st/en/prog/planning.html.*

FOR FURTHER INFORMATION CONTACT: Jeanie Cole, telephone 907–474–2340 or email *j05cole@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Eastern Interior Draft RMP/EIS covers approximately 6.7 million acres of BLM-administered lands in interior Alaska and is divided into four geographic areas: The Fortymile, Steese, Upper Black River, and White Mountains subunits. The planning area encompasses four areas managed under the BLM's National Landscape Conservation System (NLCS): The Birch Creek, Beaver Creek, and Fortymile National Wild and Scenic Rivers; and the Steese National Conservation Area. In addition to these NLCS areas, the planning area includes the White Mountains National Recreation Area. These five areas were designated and are covered by special provisions in the Alaska National Interest Lands Conservation Act of 1980, as amended (ANILCA).

The following BLM plans currently guide management decisions for 4.2 million acres in the planning area: Fortymile Management Framework Plan (1980), Fortymile River Management Plan (1983), Birch Creek River Management Plan (1983), Beaver Creek River Management Plan (1983), Record of Decision and RMP for the Steese National Conservation Area (1986), and Record of Decision and RMP for the White Mountains National Recreation Area (1986). The remaining 2.5 million acres are not covered by any land use plans.

The BLM published a Notice of Intent to prepare an RMP/EIS in the **Federal Register** on February 29, 2008 (73 FR 11140), beginning a 120-day scoping and public comment period. The following issues were identified during scoping: Climate change, fisheries, minerals, recreation, rights-of-way, subsistence, travel management, water quality, lands with wilderness characteristics, and wildlife.

The Draft RMP/EIS presents four alternatives, including the No Action Alternative. The BLM's preferred alternative (Alternative C) proposes a balanced level of protection, use, and enhancement of resources and services, and represents the mix and variety of actions that the BLM believes best resolves the issues and management concerns in consideration of all resource values and programs.

Pursuant to 43 CFR 1610.7–2, areas with potential for designation as Areas of Critical Environmental Concern (ACEC) and protective management are considered during the planning process. Four potential ACECs are considered for designation in Draft RMP/EIS. Boundaries, size, and management direction within potential ACECs vary by Alternative. Table 1 lists the three ACECs considered for designation in the Agency Preferred Alternative (Alternative C). The White Mountains ACEC is not considered for designation in Alternative C, but is considered for designation in one other alternative. All alternatives will retain the four existing Research Natural Areas.

The following table includes the names and acreages of each proposed ACEC and provides summary descriptions of resource use limitations for Alternative C.

TABLE 1—PROPOSED NEW ACECS UNDER THE AGENCY PREFERRED ALTERNATIVE, ALTERNATIVE C

Proposed ACEC name	Acres	Limitations
Fortymile ACEC	547,000	Limited Off-Highway Vehicle (OHV) designation; seasonal limitation on uses within one mile of ungulate mineral licks; 360,000 acres of core caribou habitat closed to locatable mineral entry and mineral leasing.
Steese ACEC	460,000	Limited OHV designation; winter motorized use in Dall sheep habitat may be restricted if monitoring indicates sheep displacement; development of trails and recreational facilities must be compatible with caribou and Dall sheep habitat; seasonal limitation on uses within one mile of ungulate mineral licks; closed to locatable mineral entry and mineral leasing.
Salmon Fork ACEC	621,000	Limited OHV designation; closed to mineral leasing.

Pursuant to section 810 of ANILCA, the BLM evaluated the effects of the alternatives presented in this Draft RMP/EIS on subsistence activities and determined that some decisions in the Draft RMP/EIS may significantly restrict subsistence uses. The BLM will hold public hearings related to Section 810 of ANILCA, in conjunction with public

meetings on the Draft RMP/EIS, in potentially affected regions. The BLM will announce notice of specific dates and locations for ANILCA hearings at least 15 days in advance, through public notices, media releases, and/or mailings.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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: 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2

Bud Cribley,

State Director.

[FR Doc. 2012–4039 Filed 2–23–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO922000–L13100000–FI0000; COC73670]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease COC73670

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC73670 from Hannon & Associates Inc., for lands in Huerfano County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Milada Krasilinec, BLM Land Law Examiner, Fluid Minerals Adjudication, at (303) 239–3767.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease COC73670 effective December 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Steven Hall,

Acting State Director.

[FR Doc. 2012–4322 Filed 2–23–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare an Environmental Impact Statement on the Pojoaque Basin Regional Water System, Santa Fe County, NM

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Reclamation (Reclamation) intends to prepare an environmental impact statement (EIS) on the Pojoaque Basin Regional Water System. Reclamation will serve as the lead Federal agency. The U.S. Army Corp of Engineers, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, New Mexico Interstate Stream Commission, New Mexico Office of the State Engineer, County of Santa Fe, and the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque will be invited to participate as cooperating agencies for the EIS. Other entities will be considered as necessary during the EIS process.

The proposed Pojoaque Basin Regional Water System will divert, treat, and distribute potable water to the Pueblo and non-Pueblo residents of the Pojoaque Basin. The Regional Water System will consist of surface water diversion and water treatment facilities at San Ildefonso Pueblo on the Rio Grande and storage tanks, transmission and distribution pipelines, and aquifer storage and recovery well fields that will supply up to 4,000 acre-feet of water annually to customers within the Pojoaque Basin.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, please contact Marsha Carra, Bureau of Reclamation, Albuquerque Area Office, 555 Broadway NE., Suite 100, Albuquerque, New Mexico 87102; telephone (505) 462–3602; facsimile (505) 462–3780; email *mcarra@usbr.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This **Federal Register** notice provides the public with information regarding Reclamation's intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended.

The Pojoaque Basin Regional Water System is described in and authorized by the Aamodt Litigation Settlement Act (Settlement Act) which is Title VI of the Claims Resolution Act of 2010 (Pub. L. 111–291, Title VI; 124 Stat. 3065). The Settlement Act authorizes implementation of a Settlement Agreement among the United States, the State of New Mexico, the County of Santa Fe, the City of Santa Fe, the four Pueblos, and other non-Pueblo parties, and allows for the annual diversion of up to 4,000 acre-feet of water per year and the construction of the Pojoaque Basin Regional Water System to treat and distribute the water to residents of the Pojoaque Basin. The Settlement Agreement provides for settlement of water rights claims of the Nambé, Pojoaque, San Ildefonso, and Tesuque Pueblos in the Pojoaque Basin.

As described in the Settlement Act, Congress is requiring compliance with relevant laws protecting the environment, including but not limited to NEPA and the Endangered Species Act of 1973. Pursuant to NEPA, Reclamation is preparing an EIS that will describe the existing environment and environmental impacts of the proposed Pojoaque Basin Regional Water System.

Public scoping meetings will be held to solicit comments on the scope of the

EIS and the issues and alternatives that should be analyzed. Scoping meetings will be held for Pueblo members at or near each of the four Pueblos. In addition, public scoping meetings will be held in multiple locations in northern New Mexico. Additional information regarding specific dates and times for the upcoming meetings and identification of relevant comment periods will be provided in a future **Federal Register** notice, in the local news media, and through direct contact with interested parties.

Purpose and Need for Action

The purpose is to provide safe and reliable potable water to the residents of the Pojoaque Basin. The need is to reduce reliance on groundwater and to allow the Pueblos to obtain the water rights provided under the Settlement Act.

Proposed Federal Action

Reclamation proposes to plan, design, and construct the Pojoaque Basin Regional Water System in accordance with the Settlement Agreement and the Settlement Act. The Regional Water System shall divert and distribute water in the Pojoaque Basin and shall consist of surface water diversion facilities at San Ildefonso Pueblo on the Rio Grande, and treatment, transmission, storage and distribution facilities and well fields that are necessary to supply 4,000 acre-feet of water within the Pojoaque Basin in accordance with the Settlement Agreement and the Settlement Act.

Possible Alternatives

Alternatives have not been developed at this time. However, the Settlement Act includes provisions for additional construction proposed and paid for by the four Pueblos, the County of Santa Fe, or a Pojoaque Basin Regional Water Authority. Such additional infrastructure would be designed to fully use the water delivered by the Pojoaque Basin Regional Water System or to improve existing, or develop new, water-related infrastructure.

Nature of Decision To Be Made

The decision to be made is which design alternative for the Pojoaque Basin Regional Water System will be constructed. **Note:** The information in the EIS regarding water rights will be presented for background and descriptive purposes only. The terms of the parties' water entitlement and use are established under state and Federal law through the Settlement Agreement and nothing in the EIS is intended to suggest that any of those provisions are subject to reconsideration, litigation, or alteration through the NEPA process.

Public Disclosure

Before including a name, address, telephone number, email address, or other personal identifying information in the comment, please be advised that the entire comment—including personal identifying information—may be made publicly available at any time. While a commenter may request that Reclamation withhold personal identifying information from public review, Reclamation cannot guarantee that they will be able to do so.

Dated: February 14, 2012.

Larry Walkoviak,

Regional Director—Upper Colorado Region, Bureau of Reclamation.

[FR Doc. 2012–4293 Filed 2–23–12; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[DN 2878]

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Consumer Electronics, Including Mobile Phones and Tablets,* DN 2878; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Pragmatus AV, LLC on February 17, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain consumer electronics, including mobile phones and tablets. The complaint names as respondents ASUSTeK Computer, Inc. of Taiwan; ASUS Computer International Inc. of CA; Pantech Co., Ltd. of South Korea; Pantech Wireless, Inc. of GA; Research In Motion Ltd. of Canada; Research In Motion Corp. of TX; Samsung Electronics Co, Ltd. of South Korea; Samsung Electronics America, Inc. of NJ; and Samsung Telecommunications America LLC of TX.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to

replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; *and*

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2878'') in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: February 17, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4264 Filed 2–23–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–525]

Remanufactured Goods: An Overview of the U.S. and Global Industries, Markets, and Trade; Change in Start Time of Public Hearing

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Following receipt of a request dated and received June 28, 2011 from the U.S. Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–525, Remanufactured Goods: An Overview of the U.S. and Global Industries, Markets, and Trade (76 FR 44606).

Public Hearing: In order to facilitate the hearing in Inv. No. 332–525, the Commission has determined to change the start time of the public hearing to 9:00 a.m., February 28, 2012, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Project Leader Alan Treat (202–205–3426 or *alan.treat@usitc.gov*), Deputy Project Leader Jeremy Wise (202–205–3190 or *jeremy.wise@usitc.gov*), or Hearings and Meetings Coordinator Bill Bishop (202–205–2595 or *william.bishop@usitc.gov*) for information. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Issued: February 16, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4262 Filed 2–23–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–721]

Certain Portable Electronic Devices and Related Software; Final Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 with respect to United States Patent No. 6,999,800 (''the '800 patent'') in this investigation, and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 17, 2010, based on a complaint filed by HTC Corporation (''HTC'') of Taiwan. 75 FR 34,484–85 (June 17, 2010). The complaint alleged violations of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and sale within the United States after importation of certain portable electronic devices and related software by reason of infringement of various claims of the '800 patent; United States Patent No. 5,541,988 (''the '988 patent''); United States Patent No. 6,320,957 (''the '957 patent''); United States Patent No. 7,716,505 (''the '505 patent''); and United States Patent No. 6,058,183 (''the '183 patent'') (subsequently terminated

from the investigation). The complaint named Apple Inc. as the Respondent.

On October 17, 2011, the ALJ issued his final ID, finding no violation of section 337 by the Respondent. Specifically, the ALJ found that the Commission has subject matter jurisdiction and that Apple did not contest that the Commission has *in rem* and *in personam* jurisdiction. The ALJ also found that there was an importation into the United States, sale for importation, or sale within the United States after importation of the accused portable electronic devices and related software. Regarding infringement, the ALJ found that Apple does not infringe claims 1, 2, 4, 6, 10, 11, 14 and 15 of the '800 patent, claims 1 and 10 of the '988 patent, claims 8–9 of the '957 patent and claims 1–2 of the '505 patent. With respect to invalidity, the ALJ found that the asserted claims are not invalid. Finally, the ALJ concluded that an industry exists within the United States that practices the '988 and '957 patents, but not the '800 and '505 patents as required by 19 U.S.C. 1337(a)(2).

On October 31, 2011, HTC filed a petition for review of the ID, which also included a contingent petition for review. Also on October 31, 2011, Apple filed a contingent petition for review. On November 8, 2011, the parties filed responses to the petition and contingent petitions for review. On December 16, 2011, the Commission determined to review the ID in part. The Commission determined to review the ALJ's findings for '800 patent in its entirety and requested briefing on nine issues, and on remedy, the public interest and bonding. 76 FR 79708–09 (Dec. 22, 2011). The Commission did not review any issues related to the '505 patent and reviewed in part the ALJ's findings for the '988 and '957 patents. *Id.* The Commission took no position on one limitation and affirmed the remainder of the ALJ's findings for the '988 and '957 patents. *Id.* The Commission terminated those patents from the investigation. *Id.*

On January 4, 2012, the parties filed written submissions on the issues under review, remedy, the public interest, and bonding. On January 11, 2012, the parties filed reply submissions on the issues on review, remedy, the public interest, and bonding.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined that there is no violation of section 337. Specifically, the Commission has determined to reverse the ALJ's finding that the ''switching the PDA system from normal mode to sleep mode when the PDA system has been idle for a second period of time'' limitation of claim 1 is met and affirm the ALJ's determination that the accused products do not meet the ''implementing a power detection method comprising steps of: detecting an amount of power of a source in the power system; switching the mobile phone system to off mode when the detected amount is less than a first threshold; and switching the PDA system to off mode when the detected amount is less than a second threshold'' limitations of claim 1. In addition, the Commission affirms the ALJ's finding that no domestic industry exists for the '800 patent. The Commission also finds that Apple's waiver argument is moot.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

By order of the Commission.
Issued: February 17, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4263 Filed 2–23–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Toxic Substances Control Act

Notice is hereby given that on February 7, 2012, a proposed Consent Decree in *United States* v. *Dover Chemical Corp.,* Civil Action No. 5:12–cv–00292–SL was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States sought injunctive relief from Defendant Dover Chemical Corporation (''Dover Chemical'') for violations of the Toxic Substances Control Act (''TSCA'') Section 15, 15 U.S.C. 2614. The Complaint alleges that Dover Chemical manufactured and continues to manufacture multiple ''new chemical substances'' as defined in TSCA Section 3(9), 15 U.S.C. 2602(9), at its chemical manufacturing plants located in Dover, Ohio and Hammond, Indiana, while failing to comply with the manufacturing and processing notices required under TSCA Section 5, 15 U.S.C. 2604.

The Consent Decree requires Dover Chemical to pay a $1.4 million civil penalty. Dover Chemical has halted manufacture of short-chain chlorinated paraffins and committed to submit premanufacture notices (''PMNs'') for medium and long-chain chlorinated paraffins, pursuant to TSCA Section 5. The proposed Consent Decree prohibits Dover Chemical from manufacturing any chlorinated paraffin product not placed on the TSCA Inventory via the PMN process.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Dover Chemical Corp.,* D.J. Ref. 90–5–2–1–10116.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.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 no. (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 $6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–4369 Filed 2–23–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

Notice is hereby given that on February 17, 2012, a proposed Consent Decree in *In Re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010,* MDL 2179, was lodged with the United States District Court for the Eastern District of Louisiana.

In this action the United States sought, in part, civil penalties under Section 311(b) of the Clean Water Act,

33 U.S.C. 1321(b), against multiple parties, including MOEX Offshore 2007 LLC (''MOEX''), in connection with the discharge of oil into the Gulf of Mexico resulting from the April 20, 2010 blowout of the Macondo well and explosion of the Deepwater Horizon oil rig. The Complaint alleges that MOEX is liable for civil penalties as a co-lessee of the Macondo well and as co-owner of the well casing and equipment. Pursuant to the proposed Consent Decree, MOEX will pay $70 million in civil penalties, of which $45 million will go to the United States and the remaining $25 million will be divided among the states of Louisiana, Alabama, Florida, Mississippi and Texas. The proposed Consent Decree also requires MOEX to perform supplemental environmental projects valued at $20 million in the Gulf States proximate to the Gulf of Mexico. The proposed Consent Decree does not resolve all claims in the Complaint alleged against MOEX, nor does it resolve claims alleged in the Complaint against other parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In Re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010,* MDL 2179, D.J. Ref. 90–5–1–1–10026. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.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 no. (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 $13.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by fax, forward a check in that amount to the Consent Decree Library at the address given above.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–4368 Filed 2–23–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 9, 2012, a proposed Settlement Agreement (the ''Agreement'') in *In re: Wood Treaters, LLC,* Bankruptcy Case No. 3:09–bk–01895–PMG, was lodged with the United States Bankruptcy Court for the Middle District of Florida.

In this Chapter 7 bankruptcy case, the United States filed a claim for administrative expenses seeking payment under Section 107(a)(1) and (2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a)(1) and (2), of past and future costs incurred by the U.S. Environmental Protection Agency (''EPA'') for environmental response activities related to the releases and threatened releases of hazardous substances from the Fairfax Street Wood Treaters Site, located at 2610 Fairfax Street in Jacksonville, Duvall County, Florida. The Site was formerly operated by Debtor Wood Treaters, LLC. Under the Agreement between the United States, on behalf of EPA, and the Chapter 7 Trustee, EPA covenants not to take administrative or civil action against the Debtor or Trustee pursuant to CERCLA Sections 106 or 107, 42 U.S.C. 9606 or 9607, subject to certain reservations of rights. In exchange, the United States, on behalf of EPA, shall have an allowed priority claim for administrative expenses of $4,352,672. Further, the Trustee shall pay the United States $70,000; pay the United States 25% of certain net proceeds retained from the recovery of pre-Chapter 7 conversion accounts receivable and from recovery claims under 11 U.S.C. 549; and assign to EPA all rights to insurance claims proceeds that the Trustee may collect on any insurance policy relating to environmental liability for the Site. To the extent that the aforementioned sums are insufficient to satisfy EPA's allowed priority claim, the unpaid balance shall be converted to and allowed as a general nonpriority unsecured claim.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re: Wood Treaters, LLC,* D.J. Ref. 90–11–3–10194.

During the public comment period, the Agreement may also be examined on the following Department of Justice Web site, at *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Agreement 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 no. (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 $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–4350 Filed 2–23–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

160th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 160th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held on March 13, 2012.

The meeting will take place in Room S–2508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1:30 p.m. to approximately 4:30 p.m. Eastern Standard Time, is to welcome the new members, introduce the Council Chair and Vice Chair, receive an update from

the Assistant Secretary of Labor for the Employee Benefits Security Administration, and determine the topics to be addressed by the Council in 2012.

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before March 6, 2012 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as email attachments in text or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the email. Statements deemed relevant by the Advisory Council and received on or before March 6, 2012 will be included in the record of the meeting and available in the EBSA Public Disclosure room. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary by email or telephone (202–693–8668). Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by March 6.

Signed at Washington, DC this 21st day of February, 2012.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2012–4338 Filed 2–23–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Maine and Michigan

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in status of payable periods under the EB program for Maine and Michigan.

The following changes have occurred since the publication of the last notice regarding these States' EB status:

• Based on data released by the Bureau of Labor Statistics on January 24, 2012, Maine and Michigan do not meet one of the necessary criteria to remain on in the EB program: Having a TUR trigger rate at least ten percent greater than the rate for a comparable period in any of the three prior years. This triggered Maine and Michigan ''off'' the EB program with the week ending January 28, 2012. The end of the payable period in both states in the EB program will be February 18, 2012.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state concluding an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg., Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov.*

Signed in Washington, DC this 16th day of February, 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–4295 Filed 2–23–12; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Payable Periods in the Emergency Unemployment Compensation 2008 (EUC08) Program for Connecticut and Missouri

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in status of the payable periods in the Emergency Unemployment Compensation 2008 (EUC08) program for Connecticut and Missouri.

Public Law 111–312 extended provisions in Public Law 111–92 which amended prior laws to create a Third and Fourth Tier of benefits within the EUC08 program for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for EUC08 benefits within Tiers Three and Four and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notice covering state eligibility for the EUC08 program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.* The following changes have occurred since the publication of the last notice regarding these States' EUC08 status:

• Based on data released by the Bureau of Labor Statistics on January 24, 2012, the three month average, seasonally adjusted total unemployment rate for Connecticut and Missouri fell below the 8.5% threshold to remain ''on'' in Tier 4 of the EUC08 program. As a result, the current maximum potential entitlement for Connecticut and Missouri in the EUC08 program will decrease from 53 weeks to 47 weeks. The week ending February 18, 2012 will be the last week in which EUC claimants in Connecticut and Missouri can exhaust Tier 3, and establish Tier 4 eligibility. Under the phase-out provisions, claimants can receive any remaining entitlement they have in Tier 4 after February 18, 2012.

Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by public laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205, 111–312, and 112–78, and the operating instructions issued to the states by the U.S. Department of Labor. Persons who

believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov*.

Signed in Washington, DC, this 16th day of February 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–4294 Filed 2–23–12; 8:45 am]

BILLING CODE 4510–FW–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Promotion & Provision for the Delivery of Legal Services Committee will meet March 9, 2012. The meeting will commence at 12 p.m., Eastern Standard Time, and will continue until the conclusion of the Committee's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters Building, 3333 K Street NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend but wish to listen to the public proceeding may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348
- When connected to the call, please immediately ''MUTE'' your telephone.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of minutes of the Committee's meeting of January 20, 2012
3. Discussion of Committee members' self-evaluations for 2011 and the Committee's goals for 2012
4. Discussion on use of video taping of Committee presentations for preservation and dissemination
5. Facilitating grantee staff to participate in ''peer'' review visits of other grantees and/or OPP program quality visits
6. Public comment
7. Consider and act on other business
8. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov*.

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: February 21, 2012.

Mattie Cohan,

Senior Assistant General Counsel.

[FR Doc. 2012–4441 Filed 2–22–12; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: NSF is hereby granting a limited exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), with respect to the purchase of the propulsion shaft bulkhead seals that will be used in the Alaska Region Research Vessel (ARRV). These seals protect the vessel from progressive flooding in the event of an emergency.

DATES: February 24, 2012.

ADDRESSES: National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Leithead, Division of Acquisition and Cooperative Support, 703–292–4595.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on February 15, 2012, the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency, granted a limited project exemption of section 1605 of the Recovery Act (Buy American provision) with respect to the propulsion shaft bulkhead seals that will be used in the ARRV. The basis for this exemption is section 1605(b)(2) of the Recovery Act, in that propulsion shaft bulkhead seals of satisfactory quality are not produced in the United States in sufficient and reasonably available commercial quantities. The total cost of the two required propulsion shaft bulkhead seals (~$82,000) represents less than 0.1% of the total $148 million Recovery Act award provided toward construction of the ARRV.

I. Background

The Recovery Act appropriated $400 million to NSF for several projects being funded by the Foundation's Major Research Equipment and Facilities Construction (MREFC) account. The ARRV is one of NSF's MREFC projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act ''may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.''

The ARRV has been developed under a cooperative agreement awarded to the University of Alaska, Fairbanks (UAF) that began in 2007. UAF executed the shipyard contract in December 2009 and the project is currently under construction. The purpose of the Recovery Act is to stimulate economic recovery in part by funding current construction projects like the ARRV that are ''shovel ready'' without requiring projects to revise their standards and specifications, or to restart the bidding process again.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant

goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Finding That Relevant Goods Are Not Produced in the United States in Sufficient and Reasonably Available Quality

The ARRV is specifically designed to meet a low underwater radiated noise standard that relates to fish hearing (Specification Section 073.2). This standard is critical to science operations in that if the noise from the vessel is too high, the behavior of the species being studied will be changed, which negatively impacts the population data being collected. If the vessel does not meet this low underwater radiated noise standard, the science mission requirements will not be met. All modern research vessels are being built with low underwater noise in mind not only because of improved science capabilities but also because of the growing understanding of the negative environmental effects of noise in the water, particularly for marine mammals. One significant path for vessel noise to be transmitted into the water is from rotating or vibrating machinery that is in contact with elements of the ship's structure, such as bulkheads (walls) and decks (floors). The vibration then goes directly into the water from the hull. The way to prevent this is to eliminate direct contact with the ship's structure or lower it to acceptable levels using properly designed vibration mounts made of a flexible material, such as rubber or springs.

The ship's main propulsion shafts, which connect the electric drive motors to the azimuthing thrusters (Z-drive), are a significant source of vibration. The vessel has two main thruster units for speed, ice breaking, and maneuverability, and it therefore has two propulsion shafts. Originally, both the motor and the thruster were in the same compartment. However, the hull had to be lengthened six feet due to weight, which necessitated the creation of a separate motor room. Because of U.S. Coast Guard requirements to prevent progress flooding between compartments in the event of damage to the hull, all penetrations (including the shaft) require a means to make the opening water tight. Therefore, the technical requirements that were developed by UAF for selecting the propulsion shaft bulkhead seals used in the ARRV include:

1. Certified by the American Bureau of Shipping (ABS).
2. Withstand water pressures when flooding in the hull is over 10 feet deep.
3. Sized to properly fit the diameter of the propulsion shaft.
4. Accommodate all angular and directional fluctuations of the shaft when rotating.
5. Accommodate shaft speeds up to 1079 RPM.
6. Suitable for the marine environment (temperatures, contact with sea water, bilge water, etc.).
7. Be split seal/housing type to allow installation and/or removal after shaft installation.
8. Be non-contact type under normal operations to prevent shaft vibration from transmitting to the hull.

Failure to meet any of these technical requirements would jeopardize safety and operability, and would prevent the vessel from meeting the specified low underwater radiated noise requirements.

The unique aspect of the MIDE Marine propulsion shaft bulkhead seal is its hydrogel embedded foam. This foam enables the seal to not contact the rotating shaft during the majority of its life. When a flooding event occurs, the hydrogel embedded foam uses the water from the flooding to swell and provide a robust and reliable seal against the shaft, protecting the vessel from progressive flooding. Rigorous testing to U.S. Navy standards has demonstrated that the seal can operate for up to 1,000 hours with the seal engaged after a flooding. By not normally contacting the shaft the seal has no wearing components (which means less maintenance and easier installation), and for the ARRV has the added benefit of not transmitting any shaft vibrations to the hull. In an emergency situation, meeting the low underwater radiated noise standards is of no concern. MIDE Marine is a U.S. company based in Massachusetts, but manufactures their product overseas.

The shipyard conducted trade publication and web based searches for bulkhead and shaft seals of all types. A web search generated an initial list of 189 U.S. companies that might manufacture the required seal type. Ultimately, the list was reduced to forty (40) by researching those that had marine applications. A detailed review of the forty (40) remaining companies was conducted and only one company (MIDE Marine) was found to have an ARRV compliant non-contact type propulsion shaft bulkhead seal. Further discussion with MIDE Marine revealed that the seals are manufactured overseas. The shipyard decided to pursue the propulsion shaft bulkhead seal available from MIDE Marine, a U.S.-owned company, as the only supplier whose product meets technical requirements, but this purchase still requires an exemption due to foreign manufacture.

In the absence of a domestic manufacturer that could provide requirements-compliant propulsion shaft bulkhead seals, UAF requested that NSF issue a Section 1605 exemption determination with respect to the purchase of foreign-supplied, requirements-compliant propulsion shaft bulkhead seals, so that the vessel will meet the specific design and technical requirements that, as explained above, are necessary for this vessel to be able to perform its mission successfully. Furthermore, the shipyard's market research indicated that propulsion shaft bulkhead seals compliant with the ARRV's technical specifications and requirements are commercially available from a U.S. company within their standard product line, but are manufactured overseas, which necessitates an exemption.

NSF's Division of Acquisition and Cooperative Support (DACS) and other NSF program staff reviewed the UAF exemption request submittal, found that it was complete, and determined that sufficient technical information was provided in order for NSF to evaluate the exemption request and to conclude that an exemption is needed and should be granted.

III. Exemption

On February 15, 2012, based on the finding that no domestically produced propulsion shaft bulkhead seals meet all of the ARRV's technical specifications and requirements and pursuant to section 1605(b), the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency signed on May 27, 2010, granted a limited project exemption of the Recovery Act's Buy American requirements with respect to the procurement of propulsion shaft bulkhead seals.

Dated: February 17, 2012.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2012–4235 Filed 2–23–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Buy American Waiver Under the American Recovery and Reinvestment Act of 2009

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: NSF is hereby granting a limited exemption of section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, 123 Stat. 115, 303 (2009), with respect to the purchase of the superior holding power balanced anchors that will be used in the Alaska Region Research Vessel (ARRV). These anchors are required in order to accommodate the vessel's ice breaking bow shape and they will save weight.

DATES: February 24, 2012.

ADDRESSES: National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Leithead, Division of Acquisition and Cooperative Support, 703–292–4595.

SUPPLEMENTARY INFORMATION: In accordance with section 1605(c) of the Recovery Act and section 176.80 of Title 2 of the Code of Federal Regulations, the National Science Foundation (NSF) hereby provides notice that on February 15, 2012, the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency, granted a limited project exemption of section 1605 of the Recovery Act (Buy American provision) with respect to the superior holding power balanced anchors that will be used in the ARRV. The basis for this exemption is section 1605(b)(2) of the Recovery Act, in that superior holding power balanced anchors of satisfactory quality are not produced in the United States in sufficient and reasonably available commercial quantities. The total cost of the three (3) required anchors (~$42,360) represents less than 0.1% of the total $148 million Recovery Act award provided for construction of the ARRV.

I. Background

The Recovery Act appropriated $400 million to NSF for several projects being funded by the Foundation's Major Research Equipment and Facilities Construction (MREFC) account. The ARRV is one of NSF's MREFC projects. Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act ''may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.''

The ARRV has been developed under a cooperative agreement awarded to the University of Alaska, Fairbanks (UAF) that began in 2007. UAF executed the shipyard contract in December 2009 and the project is currently under construction. The purpose of the Recovery Act is to stimulate economic recovery in part by funding current construction projects like the ARRV that are ''shovel ready'' without requiring projects to revise their standards and specifications, or to restart the bidding process again.

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States' obligations under international agreements.

II. Finding That Relevant Goods Are Not Produced in the United States in Sufficient and Reasonably Available Quality

The specification for the ARRV originally called for standard ''stockless'' anchors (the stock is the cross arm below the ring on an old-fashioned style anchor), which are in common use on commercial and military vessels. The design requirements in the specification for the anchoring system on the ARRV include:

1. Approved by the American Bureau of Shipping with regard to operability, quality and size/holding power (6,000 lbs).
2. The anchors drop immediately upon release.
3. The anchors do not jam in the hawse pipe (chain pipe between the hull and deck).
4. The anchors do not move when stowed in heavy seas.
5. The anchors ''self-stow'' against the hull.

Failure to meet any of these technical requirements would have severe negative impacts on safety. Anchors are required not only for routine use in port or during operations, but in an emergency situation (for example, the loss of propulsion) to keep the vessel from going aground, damaging the hull and sinking. In this situation, the anchors must release from the ship quickly and efficiently. If proper anchors are not used, the safety of the vessel and the lives of everyone on board would be jeopardized. The ARRV is approved by the American Bureau of Shipping (ABS) to ensure safe design, construction, and vessel operation.

Since proper storage of the anchors in the bow of the ship is often difficult to achieve, the specification also called for the shipyard to construct a physical mock-up of the anchoring system, which includes the anchors, anchor pockets (recesses in the bow that keep the anchors from protruding beyond the hull), hawse pipes, and anchor winches. Through this process, it was found that the stockless anchor would not store properly in the pockets that were required to accommodate the ARRV's specialized ice-breaking bow. To protect the anchors during ice operations, the pockets were originally set as high in the bow as possible. The only way to make the stockless anchor work would be to put the pockets excessively close to the water line, but that would be contrary to American Bureau of Shipping and international regulatory guidance for ice-classed vessels. Through continued testing with the mock-up, it was found that only a ''balanced'' anchor would work with the pockets in the proper location. A balanced anchor always stows with the flukes (the ''hooks'' that penetrate into the bottom) in the same position.

The specification originally called for three (3) anchors; one on each side of the bow and one spare on deck. This configuration is typical for all commercial and military vessels. As part of the design effort to reduce weight, the shipyard originally proposed eliminating the spare anchor, which was not considered prudent by UAF. As an option, the use of three smaller, lighter ''superior'' holding power anchors was proposed during the anchoring system evaluation. This

approach was considered the best approach to enhance safety in the event one (or both) fitted anchors are lost in an emergency situation. Use of superior holding power anchors was subsequently approved by ABS as long as the anchor was sufficiently tested, proven, and held an ABS class certificate. ABS allows up to a 25 percent reduction in weight (4,500 lbs each) for a total weight savings of over a ton.

The shipyard's market research included an ABS web based data search for superior holding power anchors. Approximately forty three (43) companies world-wide were identified that manufacture ABS approved anchors of superior holding anchors. Of these, only two (2) were U.S. manufacturers. Neither company produced an anchor of the correct size that will fit in the ARRV's anchor pocket. The pocket cannot be made larger because of the specialized hull shape of the ice-breaking bow as described above.

The project's conclusion is that there are no U.S. manufacturers who produce suitable superior holding power balanced anchors that meet all of the ARRV requirements, so an exemption from the Buy American requirements is necessary.

In the absence of a domestic supplier that could provide requirements-compliant superior holding power anchors, UAF requested that NSF issue a Section 1605 exemption determination with respect to the purchase of foreign-supplied, requirements-compliant superior holding power balanced anchors, so that the vessel will meet the specific design and technical requirements that, as explained above, are necessary for this vessel to be able to perform its mission successfully. Furthermore, the shipyard's market research indicated that superior holding power balanced anchors compliant with the ARRV's technical specifications and requirements are commercially available from foreign vendors within their standard product lines.

NSF's Division of Acquisition and Cooperative Support (DACS) and other NSF program staff reviewed the UAF exemption request submittal, found that it was complete, and determined that sufficient technical information was provided in order for NSF to evaluate the exemption request and to conclude that an exemption is needed and should be granted.

III. Exemption

On February 15, 2012, based on the finding that no domestically produced superior holding power balanced anchors met all of the ARRV's technical specifications and requirements and pursuant to section 1605(b), the NSF Chief Financial Officer, in accordance with a delegation order from the Director of the agency signed on May 27, 2010, granted a limited project exemption of the Recovery Act's Buy American requirements with respect to the procurement of superior holding power balanced anchors.

Dated: February 16, 2012.

Lawrence Rudolph,

General Counsel.

[FR Doc. 2012–4233 Filed 2–22–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Proposal Review Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson, Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov*. This information may also be requested by telephoning, 703/292–8182.

Dated: February 21, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–4306 Filed 2–23–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0047]

Agency Information Collection Activities: Emergency Clearance Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request for emergency review to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request emergency review and OMB approval of the information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR 1320.13. This is necessary to ensure compliance with requirements in Section 402 of the Consolidated Appropriations Act, 2012, ''* * *'' We cannot reasonably comply with the normal clearance procedures because the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information as stated in 5 CFR 1320.13(a)(2)(iii).

Information pertaining to the requirement to be submitted:

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* Request for Information Pursuant to 10 CFR 50.54(f) Regarding Recommendations 2.1, 2.3 and 93, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Event.

2. *Current OMB approval number:* Not applicable.

3. *How often the collection is required:* One-time, on occasion.

4. *Who is required or asked to report:* 104 power reactor licensees.

5. *The number of annual respondents:* 104.

6. *The number of hours needed annually to complete the requirement or request:* The NRC estimates that it will require 13,300 hours per power reactor to respond to the information collection request, for a total of 1,383,200 hours (or 461,067 hours annualized).

7. *Abstract:* Following the accident at the Fukushima Dai-ichi nuclear power plant resulting from the March 11, 2011, Great Tōhoku Earthquake and subsequent tsunami, the NRC established the Near-Term Task Force (NTTF). The NTTF Charter, dated March 30, 2011, tasked the NTTF with conducting a systematic and methodical review of NRC processes and regulations and determining if the agency should make additional improvements to its regulatory system. Ultimately, a comprehensive set of recommendations contained in a report to the Commission (dated July 12, 2011, SECY–11–0093 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML111861807)) was developed using a decision rationale built around the defense-in-depth concept in which each level of defense-in-depth (namely prevention, mitigation, and emergency preparedness (EP)) is critically evaluated for its completeness and effectiveness in performing its safety function.

On August 19, 2011, following issuance of the NTTF report, the Commission directed the NRC staff in staff requirements memorandum (SRM) for SECY 11–0093 (ADAMS Access No. ML112310021), in part, to determine which of the recommendations could and should be implemented without unnecessary delay.

On September 9, 2011, the NRC staff provided SECY–11–0124 to the Commission (ADAMS Accession No. ML11245A158). The document identified those actions from the NTTF report that should be taken without unnecessary delay. As part of the October 18, 2011, SRM for SECY–11–0124 (ADAMS Accession No. ML112911571), the Commission approved the staff's proposed actions, including the development of three information requests under 10 CFR 50.54(f). The information collected would be used to support the NRC staff's evaluation of whether further regulatory action was needed in the areas of seismic and flooding design, and emergency preparedness.

On December 23, 2011, the Consolidated Appropriations Act, Public Law 112–074, was signed into law. Section 402 of the law also requires a reevaluation of licensees' design basis for external hazards, and expands the scope to include other external events.

The NRC has concluded that it requires the information requested to verify the compliance with design bases at nuclear power plants and to determine if additional regulatory actions are appropriate. Therefore, the NRC will issue requests for information, pursuant to Section 182(a) of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). Addressees to the NRC information request will be required to confirm receipt of the request for information within 30 days. Each attachment to the request for information contains a topic-specific schedule for response. The NRC is requesting OMB review and approval of this collection by March 6, 2012, with a 180-day approval period.

Throughout the development of these letters, the NRC has solicited stakeholder input including feedback on the burden. The NRC made draft versions of the letters publically available and hosted seven public meetings to gather stakeholder feedback. Further, the Nuclear Energy Institute provided feedback to the NRC on the content of the letters, including the associated burden. The NRC considered all feedback in generating its burden estimate.

Submit, by March 5, 2012, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public_involve/doc_comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 5, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at (202) 395–4718.

For additional information on the information collections, contact G. Edward Miller, Project Manager, Projects Management Branch, Japan Lessons Learned Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–2481; fax number: (301) 415–2444; email: *Edward.Miller@nrc.gov.*

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 21st day of February 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–4360 Filed 2–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0157]

Order Approving Application Regarding Proposed Corporate Merger and Indirect Transfer of Licenses

In the Matter of
EXELON CORPORATION.
CONSTELLATION ENERGY GROUP, INC.
CALVERT CLIFFS NUCLEAR POWER PLANT, LLC.

Calvert Cliffs Nuclear Power Plant, Units 1 and 2	Docket Nos. 50–317 and 50–318. License Nos. DPR–53 and DPR–69.
Calvert Cliffs Independent Spent Fuel Storage Installation	Docket No. 72–8. Materials License No. SNM–2505.

I

Calvert Cliffs Nuclear Power Plant, LLC (CCNPP, LLC or the licensee), is the holder of Renewed Facility Operating License Nos. DPR–53 and DPR–69, which authorizes the possession, use, and operation of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (CCNPP 1 and 2), and of Materials License No. SNM–2505, which authorizes the possession and use and operation of the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI), and authorizes CCNPP, LLC to receive, possess, transfer, and store power reactor spent fuel at the Calvert Cliffs ISFSI. The facilities are located at the licensee's site in Calvert County, Maryland.

II

By letter dated May 12, 2011, as supplemented on June 17, August 12, October 13, November 10, November 11, November 18, and November 22, 2011, and January 19, and January 25, 2012 (collectively, the application), Exelon Generation Company, LLC (Exelon Generation), acting on behalf of itself, Exelon Corporation (Exelon), and Exelon Ventures Company, LLC (Exelon Ventures), and Constellation Energy Nuclear Group, LLC (CENG), acting on behalf of itself, and the licensee, requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission), pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 50.80 and 10 CFR 72.50, consent to the proposed indirect license transfer of Renewed Facility Operating License Nos. DPR–53 and DPR–69 and Materials License No. SNM–2505, that would be effected by the indirect transfer of control of the ownership and operating interests in CCNPP, LLC. The transfers being sought are a result of the proposed merger between Exelon and one of CENG's parent companies, Constellation Energy Group, Inc. (CEG), whereby CEG would be merged into Exelon and ownership of CEG's 50.01 percent of CENG would be transferred to Exelon. The remaining 49.99 percent ownership of CENG is held by EDF, Inc.

The licensee is a direct wholly owned subsidiary of Constellation Nuclear Power Plants, LLC, which, in turn, is a direct wholly owned subsidiary of CENG.

The proposed merger will be accomplished in several steps and the involvement of the following entities: CEG, Exelon, Exelon Generation, Exelon Ventures, Bolt Acquisition Corporation (Bolt) (an Exelon subsidiary formed for the sole purpose of merging with CEG), and Constellation Nuclear, LLC (CNL) (a wholly owned subsidiary of CEG and intermediate parent company of CCNPP, LLC). Following the closing of the transfers, Exelon will be the ultimate parent company of CNL, CENG, and the licensee.

Exelon Ventures and Bolt are direct wholly owned subsidiaries of Exelon. Exelon Generation is a direct wholly owned subsidiary of Exelon Ventures. First, the acquisition of CEG by Exelon will be effected by the merger of Bolt with and into CEG, with CEG being the surviving corporation. As a result of the merger, CEG will be a direct wholly owned subsidiary of Exelon, and former CEG shareholders will become shareholders of Exelon. Immediately after the merger, CEG will distribute to Exelon, as a dividend, 100 percent of the equity interests of several companies unrelated to CEG's nuclear and other generation business, including Baltimore Gas and Electric Company. Second, and concurrent with the distribution of CEG's equity interests in RF HoldCo LLC (the holding company for Baltimore Gas and Electric Company), CEG will merge into Exelon, resulting in the termination of CEG's corporate existence. Exelon will then contribute 100 percent of its equity interest in CEG to Exelon Ventures, which, in turn, will contribute the equity interest to Exelon Generation, resulting in CEG becoming a direct wholly owned subsidiary of Exelon Generation. CEG will then cease to exist, making CNL a direct wholly owned subsidiary of Exelon Generation. Exelon will indirectly own 100 percent of CNL through its wholly owned subsidiary, Exelon Generation.[1]

CNL, through wholly owned subsidiaries, has a 50.01 percent ownership interest in CENG; EDF Inc. has a 49.99 percent ownership interest in CENG. EDF Inc. is a U.S. corporation organized under the laws of the State of Delaware and is a wholly owned subsidiary of E.D.F. International SAS, a limited company organized under the laws of France, which is, in turn, a wholly owned subsidiary of Electricité de France SA, a French limited company. As a result of the merger, CNL, as a direct subsidiary of Exelon Generation, will continue to indirectly hold a 50.01 percent ownership interest in CENG; EDF Inc. will continue to have a 49.99 percent ownership interest in CENG. EDF Inc.'s 49.99 percent ownership interest in CENG is unaffected by the merger of Exelon and CEG and associated indirect license transfers.

No physical changes to the facilities or operational changes are being proposed in the application.

Notice of the request for approval and opportunity for a hearing was published in the **Federal Register** on July 7, 2011 (76 FR 39908). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80(a) and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application, the NRC staff has determined that the proposed indirect transfer of control of the subject licenses held by the licensee to the extent such will result from the proposed merger of CEG and Exelon, as described in the application, will not affect the qualifications of the licensee to hold the respective licenses and is otherwise consistent with the applicable provisions of law, regulations, and Orders issued by the NRC pursuant thereto, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation (SE) dated February 15, 2012.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the

[1] See Revised Figure 3, ''Post-Transaction Final Organization,'' from letter dated November 11, 2011.

Act), 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfers related to the proposed corporate merger, as described herein, is approved, subject to the following conditions:

1. All conditions contained in the ''Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring and Approving Conforming Amendments,'' dated October 30, 2009, concerning the corporate restructuring of CENG and associated indirect and direct transfers of control of the operating licenses held by CCNPP, LLC, shall remain in full force and effect and are incorporated herein as if fully set forth, except as they are amended herein.

2. The Nuclear Advisory Committee of Constellation Energy Nuclear Group, LLC, shall prepare an Annual Report regarding the status of foreign ownership, control, or domination of the licensed activities of power reactors under the control, in whole or part, of Constellation Energy Nuclear Group, LLC. The Report shall be submitted to the NRC within 30 days of completion of the Nuclear Advisory Committee Report, or by January 31 of each year (whichever occurs first). No action shall be taken by Constellation Energy Nuclear Group, LLC, or any entity to cause Constellation Nuclear, LLC, Exelon Generation, LLC, or their parent companies, subsidiaries or successors to modify the Nuclear Advisory Committee Report before submittal to the NRC. The Report shall be made available to the public, with the potential exception of information that meets the requirements for withholding such information from public disclosure under the regulations of 10 CFR 2.390, ''Public Inspections, Exemptions, Requests for Withholding.''

3. Records of all votes by EDF Inc., or its representatives, on the Constellation Energy Nuclear Group, LLC, Board of Directors and the use of the Chairman's casting vote will be sent to the Nuclear Advisory Committee and shall be reviewed by the Nuclear Advisory Committee to ensure that no foreign interests have exercised foreign ownership, control, or domination over the licensed activities of Calvert Cliffs Nuclear Power Plant, Units 1 and 2, and the Calvert Cliffs ISFSI, and that no action taken by a foreign interest involved with licensed activities is inimical to the common defense and security. The results of the Nuclear Advisory Committee's review shall be summarized in the Nuclear Advisory Committee Report and shall include discussions of any use of the Chairman's casting vote, determinations whether an exercise of foreign ownership, control, or domination has occurred, or that foreign involvement with licensed activities was inimical to the common defense and security.

4. Exelon Generation, LLC shall enter into the $205 million Support Agreement for Constellation Energy Nuclear Group, LLC, as described in the November 11, 2011, supplement to the May 12, 2011, indirect license transfer application, no later than the time the proposed transactions and indirect license transfers occur. The Exelon Generation, LLC, Support Agreement shall supersede the Support Agreement provided by Constellation Energy Group, Inc., and shall be consistent with the representations contained in the application. Constellation Energy Nuclear Group, LLC, shall take no action to cause Exelon Generation, LLC, or its successors and assigns, to void, cancel, or materially modify the Support Agreement or cause it to fail to perform, or impair its performance under the Support Agreement, without the prior written consent of the NRC. The Support Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed merger and the indirect license transfers. Constellation Energy Nuclear Group, LLC, shall inform the NRC in writing no later than 10 days after any funds are provided to Constellation Energy Nuclear Group, LLC, or any of the licensees by Exelon Generation, LLC, under the Support Agreement.

5. Upon consummation of the merger, Constellation Energy Nuclear Group, LLC, shall submit to the NRC, the amended and restated Constellation Energy Nuclear Group, LLC, Operating Agreement, reflecting the terms set forth in the Settlement Agreement, including the proposed revisions provided in the January 25, 2012, supplement to the application. The amended and restated Operating Agreement may not be modified in any respect concerning decisionmaking authority over nuclear safety, security, and reliability without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

6. Should the proposed corporate merger not be completed within 1 year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

It is further ordered that, after receipt of all required regulatory approvals of the proposed indirect transfer action, Exelon Generation shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of the closing of the corporate merger of Exelon and CEG.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 12, 2011 (Agencywide Documents Access and Management System Accession No. ML11138A159), as supplemented by letters dated June 17 (ML11173A067), August 3 (ML112150519), August 12 (ML11234A062), October 13 (ML113050083), November 10 (ML11335A024), November 11 (ML113180265), November 18 (ML11325A258), and November 22, 2011 (ML113260456), and January 19 (ML12019A0346), and January 25, 2012 (ML12032A153), and the SE dated February 15, 2012, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of February 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Catherine Haney,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–4323 Filed 2–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0193; Docket Nos. 50–220 and 50–410; License Nos. DPR–63 and NPF–69]

In the Matter of Exelon Corporation; Constellation Energy Group, Inc.; Nine Mile Nuclear Station, LLC; Nine Mile Point Nuclear Station, Units 1 and 2; Order Approving Application Regarding Proposed Corporate Merger and Indirect Transfer of Licenses

I

Nine Mile Point Nuclear Station, LLC (NMPNS, LLC, or the licensee) is the holder of Renewed Facility Operating License No. DPR–63, which authorizes the possession, use, and operation of Nine Mile Point Nuclear Station, Unit 1. NMPNS, LLC is also the 82 percent owner and the licensed operator of Renewed Facility Operating License No. NPF–69, which authorizes the possession, use, and operation of Nine Mile Point Nuclear Station, Unit 2. Long Island Power Authority owns the remaining 18 percent of Nine Mile Point Nuclear Station, Unit 2. The facilities are located at the licensee's site in Oswego County, New York.

II

By letter dated May 12, 2011, as supplemented on June 17, August 12, October 13, November 10, November 11, November 18, and November 22, 2011, and January 19, and January 25, 2012 (collectively, the application), Exelon Generation Company, LLC (Exelon Generation), acting on behalf of itself, Exelon Corporation (Exelon), and Exelon Ventures Company, LLC (Exelon Ventures), and Constellation Energy Nuclear Group, LLC (CENG), acting on behalf of itself, and the licensee, requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission), pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 50.80, consent to the proposed indirect license transfer of Renewed Facility Operating License Nos. DPR–63 and NPF–69, to the extent held by NMPNS, LLC, that would be effected by the indirect transfer of control of the ownership and operating interests in NMPNS, LLC. Long Island Power Authority is unaffected by the merger and associated indirect license transfers. The transfers being sought are a result of the proposed merger between Exelon and one of CENG's parent companies, Constellation Energy Group, Inc. (CEG), whereby CEG would be merged into Exelon and ownership of CEG's 50.01 percent of CENG would be transferred to Exelon. The remaining 49.99 percent ownership of CENG is held by EDF, Inc.

The licensee is a direct wholly owned subsidiary of Constellation Nuclear Power Plants, LLC, which, in turn, is a direct wholly owned subsidiary of CENG.

The proposed merger will be accomplished in several steps and the involvement of the following entities: CEG, Exelon, Exelon Generation, Exelon Ventures, Bolt Acquisition Corporation (Bolt) (an Exelon subsidiary formed for the sole purpose of merging with CEG), and Constellation Nuclear, LLC (CNL) (a wholly owned subsidiary of CEG and intermediate parent company of NMPNS, LLC). Following the closing of the transfers, Exelon will be the ultimate parent company of CNL, CENG, and the licensee.

Exelon Ventures and Bolt are direct wholly owned subsidiaries of Exelon. Exelon Generation is a direct wholly owned subsidiary of Exelon Ventures. First, the acquisition of CEG by Exelon will be effected by the merger of Bolt with and into CEG, with CEG being the surviving corporation. As a result of the merger, CEG will be a direct wholly owned subsidiary of Exelon, and former CEG shareholders will become shareholders of Exelon. Immediately after the merger, CEG will distribute to Exelon, as a dividend, 100 percent of the equity interests of several companies unrelated to CEG's nuclear and other generation business, including Baltimore Gas and Electric Company. Second, and concurrent with the distribution of CEG's equity interests in RF HoldCo LLC (the holding company for Baltimore Gas and Electric Company), CEG will merge into Exelon, resulting in the termination of CEG's corporate existence. Exelon will then contribute 100 percent of its equity interest in CEG to Exelon Ventures, which, in turn, will contribute the equity interest to Exelon Generation, resulting in CEG becoming a direct wholly owned subsidiary of Exelon Generation. CEG will then cease to exist, making CNL a direct wholly owned subsidiary of Exelon Generation. Exelon will indirectly own 100 percent of CNL through its wholly owned subsidiary, Exelon Generation.[1]

CNL, through wholly owned subsidiaries, has a 50.01 percent ownership interest in CENG; EDF Inc. has a 49.99 percent ownership interest in CENG. EDF Inc. is a U.S. corporation organized under the laws of the State of Delaware and is a wholly owned subsidiary of E.D.F. International SAS, a limited company organized under the laws of France, which is, in turn, a wholly owned subsidiary of Electricité de France SA, a French limited company. As a result of the merger, CNL, as a direct subsidiary of Exelon Generation, will continue to indirectly hold a 50.01 percent ownership interest in CENG; EDF Inc. will continue to have a 49.99 percent ownership interest in CENG. EDF Inc.'s 49.99 percent ownership interest in CENG is unaffected by the merger of Exelon and CEG and associated indirect license transfers.

No physical changes to the facilities or operational changes are being proposed in the application.

Notice of the request for approval and opportunity for a hearing was published in the **Federal Register** on July 7, 2011 (76 FR 39910). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80(a), no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application, the NRC staff has determined that the proposed indirect transfer of control of the subject licenses held by the licensee to the extent such will result from the proposed merger of CEG and Exelon, as described in the application, will not affect the qualifications of the licensee to hold the respective licenses and is otherwise consistent with the applicable provisions of law, regulations, and Orders issued by the NRC pursuant thereto, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation (SE) dated February 15, 2012.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfers related to the proposed corporate merger, as described herein, is approved, subject to the following conditions:

1. All conditions contained in the ''Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring,'' dated October 30, 2009, concerning the

[1] See Revised Figure 3, ''Post-Transaction Final Organization,'' from letter dated November 11, 2011.

corporate restructuring of CENG and associated indirect transfer of control of the operating licenses held by NMPNS, LLC, shall remain in full force and effect and are incorporated herein as if fully set forth, except as they are amended therein.

2. The Nuclear Advisory Committee of Constellation Energy Nuclear Group, LLC, shall prepare an Annual Report regarding the status of foreign ownership, control, or domination of the licensed activities of power reactors under the control, in whole or part, of Constellation Energy Nuclear Group, LLC. The Report shall be submitted to the NRC within 30 days of completion of the Nuclear Advisory Committee Report, or by January 31 of each year (whichever occurs first). No action shall be taken by Constellation Energy Nuclear Group, LLC, or any entity to cause Constellation Nuclear, LLC, Exelon Generation, LLC, or their parent companies, subsidiaries or successors to modify the Nuclear Advisory Committee Report before submittal to the NRC. The Report shall be made available to the public, with the potential exception of information that meets the requirements for withholding such information from public disclosure under the regulations of 10 CFR 2.390, ''Public Inspections, Exemptions, Requests for Withholding.''

3. Records of all votes by EDF Inc., or its representatives, on the Constellation Energy Nuclear Group, LLC, Board of Directors and the use of the Chairman's casting vote will be sent to the Nuclear Advisory Committee and shall be reviewed by the Nuclear Advisory Committee to ensure that no foreign interests have exercised foreign ownership, control, or domination over the licensed activities of Nine Mile Point Nuclear Station, Units 1 and 2, and that no action taken by a foreign interest involved with licensed activities is inimical to the common defense and security. The results of the Nuclear Advisory Committee's review shall be summarized in the Nuclear Advisory Committee Report and shall include discussions of any use of the Chairman's casting vote, determinations whether an exercise of foreign ownership, control, or domination has occurred, or that foreign involvement with licensed activities was inimical to the common defense and security.

4. Exelon Generation, LLC shall enter into the $205 million Support Agreement for Constellation Energy Nuclear Group, LLC, as described in the November 11, 2011, supplement to the May 12, 2011, indirect license transfer application, no later than the time the proposed transactions and indirect license transfers occur. The Exelon Generation, LLC, Support Agreement shall supersede the Support Agreement provided by Constellation Energy Group, Inc., and shall be consistent with the representations contained in the application. Constellation Energy Nuclear Group, LLC, shall take no action to cause Exelon Generation, LLC, or its successors and assigns, to void, cancel, or materially modify the Support Agreement or cause it to fail to perform, or impair its performance under the Support Agreement, without the prior written consent of the NRC. The Support Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed merger and the indirect license transfers. Constellation Energy Nuclear Group, LLC, shall inform the NRC in writing no later than 10 days after any funds are provided to Constellation Energy Nuclear Group, LLC, or any of the licensees by Exelon Generation, LLC, under the Support Agreement.

5. Upon consummation of the merger, Constellation Energy Nuclear Group, LLC, shall submit to the NRC, the amended and restated Constellation Energy Nuclear Group, LLC, Operating Agreement, reflecting the terms set forth in the Settlement Agreement, including the proposed revisions provided in the January 25, 2012, supplement to the application. The amended and restated Operating Agreement may not be modified in any respect concerning decisionmaking authority over nuclear safety, security, and reliability without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

6. Should the proposed corporate merger not be completed within 1 year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

It is further ordered that, after receipt of all required regulatory approvals of the proposed indirect transfer action, Exelon Generation shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of the closing of the corporate merger of Exelon and CEG.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 12, 2011 (Agencywide Documents Access and Management System Accession No. ML11138A159), as supplemented by letters dated June 17 (ML11173A067), August 3 (ML112150519), August 12 (ML11234A062), October 13 (ML113050083), November 10 (ML11335A024), November 11 (ML113180265), November 18 (ML11325A258), and November 22, 2011 (ML113260456), and January 19 (ML12019A0346), and January 25, 2012 (ML12032A153), and the SE dated February 15, 2012, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 15th 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. 2012–4324 Filed 2–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0192; Docket Nos. 50–244 and 72–67; License No. DPR–18; Docket No. 72–67; General License]

In the Matter of Exelon Corporation; Constellation Energy Group, Inc.; R.E. Ginna Nuclear Power Plant, LLC; R.E. Ginna Nuclear Power Plant; R.E. Ginna Independent Spent Fuel Storage Installation; Order Approving Application Regarding Proposed Corporate Merger and Indirect Transfer of License

I

R.E. Ginna Nuclear Power Plant, LLC (R.E. Ginna LLC, or the licensee), is the holder of Renewed Facility Operating License No. DPR–18, which authorizes the possession, use, and operation of the R.E. Ginna Nuclear Power Plant (Ginna). R.E. Ginna, LLC, is also the holder of the general license for the R.E. Ginna Independent Spent Fuel Storage Installation (ISFSI) which authorizes the possession, use and operation of the R.E. Ginna ISFSI and authorizes R.E. Ginna, LLC to receive, possess, transfer,

and store power reactor spent fuel at the R.E. Ginna ISFSI. The facilities are located in Wayne County, New York.

II

By letter dated May 12, 2011, as supplemented on June 17, August 12, October 13, November 10, November 11, November 18, and November 22, 2011, and January 19, and January 25, 2012 (collectively, the application), Exelon Generation Company, LLC (Exelon Generation), acting on behalf of itself, Exelon Corporation (Exelon), and Exelon Ventures Company, LLC (Exelon Ventures), and Constellation Energy Nuclear Group, LLC (CENG), acting on behalf of itself, and the licensee, requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission), pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 50.80, consent to the proposed indirect license transfer of Renewed Facility Operating License No. DPR–18, that would be effected by the indirect transfer of control of the ownership and operating interests in R.E. Ginna, LLC. The transfer being sought is a result of the proposed merger between Exelon and one of CENG's parent companies, Constellation Energy Group, Inc. (CEG), whereby CEG would be merged into Exelon and ownership of CEG's 50.01 percent of CENG would be transferred to Exelon. The remaining 49.99 percent ownership of CENG is held by EDF, Inc.

The licensee is a direct wholly owned subsidiary of Constellation Nuclear Power Plants, LLC, which, in turn, is a direct wholly owned subsidiary of CENG.

The proposed merger will be accomplished in several steps and the involvement of the following entities: CEG, Exelon, Exelon Generation, Exelon Ventures, Bolt Acquisition Corporation (Bolt) (an Exelon subsidiary formed for the sole purpose of merging with CEG), and Constellation Nuclear, LLC (CNL) (a wholly owned subsidiary of CEG and intermediate parent company of R. E. Ginna, LLC). Following the closing of the transfers, Exelon will be the ultimate parent company of CNL, CENG, and the licensee.

Exelon Ventures and Bolt are direct wholly owned subsidiaries of Exelon. Exelon Generation is a direct wholly owned subsidiary of Exelon Ventures. First, the acquisition of CEG by Exelon will be effected by the merger of Bolt with and into CEG, with CEG being the surviving corporation. As a result of the merger, CEG will be a direct wholly owned subsidiary of Exelon, and former CEG shareholders will become shareholders of Exelon. Immediately after the merger, CEG will distribute to Exelon, as a dividend, 100 percent of the equity interests of several companies unrelated to CEG's nuclear and other generation business, including Baltimore Gas and Electric Company. Second, and concurrent with the distribution of CEG's equity interests in RF HoldCo LLC (the holding company for Baltimore Gas and Electric Company), CEG will merge into Exelon, resulting in the termination of CEG's corporate existence. Exelon will then contribute 100 percent of its equity interest in CEG to Exelon Ventures, which, in turn, will contribute the equity interest to Exelon Generation, resulting in CEG becoming a direct wholly owned subsidiary of Exelon Generation. CEG will then cease to exist, making CNL a direct wholly owned subsidiary of Exelon Generation. Exelon will indirectly own 100 percent of CNL through its wholly owned subsidiary, Exelon Generation.[1]

CNL, through wholly owned subsidiaries, has a 50.01 percent ownership interest in CENG; EDF Inc. has a 49.99 percent ownership interest in CENG. EDF Inc. is a U.S. corporation organized under the laws of the State of Delaware and is a wholly owned subsidiary of E.D.F. International SAS, a limited company organized under the laws of France, which is, in turn, a wholly owned subsidiary of Electricité de France SA, a French limited company. As a result of the merger, CNL, as a direct subsidiary of Exelon Generation, will continue to indirectly hold a 50.01 percent ownership interest in CENG; EDF Inc. will continue to have a 49.99 percent ownership interest in CENG. EDF Inc.'s 49.99 percent ownership interest in CENG is unaffected by the merger of Exelon and CEG and associated indirect license transfer.

No physical changes to the facilities or operational changes are being proposed in the application.

Notice of the request for approval and opportunity for a hearing was published in the **Federal Register** on July 8, 2011 (76 FR 40403). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80(a), no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application, the NRC staff has determined that the proposed indirect transfer of control of the subject license held by the licensee to the extent such will result from the proposed merger of CEG and Exelon, as described in the application, will not affect the qualifications of the licensee to hold the respective license and is otherwise consistent with the applicable provisions of law, regulations, and Orders issued by the NRC pursuant thereto, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation (SE) dated February 15, 2012.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. Sections 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfer related to the proposed corporate merger, as described herein, is approved, subject to the following conditions:

1. All conditions contained in the ''Order Superseding Order of October 9, 2009, Approving Application Regarding Proposed Corporate Restructuring,'' dated October 30, 2009, concerning the corporate restructuring of CENG and associated indirect transfer of control of the operating license held by R.E. Ginna, LLC, shall remain in full force and effect and are incorporated herein as if fully set forth, except as they are amended herein.

2. The Nuclear Advisory Committee of Constellation Energy Nuclear Group, LLC, shall prepare an Annual Report regarding the status of foreign ownership, control, or domination of the licensed activities of power reactors under the control, in whole or part, of Constellation Energy Nuclear Group, LLC. The Report shall be submitted to the NRC within 30 days of completion of the Nuclear Advisory Committee Report, or by January 31 of each year (whichever occurs first). No action shall be taken by Constellation Energy Nuclear Group, LLC, or any entity to cause Constellation Nuclear, LLC, Exelon Generation, LLC, or their parent companies, subsidiaries or successors to modify the Nuclear Advisory Committee Report before submittal to the NRC. The Report shall be made available to the public, with the potential exception of information that meets the requirements for withholding such information from public disclosure under the regulations of 10 CFR 2.390, ''Public Inspections, Exemptions, Requests for Withholding.''

[1] See Revised Figure 3, ''Post-Transaction Final Organization,'' from letter dated November 11, 2011.

3. Records of all votes by EDF Inc., or its representatives, on the Constellation Energy Nuclear Group, LLC, Board of Directors and the use of the Chairman's casting vote will be sent to the Nuclear Advisory Committee and shall be reviewed by the Nuclear Advisory Committee to ensure that no foreign interests have exercised foreign ownership, control, or domination over the licensed activities of R.E. Ginna Nuclear Power Plant, and that no action taken by a foreign interest involved with licensed activities is inimical to the common defense and security. The results of the Nuclear Advisory Committee's review shall be summarized in the Nuclear Advisory Committee Report and shall include discussions of any use of the Chairman's casting vote, determinations whether an exercise of foreign ownership, control, or domination has occurred, or that foreign involvement with licensed activities was inimical to the common defense and security.

4. Exelon Generation, LLC shall enter into the $205 million Support Agreement for Constellation Energy Nuclear Group, LLC, as described in the November 11, 2011, supplement to the May 12, 2011, indirect license transfer application, no later than the time the proposed transactions and indirect license transfers occur. The Exelon Generation, LLC, Support Agreement shall supersede the Support Agreement provided by Constellation Energy Group, Inc., and shall be consistent with the representations contained in the application. Constellation Energy Nuclear Group, LLC, shall take no action to cause Exelon Generation, LLC, or its successors and assigns, to void, cancel, or materially modify the Support Agreement or cause it to fail to perform, or impair its performance under the Support Agreement, without the prior written consent of the NRC. The Support Agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed merger and the indirect license transfers. Constellation Energy Nuclear Group, LLC, shall inform the NRC in writing no later than 10 days after any funds are provided to Constellation Energy Nuclear Group, LLC, or any of the licensees by Exelon Generation, LLC, under the Support Agreement.

5. Upon consummation of the merger, Constellation Energy Nuclear Group, LLC, shall submit to the NRC, the amended and restated Constellation Energy Nuclear Group, LLC, Operating Agreement, reflecting the terms set forth in the Settlement Agreement, including the proposed revisions provided in the January 25, 2012, supplement to the application. The amended and restated Operating Agreement may not be modified in any respect concerning decisionmaking authority over nuclear safety, security, and reliability without the prior written consent of the Director, Office of Nuclear Reactor Regulation.

6. Should the proposed corporate merger not be completed within 1 year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by Order.

It is further ordered that, after receipt of all required regulatory approvals of the proposed indirect transfer action, Exelon Generation shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of the closing of the corporate merger of Exelon and CEG.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 12, 2011 (Agencywide Documents Access and Management System Accession No. ML11138A159), as supplemented by letters dated June 17 (ML11173A067), August 3 (ML112150519), August 12 (ML11234A062), October 13 (ML113050083), November 10 (ML11335A024), November 11 (ML113180265), November 18 (ML11325A258), and November 22, 2011 (ML113260456), and January 19 (ML12019A0346), and January 25, 2012 (ML12032A153), and the SE dated February 15, 2012, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 15th 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. 2012–4327 Filed 2–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483; NRC–2012–0001]

License Renewal Application for Callaway Plant, Unit 1, Union Electric Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Intent to prepare environmental impact statement and conduct scoping process.

SUMMARY: Union Electric Company, a subsidiary of Ameren Corporation and doing business as Ameren Missouri (Ameren), has submitted to the U.S. Nuclear Regulatory Commission (NRC) an application for renewal of Facility Operating License NPF–30 for an additional 20 years of operation at Callaway Plant, Unit 1 (Callaway). Callaway is located in Callaway County, MO. The current operating license for Callaway expires on October 18, 2024.

DATES: The public scoping meeting will be held on March 14, 2012. The first session will be from 2 p.m. to 4 p.m., and the second session will be from 7:00 p.m. to 9:00 p.m. Submit comments by April 24, 2012. Comments received after these dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0001. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0001. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carmen Fells, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6337, email: *Carmen.Fells@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0001 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0001.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0001 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

The application for renewal, dated December 15, 2011, was submitted pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 54, which included an environmental report (ER). A separate notice of receipt and availability of the application was published in the **Federal Register** on January 3, 2012 (77 FRN 142). A notice of acceptance for docketing of the application and opportunity for hearing regarding renewal of the facility operating license is also being published in the **Federal Register**. The purpose of this notice is to inform the public that the NRC will be preparing an environmental impact statement (EIS) related to the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

As outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA). Pursuant to 36 CFR 800.8(c), the NRC intends to use its process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA, in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Ameren submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is publicly available in ADAMS under Accession No. ML113530374. The ER may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/callaway.html.* In addition, the ER is available to the public near the site at the Callaway County Public Library, 710 Court Street, Fulton, MO 65251.

This document advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the NRC's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants'' (NUREG–1437), related to the review of the application for renewal of the Callaway operating license for an additional 20 years.

Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This document is being published in accordance with NEPA and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action, which is to be the subject of the supplement to the GEIS;

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies; and

h. Describe how the supplement to the GEIS will be prepared and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Ameren;

b. Any Federal agency that has jurisdiction by law or special expertise

with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene.

III. Public Scoping Meeting

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the Callaway license renewal supplement to the GEIS. The scoping meetings will be held on March 14, 2012, and there will be two sessions to accommodate interested parties. The first session will convene at 2 p.m. and will continue until 4 p.m., as necessary. The second session will convene at 7:00 p.m. with a repeat of the overview portions of the meeting and will continue until 9:00 p.m., as necessary. Both sessions will be held at the Fulton City Hall, 18 East 4th Street, Fulton, MO 65251.

Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or by any method provided in the **ADDRESSES** section of this document.

Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Project Manager, Ms. Carmen Fells, by telephone at 301–415–6337, or by email at *Carmen.Fells@nrc.gov* no later than March 7, 2012. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Ms. Fells will need to be contacted no later than March 5, 2012, if special equipment or accommodations are needed to attend or present information at the public meeting so that the NRC staff can determine whether the request can be accommodated.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting. The notice of acceptance for docketing of the application and opportunity for hearing that was published in the **Federal Register** describes the hearing process.

Dated at Rockville, Maryland, this 14th day of February, 2012.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–4315 Filed 2–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483; NRC–2012–0001]

Renewal of Facility Operating License No. NPF–30, Union Electric Company, Callaway Plant, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; docketing and opportunity for hearing and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of an operating license, which authorizes Union Electric Company to operate the Callaway Plant, Unit 1 (Callaway), at 3565 megawatts thermal. The renewed license would authorize the applicant to operate Callaway for an additional 20 years beyond the period specified in the current license. Callaway is located in Callaway County, Missouri and its current operating license expires on October 18, 2024.

DATES: Requests for a hearing or petitions for leave to intervene must be filed by 60 days from date of publication.

ADDRESSES: Please refer to Docket ID NRC–2012–0001 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0001. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application may be accessed in ADAMS under ADAMS Accession No. ML113530372.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

I. Discussion

Union Electric Company submitted the application dated December 15, 2011, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) part 54, to renew operating license NPF–30. A notice of receipt and availability of the license renewal application (LRA) was published in the **Federal Register** on January 3, 2012 (77 FRN 142).

The Commission's staff has determined that Union Electric Company has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c), to enable the staff to undertake a review of the application, and that the application is therefore acceptable for docketing. The current Docket Number, 50–483, for operating license NPF–30 will be retained. The determination to accept the LRA for docketing does not constitute a determination that a renewed license should be issued, and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated May 1996. In considering the LRA, the Commission must find that the applicable requirements of Subpart A of 10 CFR part 51 have been satisfied, and that matters raised under 10 CFR 2.335 have been addressed. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding the environmental scoping meeting will be the subject of a separate **Federal Register** notice.

II. Opportunity for Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing or petitions for leave to intervene must be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' in 10 CFR Part 2. Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737. The NRC's regulations are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.*

If a request for a hearing/petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the basis for each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

IV. Document Availability

Detailed information about the license renewal process can be found on the NRC's Web site at *http://www.nrc.gov/reactors/operating/licensing/renewal.html.* Copies of the application to renew the operating license for Callaway are available for public inspection at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852–2738, and on the NRC's Web site at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* while the application is under review.

The NRC staff has verified that a copy of the license renewal application is also available to local residents near Callaway, at the Callaway County Public Library, 710 Court St., Fulton, MO 65251.

Dated at Rockville, Maryland, this 16th day of February, 2012.

For the Nuclear Regulatory Commission.

Mark S. Delligatti,

Acting Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–4309 Filed 2–23–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66413; File No. SR–DTC–2012–01]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Automate the ''Full Call'' Notification Process Relating to Money Market Instruments and Reduce the Time Frame Within Which Notices Are Required To Be Submitted

February 16, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on February 8, 2012, The Depository Trust Company (''DTC'') 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(4) [4] thereunder so that the proposed rule change was 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 proposed rule change would automate the ''full call'' notification process relating to Money Market Instruments (''MMIs'') and would reduce the time frame within which such notices are required to be submitted to DTC.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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. DTC requires that an issuer or its agent notify DTC in a timely manner in the event of a full or partial redemption of outstanding debt securities. Currently, DTC requires that an MMI Issuing/Paying Agent (''IPA'') send DTC full call information by email to DTC's redemption processing area no later than the close of business on the business day before or if possible two business days before the Publication Date, which except as otherwise noted in DTC's Operational Arrangements (''OA''), is no fewer than 30 calendar days or more than 60 calendar days prior to the Redemption Date.

In April 2011, members of the Securities Industry and Financial Markets Association Money Market Committee (''SIFMA MMI Committee'') sent a written request to DTC regarding the ''full call'' notification process for MMIs.[6] The SIFMA MMI Committee requested that DTC reevaluate its procedures regarding notification time frames for processing certain transactions in MMIs (''Request'').[7] The financial services industry, and the money market sector in particular, is responding to various significant regulatory changes including, the Basel III capital directives (''Basel III''). In particular, the industry is concerned that the anticipated implementation of a Liquidity Coverage Ratio under Basel III will have significant consequences on the cost of short-term funds for major international banks and that the commercial paper market will need to adapt to these changes. DTC was advised that the ability to issue callable commercial paper with very short notice periods would be beneficial to banks in managing the new Liquidity Coverage Ratio. The industry has indicated that affected banks may shift a significant percentage of commercial paper issuances into a callable format over time.

DTC has reviewed its current processes and has determined that it is feasible to automate its processes as they relate to the SIFMA MMI Request. In so doing, DTC would reduce operational risk in the processing of MMI full call notices and at the same time would support the Request. In order to facilitate this automation, DTC will create a function that will provide IPAs with the ability and option to input MMI full call information directly into DTC's systems through an input screen in the Settlement Web or through an automated message format. The announcement information will be available through the existing Reorg Inquiry for Participants (''RIPS'') function on DTC's Participant Terminal System (''PTS'') and as an intraday file to which Participants will be able to subscribe. The information will also be included in end of day redemption output files. As a result of this automation, DTC will be able to reduce the notification time frame on full call MMIs so that effective April 26, 2012, DTC will modify the timing of a full call announcement so that IPAs have the option to send notification to DTC up until noon on the day before the maturity date for those IPAs that use the full call automation input mechanism.

Additionally, at the request of the Options Clearing Corporation (''OCC''), DTC is making unrelated updates to its Settlement Service Guide in order to make changes to certain OCC cutoff times. These two cutoffs were originally established to allow OCC as Pledgee (as defined in the DTC rules and procedures) sufficient time to receive and input Participant release requests to the OCC internal system and then to create and send approved releases back to DTC. When first introduced, this was a manual process. In 1997, DTC extended the cutoffs to the current times to reflect automation in OCC's process.[8] OCC has now requested that DTC extend the cutoffs further in order to allow Participants additional time to process their release requests since the current process is no longer manual and is instead a ''real-time'' messaging between DTC and OCC. Effective upon the date of this filing, DTC will extend the OCC cutoffs described above to 6:15 pm.

2. The proposed rule change is consistent with the requirements of the Act, the rules and regulations thereunder, and the CPSS/IOSCO Recommendations for Securities Settlement Systems applicable to DTC. The proposed rule changes modify existing DTC services in order to make the redemption announcement process, as it relates to MMIs, and the processing of pledge releases through the OCC, more efficient. As such, these are changes to existing services, which will not adversely affect the safeguarding of securities and funds in DTC's control or custody and which will not significantly affect the rights or obligations of the clearing agency or persons using the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] DTC is also making an unrelated change to its settlement processing schedule for The Options Clearing Corporation (''OCC'') services in response to a request from OCC.

[6] The SIFMA MMI Committee includes MMI dealers and IPAs.

[7] DTC, in consultation with the industry, agreed that these process changes for MMIs would only apply to full calls. A partial call undergoes a different process using a ''lottery'' mechanism that requires more time for the holders to elect their option and for operational processing. Given the additional time constraints, it was agreed that DTC would shorten the window only for full calls.

[8] See DTC Important Notice B#2287 dated December 2, 1997 in which DTC made changes to OCC's cutoffs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(4) of Rule 19b–4 and therefore, became effective on filing. At any time within sixty days of the filing of such 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–DTC–2012–01 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–DTC–2012–01. 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 DTC's principal office and on DTC's Web site at *www.dtc.org*. 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–DTC–2012–01 and should be submitted on or before March 16, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4279 Filed 2–23–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66420; File No. SR–Phlx-2011–179]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of MSCI EM Index Options

February 17, 2012.

I. Introduction

On December 21, 2011, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain of its rules to provide for the listing and trading of options on the MSCI EM Index. The proposed rule change was published for comment in the **Federal Register** on January 6, 2012.[3] On January 11, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description

The proposed rule change would amend Phlx Rules 1079 (FLEX Index, Equity and Currency Options), 1009A (Designation of the Index) and 1101A (Terms of Option Contracts) to list and trade P.M. cash-settled, European-style options, including FLEX[5] options and LEAPS,[6] on the MSCI EM Index, which is described below. The proposal would also create new Phlx Rule 1108A, entitled ''MSCI EM Index,'' which would provide additional detailed information pertaining to the index as required by the licensor including, but not limited to, liability and other representations on the part of MSCI Inc. (''MSCI''), which maintains the index.

As described by the Exchange, the MSCI EM Index is a free float-adjusted market capitalization index consisting of large and midcap component securities from countries classified by MSCI as ''emerging markets,'' and is designed to measure equity market performance of emerging markets. The index consists of component securities from the following 21 emerging market countries: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.

As further described by the Exchange, the MSCI EM Index is calculated in U.S. Dollars on a real time basis from the open of the first market on which the components are traded to the close of the last market on which the components are traded. The level of the index reflects the free float-adjusted market value of the component stocks relative to a particular base date, and the methodology used to calculate the value of the index is similar to the methodology used to calculate the value of other well-known market-

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66077 (January 3, 2012), 77 FR 829 (''Notice'').

[4] Amendment No. 1 made a technical correction to the Exhibit 3. Amendment No. 1 is not subject to notice and comment because it is technical in nature and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

[5] FLEX options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX index options may have expiration dates within five years. *See* Exchange Rules 1079 and 1101A.

[6] LEAPS or Long Term Equity Anticipation Securities are long term options that generally expire from twelve to thirty-nine months from the time they are listed.

capitalization weighted indexes.[7] As of December 31, 1987, when the MSCI EM Index was launched, its base index value was 100. On June 1, 2011, the index value was 1166.72.[8]

The MSCI EM Index is monitored and maintained by MSCI. Adjustments to the MSCI EM Index are made on a daily basis with respect to corporate events and dividends. The index is generally updated on a quarterly basis to reflect amendments to shares outstanding and free float. Full index reviews are conducted on a semi-annual basis for purposes of rebalancing the index.

Options on the MSCI EM Index, as introduced by the proposed rule change, would be European-style and P.M. cash-settled. The settlement value for expiring options would be based on the closing prices of the component stocks on the last trading day prior to expiration. The expiration date would be the Saturday following the third Friday of the expiration month. The Options Clearing Corporation would be the issuer and guarantor.

Phlx Rule 1009A(d) provides that the Exchange may trade options on a broad-based index[9] pursuant to Rule 19b–4(e) under the Act, when certain conditions are satisfied.[10] The MSCI EM Index is a broad-based index. However, it does not meet all the conditions of Rule 1009A(d). The proposed rule change would establish listing standards that are specific to MSCI EM Index options, to be set forth in new Rule 1009A(g).

Specifically, proposed Rule 1009A(g)(i) would provide that the Exchange may trade options on the MSCI EM Index if each of the following conditions is satisfied:

(1) The index is broad-based;

(2) Options on the index are designated as P.M.-settled index options;

(3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted;

(4) The index consists of 500 or more component securities;

(5) All the component securities of the index have a market capitalization of greater than $100 million;

(6) No single component security accounts for more than 15% of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than 50% of the weight of the index;

(7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 22.5% of the weight of the index;

(8) The current index value is widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange;

(9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and

(10) The Exchange has written procedures in place for the surveillance of trading of options on the index.

After the initial listing of options on the MSCI EM Index under the above conditions, the following maintenance standards, as set forth in proposed Rule 1009A(g)(ii), would apply: The requirements set forth in proposed Rule 1009A(g)(i)(1), (2), (3), (4), (7), (8), (9), and (10) must continue to be satisfied. The requirements set forth in proposed Rule 1009A(g)(i)(5) and (6) must be satisfied only as of the first day of January and July in each year. In addition, the total number of component securities in the index could not increase or decrease by more than 35% from the number of component securities in the index at the time of its initial listing.

The Exchange proposed to apply position limits of 25,000 contracts on the same side of the market to options on the MSCI EM Index.[11] All position limit hedge exemptions would apply. In addition, the Exchange proposed to amend Rule 1079(d)(1) to note that, with respect to FLEX options on the MSCI EM index, the same number of contracts, 25,000, would apply with respect to the position limit. The Exchange also proposed to apply existing index option margin requirements for the purchase and sale of options on the MSCI EM Index.[12]

Further, as proposed, Exchange rules that apply to the trading of options on broad-based indexes also would apply to options on the MSCI EM Index.[13] This includes, among others,

Exchange rules governing margin requirements and trading halt procedures for index options.[14]

Finally, the Exchange proposed to add Rule 1108A, entitled ''MSCI EM Index,'' to provide additional detailed information pertaining to the index as required by the licensor, including, but not limited to, liability and other representations on the part of MSCI.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the listing and trading of options on the MSCI EM Index will broaden trading and hedging opportunities for investors by creating a new options instrument based on an index designed to measure the equity market performance of emerging markets. Because the MSCI EM Index is a broad-based index comprised of actively-traded, well-

[7] Details regarding the methodology for calculating the MSCI EM Index can be found in the Notice, *supra* note 3, and at *http://www.msci.com/eqb/methodology/meth_docs/MSCI_May11_GIMIMethod.pdf*.

[8] According to the Exchange, static data regarding the MSCI EM Index is distributed daily to clients through MSCI as well as through major quotation vendors, including Bloomberg L.P. (''Bloomberg''), FactSet Research Systems, Inc. (''FactSet'') and Thomson Reuters (''Reuters''). Real time data is distributed at least every 15 seconds using MSCI's real-time calculation engine to Reuters, Bloomberg, SIX Telekurs and FactSet.

[9] A broad-based index is defined in Exchange Rule 1000A(b)(11) as an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

[10] This provision is an exception to Exchange Rule 1009A(a), which provides generally that the listing of a class of index options on a new underlying index will be treated by the Exchange as a proposed rule change subject to filing with and approved by the Commission under Section 19(b) of the Act.

[11] The exercise limit would also be 25,000 contracts as per Exchange Rule 1002A.

[12] *See* Exchange Rule 721. For additional proposed requirements for options on the MSCI EM Index, including strike price intervals, minimum tick size, and series openings, *see* Notice, *supra* note 3.

[13] *See generally* Exchange Rules 1000A through 1107A (Rules Applicable to Trading of Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

[14] *See* Exchange Rules 721 (Proper and Adequate Margin) and 1047A (Trading Rotations, Halts or Reopenings).

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[16] 15 U.S.C. 78f(b)(5).

capitalized stocks, the trading of options on the MSCI EM Index does not raise unique regulatory concerns. The Commission believes that the listing standards, which are created specifically and exclusively for the MSCI EM Index, are consistent with the Act, for the reasons discussed below.

The Commission notes that proposed Rule 1009A(g) would require that the MSCI EM Index consist of 500 or more component securities. The component securities of the MSCI EM Index are listed and traded on markets spread over 21 different countries. Further, for options on the MSCI EM Index to trade, each of the minimum of 500 component securities would need to have a market capitalization of greater than $100 million. Moreover, the Commission notes that, according to the Exchange, the MSCI EM Index is comprised of more than 800 components, all of which must meet the market capitalization requirement to permit an option on the index to begin trading.

The Commission notes that the proposed listing standards for options on the MSCI EM Index would not permit any single security to comprise more than 15% of the weight of the index, and would not permit a group of five securities to comprise more than 50% of the weight of the index. The Commission believes that, in view of the requirement on the number of securities in the index, the number of countries represented in the index, and the market capitalization, this concentration standard is consistent with the Act. Further, the Exchange stated that, of the more than 800 components that comprise the MSCI EM Index, no single component comprises more than 5% of the index.

The Exchange has represented that it has an adequate surveillance program in place for options on the MSCI EM Index, and intends to apply the same procedures for surveillance that it applies to its other index options. The Exchange also is a member of the Intermarket Surveillance Group and an affiliate member of the International Organization of Securities Commissions, and has entered into various Information Sharing Agreements and/or Memoranda of Understandings with various stock exchanges.

Under the proposed rule change, non-U.S. component securities of the MSCI EM Index that are not subject to comprehensive surveillance agreements will not, in the aggregate, represent more than 22.5% of the weight of the index. The Commission expects the Exchange to continue to work to secure comprehensive surveillance agreements with exchanges on which the component securities of the MSCI EM Index trade, but with which the Exchange currently does not have comprehensive surveillance agreements in place.

The proposed listing standards require the current value of the MSCI EM Index to be widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange. Further, the standards require that the Exchange have adequate system capacity to support the trading of options on the MSCI EM Index. The Exchange stated that these requirements will be met.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,[17] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In this regard, the Commission notes that Exchange rules that apply to the trading of options on broad-based indexes would apply to options on the MSCI EM Index.[18] In addition, the Exchange has stated that options on the MSCI EM Index would be subject to the same rules that govern all Exchange index options, including rules that are designed to protect public customer trading.[19]

The Commission further believes that the Exchange's proposed position and exercise limits, strike price intervals, minimum tick size, series openings, and other aspects of the proposed rule change are appropriate and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–2011–179), as modified by Amendment No. 1 thereto, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4281 Filed 2–23–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78f(b)(1).

[18] *See generally* Exchange Rules 1000A through 1107A (Rules Applicable to Trading of Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

[19] *See* Notice, *supra* note 3 and Exchange Rules 1024–1029. *See also supra* notes 13 and 14.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66422; File No. SR–BATS–2012–010]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

February 17, 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 8, 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 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 institute a fee change applicable to securities listed on the Exchange. Changes to the Exchange's fees 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

[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).

the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.[5] The Exchange proposes to modify Rule 14.13, entitled ''Company Listing Fees'' to: (i) Adopt specified pricing for certain exchange traded products (''ETPs'') listed on the Exchange pursuant to Rule 14.11; (ii) provide an exemption from annual listing fees for any security listed on the Exchange that has a consolidated average daily volume (''CADV'') equal to or greater than 2 million shares per day for the prior two (2) calendar months; and (iii) apply all annual fees on the anniversary date of a security's listing on the Exchange and make other clarifying changes.

Listing Fees for ETPs

The Exchange currently has in place specified fees for listing of Tier I and Tier II securities on the Exchange, including both initial and annual listing fees. The Exchange proposes to amend Rule 14.13(b) to adopt initial and annual fees for ETPs listed pursuant to Rule 14.11. The Exchange proposes to commence its listings business by charging Initial Listing Fees of $10,000 for all ETPs. This initial primary listing fee will include a $5,000 non-refundable application fee. The Exchange also proposes to charge an annual fee of $35,000 for ETPs, provided, however, that ETPs with CADV equal to or greater than 2 million shares per day for the prior two (2) calendar months will not be assessed an annual fee, as described below. The Exchange also proposes to re-number the remainder of Rule 14.13(b) following the insertion of the proposed fees for ETPs.

Waiver of Annual Listing Fees for Certain Listed Securities

In order to incentivize larger, more established companies and ETP sponsors to list securities on the Exchange and to incentivize companies that list on the Exchange and grow to be more established companies to maintain their listings on the Exchange, the Exchange proposes to waive the annual listing fee for any security that is listed on the Exchange and has had a CADV equal to or greater than 2 million shares per day for the prior two (2) calendar months. This fee waiver will apply equally to securities that transfer from another listings market and become listed on the Exchange as well as those securities already listed on the Exchange when the annual listing fee becomes due (upon the anniversary of the security's listing, as described below).

Billing of Annual Fees and Additional Clarifying Changes

The Exchange proposes to modify its intended billing of annual fees, which the Exchange originally intended to assess on a pro-rated basis. The Exchange proposes to make clear that unless otherwise specified, the Exchange will assess all annual fees set forth in Rule 14.13(b)(2) upon a security's initial listing and then on each anniversary of a security's listing on the Exchange. The Exchange believes that billing each issuer on an annual basis from the date the applicable security is first listed on the Exchange is a more straightforward billing process than billing on a calendar year basis, which requires pro-rating of annual listing fees in the initial billing cycle.

The Exchange also proposes to delete current paragraphs (F) and (G) of Rule 14.13(b)(2), as such paragraphs are duplicative of existing paragraphs (C) and (D) (which the Exchange proposes to re-number as (D) and (E)).

Finally, the Exchange proposes to correct and expand an internal cross-reference set forth in Rule 14.13(b)(2)(E) (proposed to be re-numbered as sub-paragraph (b)(2)(F)). As currently in effect, BATS Rule 14.13(b)(2)(E), states that the Exchange will not apply the standard annual fee for a dually-listed security but will instead charge an annual fee of $15,000. Although this was intended and described as applicable to both Tier I and Tier II securities in the Exchange's rule filing that proposed rules applicable to Exchange-listed securities,[6] the rule text inaccurately limits this dual-listings fee to Tier I securities. The Exchange proposes to expand the cross-reference to include Tier II securities as well as the newly added provision setting forth annual listing fees for ETPs.

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.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers. As proposed, consistent with pricing already in place for Tier I and Tier II securities, the Exchange is proposing a clear-cut and simple pricing structure for ETPs that is not variable based on the number of shares or other metrics. The proposed fees applicable to ETPs are therefore equitable and non-discriminatory because they will apply equally to all ETPs listed on the Exchange. Further, the Exchange believes its proposed pricing for ETPs is reasonable, as the Exchange has not proposed additional fees that issuers incur at other exchanges, including fees for issuance of additional shares, name changes and other corporate actions. Finally, the Exchange notes that its proposed pricing, while not necessarily cheaper for all issuers at all other markets, is in many cases roughly equivalent or less than issuers would pay at other exchanges. For instance, derivative securities products and structured products listed on the NYSE Arca are assessed fees between $5,000 and $45,000 initially (depending on the type of product and number of shares) and between $5,000 and $55,000 annually, compared to proposed Exchange fees for ETP listings of $10,000 initially and $35,000 annually. Also, as noted above, most other listings markets charge multiple other fees applicable to additional shares issued by listed companies, corporate actions and related activities of issuers, whereas the Exchange's proposed fees do not include such additional fees.

The Exchange believes it is equitable, reasonable and non-discriminatory to waive the annual fee for issuers that have consolidated average daily volume (''CADV'') equal to or greater than 2 million shares per day for the prior two (2) calendar months. As a general matter, listed companies that are better known and well-established are frequently more actively traded, liquid securities. The Exchange believes that the benefits to both the Exchange and other Exchange constituents of attracting and retaining such companies to list on the Exchange justifies the Exchange waiving annual listing fees for

[5] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011).

[6] *See* Securities Exchange Act Release No. 64546 (May 25, 2011), 76 FR 31660 (June 1, 2011) (SR–BATS–2011–018); *see also id.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4) and (b)(5).

these issuers. As it relates to other issuers, the ability of the Exchange to attract well-known, recognizable companies to list on the Exchange will help the Exchange to establish its status and reputation as a primary listing market. The Exchange's reputation as a primary listing market, in turn, will positively impact all issuers that are listed on the Exchange. Further, the Exchange believes that additional revenue generated from the Exchange's auction processes for actively traded Exchange-listed securities will offset the cost of operating a program for listed companies on the Exchange. Because issuers with higher CADV are likely to generate additional revenue for the Exchange, the Exchange believes it is reasonable to waive annual listing fees for such issuers. Based on the foregoing, the Exchange believes that waiver of annual listing fees to companies with certain CADV is a fair and equitable allocation of fees to issuers.

Finally, the Exchange believes it is reasonable and equitable to assess annual fees as of a security's initial listing date, rather than pro-rating annual fees and billing on a calendar basis. In particular, the Exchange believes that this annual billing will provide for more certainty to issuers than a billing model that requires proration.

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 [9] and Rule 19b–4(f)(2) thereunder,[10] 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–2012–010 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–2012–010. 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 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–BATS–2012–010 and should be submitted on or before March 16, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66421; File No. SR–NYSE–2012–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rule 476A To Update Its "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

February 17, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 7, 2012, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 476A to update its "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476ARule XX [sic]. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 476A to update its ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A'' (''Rule 476A List'') to (i) make technical, non-substantive changes to conform the list to previously-approved changes in Exchange rules, (ii) update the rules relating to conduct by Designated Market Makers (''DMM''), and (iii) add rules relating to conduct by DMMs.

Background

Under the Exchange's Minor Rule Violation Plan, NYSE Rule 476A, the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, approved person or registered or non-registered employee [4] of a member or member organization for a minor violation of certain specified Exchange rules (a ''summary fine''). Summary fines provide a meaningful sanction for rule violations when the violation calls for stronger discipline than an admonition or cautionary letter, but the facts and circumstances of the violation do not warrant initiation of a formal disciplinary proceeding under Rule 476.[5]

Proposed Non-Substantive Changes to Rule 476A List

The Exchange proposes the following non-substantive changes to update the Rule 476A List to conform it to approved changes to Exchange rules, as follows:

- Update the titles of Rules 15, 15A, and 105
- Update rule references that have been renumbered or harmonized with a FINRA rule: Rule 72(b) to 72(d); 79A.30 to 79A.20; 103.12 to 103.11; and 346(b) to 3270
- Delete references to rules that have been deleted: Rules 97.40 (reporting rule violation); 104.12 (DMM investment account rule); 107A.30 (reporting rule violation); 112A.10 (reporting rule violation); 123A.30 (percentage orders); 304(h)(2) (reporting rule violation); 346(c), (e), and (f) (Limitations on member organization employment and failure to obtain Exchange approval rule violations); 421 (reporting rule violation); 440F (reporting rule violation); and 440G (reporting rule violation) [6]
- Update the description to rules that have been amended: Rules 123C [7] (deleting references to expiration Fridays and quarterly expiration days); 411(b) (replacing the description to reflect the amended rule); and 345(a) (deleting the reference to Securities Trader Supervisor)

Proposed Updates to Rule 476A List for DMM Conduct Rules

The current Rule 476A List includes rules that govern DMM conduct, *e.g.,* Rules 104(a)(1)(A), 104.10, and Exchange policies regarding procedures to be followed in delayed opening situations. The Exchange proposes to update the Rule 476A List with current rules governing DMM conduct, and in particular, to include Rules 104 and 123D in the Rule 476A List. The Exchange further proposes to expand the references to Rules 104 and 123D to add new elements to the Rule 476A List [sic]

The Exchange believes that the updates proposed below will provide the Exchange with sufficient flexibility to address DMM failure to meet their obligations. The Exchange recognizes that DMMs may, for many reasons, fail to meet their affirmative obligations as prescribed under Rules [sic] 104 or duties under Rule 123D. In some circumstances, formal disciplinary measures in accordance with Rule 476 are warranted. However, in other instances, formal discipline may be unwarranted, and the Exchange believes that the addition of these Rules to Rule 476A List will provide a more flexible and appropriate tool to enforce potential failure by DMMs to adhere to the requirements set forth in those rules, while preserving the Exchange's discretion to seek formal discipline under the appropriate circumstances. The Exchange believes that the proposed updated rule references cover the same subject matter as are already addressed in the Rule 476A List, albeit in outdated references. In addition, the Exchange believes it is also appropriate to add new elements relating to Rule [sic] 104 and 123D to the Rule 476A List.

Rule 104

NYSE Rule 104 requires, *inter alia,* DMMs registered in one or more securities traded on the Exchange to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market, insofar as reasonably practicable, by contributing liquidity when lack of price continuity and depth, or disparity between supply and demand exists or is reasonably to be anticipated.[8]

The Rule 476A List currently includes Rule 104(a)(1)(A), which requires DMMs to maintain a bid or an offer at the National Best Bid and National Best Offer (''inside'') at least 15% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume of less than one million shares, and at least 10% for securities in which the DMM unit is registered with a consolidated average daily volume equal to or greater than one million shares.

The Rule 476A List also includes an outdated reference to Rule 104.10. When the Exchange adopted the New Market Model, it adopted current Rule 104 (on a pilot basis), which does not include a rule reference of 104.10 that is the same as the former Rule 104.10.[9] However, the subject matter formerly covered in Rule 104.10 continues in the current Rule 104. For example, the text of former Rules 104.10(5) and (6) has been moved in substantially similar form to current Rules 104(g), (h), and (i).

More generally, although the Exchange has deleted former Rule 104.10(1)–(3), the subject matter of those rules has been carried forward in various sections of current Rule 104. For example, former Rule 104.10 specified the functions of DMMs, including the maintenance, in so far as reasonably practicable, of a fair and orderly market. This topic is now covered by Rules 104(a) and (f).

More specifically, former Rule 104.10(1) stated that the maintenance of a fair and orderly market implies the

[4] Rule 476A(a) includes a reference to ''allied member''. The Exchange proposes to replace that term with ''principal executive,'' which is consistent with a prior rule change eliminating the category of ''allied member'' on the Exchange. *See* Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR–NYSE–2008–80).

[5] The Exchange's Minor Rule Violation Plan, Rule 476A, was originally adopted by the Exchange and approved by the Commission in 1985. *See* Exchange Act Release No. 34–21688 (January 25, 1985), 50 FR 5025 (February 5, 1985). It has been amended numerous times since its adoption.

[6] The Exchange also proposes to fix a typographical error in the entry concerning Rule 343 and replace the term ''officer'' with ''office.''

[7] The Exchange also proposes to add a reference to ''Rule 123C'' to the amended description, and move it up on the Rule 476A List.

[8] Rule 104 currently operates on a pilot basis, set to end on July 31, 2012. The Exchange believes that the Rule 476A List should reference those rules that are currently operational, even if operating on a pilot basis.

[9] *See* Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

maintenance of price continuity with reasonable depth and the minimizing of the effects of temporary disparity between supply and demand. This subject matter is now covered in Rule 104(f)(ii). Former Rule 104.10(2) concerned a DMM trading for his or her own account when there is [sic] lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated. This subject matter is similarly covered in Rule 104(f)(ii). Finally, former Rule 104.10(3) provided that DMM dealings for his own account must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to minimizing the effects of temporary disparity between supply and demand. This is similarly covered in Rule 104(f)(ii). The Exchange further believes that Rule 104(f)(iii), which provides more details about Depth Guidelines, is also related to former Rule 104.10(3). In particular, the Exchange was publishing Depth Guidelines when Rule 104.10 was in effect and the only change in the New Market Model's version of the rule is to codify this aspect of DMM obligations.

The Exchange also believes that the subject matter of former Rules 104.10(1)–(3) is now covered in current Rules 104(a)(2)–(5). Current Rules 104(a)(2)–(5) describe with specificity how a DMM can meet his or her responsibilities and duties to maintain a fair and orderly market, including facilitating openings and re-openings, the close of trading, trading when a liquidity replenishment point is reached, and trading when a ''gap'' quote procedure is being used. These rule provisions simply provide detail of how a DMM is to meet its fair and orderly obligation. These were functions that specialists formerly performed when they were subject to former Rule 104.10(1)–(3), the difference now being that these functions have been codified in the rule text.

The Exchange further proposes to add to the Rule 476A list Rules 104(b), (c), (d), and (e). The Exchange believes that, similar to Rule 104(a), (f), (g), (h), and (i), the requirements applicable to DMMs in Rules 104(b), (c), (d), and (e) relate to the functions of the DMMs. Because these are DMM obligations for which potential violations can range in severity, including these elements of Rule 104 in the Rule 476A List is consistent with the current inclusion of other aspects of Rule 104.

In addition, the Exchange believes it is appropriate to add Rule 104(a)(1)(B) to the Rule 476A List. Rule 104(a)(1)(B) governs the DMM's new pricing obligations, which were implemented by all equities markets on December 6, 2010.[10] Accordingly, this provision was not previously included in the Minor Rule Violation Plan. The Exchange believes it is appropriate to add this element of Rule 104 to the Minor Rule Violation Plan to provide greater flexibility with respect to the type of disciplinary measures that may be invoked if there were a violation of this rule. For example, a potential situation that may warrant a summary fine rather than formal disciplinary action could be if a DMM fails to maintain a quote consistent with Rule 104(a)(1)(B), but which does not result in any harm to the market.

As noted above, summary fines provide the Exchange with flexibility to impose an appropriate level of discipline for violations that are more serious than an admonition letter, but for which the facts and circumstances do not warrant formal discipline. The Exchange believes that providing flexibility for violations related to the DMM's new pricing obligations and Rules 104(b), (c), (d), and (e) is in keeping with the spirit of the existing Rule 476A List, which already includes DMM conduct rules.

To reflect these changes, the Exchange proposes to include a single reference to ''Rule 104 requirements for the dealings and responsibilities of DMMs'' to the Rule 476A List, which would include all of the subsections of Rule 104 as described above.[11] The Exchange further notes that these summary fines may be imposed, as applicable, on either an individual DMM, or the DMM unit, as specified in the subsections to Rule 104.

Rule 123D

The Exchange also proposes to update the reference relating to delayed openings in the Rule 476A list to instead reference a specific rule, *i.e.,* Rule 123D, and to add all elements of Rule 123D as they relate to DMM conduct as being eligible under the Minor Rule Violation Plan.

The Rule 476A List currently provides that ''violations of Exchange policies regarding procedures to be followed in delayed opening situations'' are eligible for summary fines under the Minor Rule Violation Plan. Such Exchange policies are codified in Rule 123D. Accordingly, the Exchange proposes to delete the general statement of ''violations of Exchange policies regarding procedures to be followed in delayed opening situations'' and replace it with a reference to Rule 123D. In so doing, the Exchange further proposes to add the other requirements of DMMs that are set forth in Rule 123D relating to openings, re-openings, trading halts, and tape indications. The Exchange believes that the additional flexibility of determining the appropriate level of discipline for DMM violations of Rule 123D conforms to the purpose of the existing Rule 476A List. In particular, the Exchange notes that adding Rule 123D in its entirety as it relates to DMM conduct is consistent with the existing inclusion of Rule 15 in the Rule 476A List, which similarly governs DMM's conduct with respect to pre-opening indications.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934, as amended,[12] (the ''Act''), in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule changes also further the objectives of Section 6(b)(6),[13] in that they provide for appropriate discipline for violations of provisions of the Act, the rules and regulations thereunder, and Exchange rules and regulations.

The Exchange believes that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices because they will provide the Exchange with greater regulatory flexibility to enforce the DMM requirements set forth in NYSE Rules 104 and 123D in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted. In addition, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by updating the Minor Rule Violation Plan by updating rule cite references, deleting references to obsolete rules, and for DMM-related rules, both updating the rule references to reflect

[10] *See* Exchange Act Release No. 63255 (Nov. 5, 2010), 75 FR 69484 (Nov. 12, 2010) (SR–NYSE–2010–69).

[11] The Exchange notes that it has separately proposed to delete NYSE Rule 104(a)(6). *See* Securities Exchange Act Release No. 65736 (Nov. 10, 2011) (SR–NYSE–2011–56). The Exchange further notes that other elements of Rule 104, *i.e.,* Rule 104(j) and supplementary material .05 and .10, are not related to DMM obligations, but rather reflect operational aspects of the Exchange.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(6).

the current rules that govern the topics currently identified in outdated rule references in the Minor Rule Violation Plan as well as adding additional elements of the rules governing DMM conduct.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–05 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–NYSE–2012–05. 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 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–NYSE–2012–05 and should be submitted on or before March 16, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4282 Filed 2–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66414; File No. SR–BX–2012–009]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to BX Rule 7021

February 16, 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 February 8, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to [sic] a rule change to BX Rule 7021 to make available at no cost and on a voluntary basis certain market data about market participants' own trading on BX.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to make available to members the Trading and Compliance Data Package under BX Rule 7021 (''Data Package''). The Data Package allows member firms to obtain via NasdaqTrader.com information regarding their own historical quoting and trading activity on BX. The Data Package will provide BX Participants with historical data reports containing trade reporting information about the Participant's own trades in BX, for delivery on an end-of-day or T+1 basis. The Exchange may modify the contents of the BX Trading and Compliance Data Package from time to time based on subscriber interest.

The Data Package also provides member firms with information concerning their compliance with BX and FINRA rules. In this regard, member firms that subscribe to the Data Package can obtain the following reports: (1)

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Monthly Compliance Report Cards, which outline firm's own compliance with various FINRA rules; (2) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading; and (3) Historical Research Reports, which provide a variety of historical trading data such as a market maker's quote updates, order activity, and detailed trade reporting information.

Use of this service is voluntary and member firms have the option of subscribing or not as they choose. Users will have the option to request and download these reports as a standalone product, and subscribers to the existing NASDAQ Exchange Trading and Compliance Data package who are BX Participants will also have the option to request BX reports through their existing service. In either case, the Exchange will not charge a fee for the BX version at this time.

2. Statutory Basis

NASDAQ [sic] believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and Section 6(b)(4) and 6(b)(5) of the Act.[4] The proposed rule change is consistent with Section 6(b)(4) because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that BX operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

BX believes it is fair and reasonable to offer the Data Package service at no cost and on a voluntary basis to users. The product is designed to enhance members' ability to provide liquidity and to trade on BX by making market data available quickly and in a useful format. In the event BX decides at a later date to assess a fee for the Data Package, BX will file a proposed rule change in accordance with the Act. Additionally, the proposal is not unreasonably discriminatory in that the Data Package will be offered at no charge to all members equally.

Additionally, the proposed rule change is consistent with Section 6(b)(5) of the Act which requires that exchange 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. As described above, the Data Package is designed to enhance the quality of trading on BX by providing members with tools to assess their trading results. Additionally, the Data Package enables members to assess their trading practices from a regulatory and compliance perspective.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the proposed rule change is pro-competitive in that it will allow the Exchange to disseminate a new product on a voluntary basis. The Data Package is voluntary on the part of the Exchange which is not required to offer such products, and voluntary on the part of prospective users that are not required to use it.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

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–BX–2012–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–009. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–009 and should be submitted on or before March 16, 2012.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day prefiling requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4280 Filed 2–23–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7806]

In the Matter of the Review of the Designation of the Islamic Jihad Union; AKA Islamic Jihad Group; AKA Jama'at al-Jihad; AKA The Libyan Society; AKA The Kazakh Jama'at; AKA The Jamaat Mojahedin; AKA Jamiyat; AKA Jamiat al-Jihad al-Islami; AKA Dzhamaat Modzhakhedov; AKA Islamic Jihad Group of Uzbekistan; AKA al-Djihad al-Islami; AKA Islomiy Jihod Ittihodi; AKA Ittihad al-Jihad al-Islami as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in these matters pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189[a][4][C]) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2005 designation of the aforementioned organization as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: February 16, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–4334 Filed 2–23–12; 8:45 am]

BILLING CODE 4710–10–P

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2011–0022]

Request for Comments on a New Information Collection

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 23, 2011 (76 FR 52731).

DATES: Comments must be submitted on or before March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Blane Workie or Daeleen Chesley, Office of the Secretary, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (C–70), Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 366–9342 (voice) 202–366–7152 (fax) or at *Blane.Workie@dot.gov* or *Daeleen.Chesley@dot.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Submission of Aviation Consumer Protection Division Web page On-Line Aviation Complaint Form.

Type of Request: Request for an OMB control number for a new information collection.

Abstract: The Department of Transportation's (Department) Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) has broad authority under 49 U.S.C., Subtitle VII, to investigate and enforce consumer protection and civil rights laws and regulations related to air transportation. The Enforcement Office, including its Aviation Consumer Protection Division (ACPD), monitors compliance with and investigates violations of the Department of Transportation's aviation economic, consumer protection, and civil rights requirements.

Among other things, the office is responsible for receiving and investigating service-related consumer complaints filed against air carriers. Once received, the complaints are reviewed by the office to determine the extent to which carriers are in compliance with federal aviation consumer protection and civil rights laws and what, if any, action should be taken.

The key reason for this request is to enable consumers to file their complaints to the Department using an on-line form. If the information collection form is not available, the Department may receive fewer complaints from consumers. The lack of information could inhibit the Departments' ability to improve airline consumer satisfaction, effectively investigate individual complaints against an air carrier, and/or determine patterns and practices that may develop with an air carrier's services in violation of our rules. The information collection also furthers the objectives of 49 U.S.C. 41712, 40101, 40127, 41702, and 41705 to protect consumers from unfair or deceptive practices, to protect the civil rights of air travelers, and to ensure safe and adequate service in air transportation.

Filing a complaint using a web-based form is voluntary and minimizes the burden on the public. Consumers can also choose to file a complaint with the Department by sending a letter using regular mail or by phone message. The type of information requested on the on-line form includes complainant's name, address, daytime phone number (including area code) and email address, name of the airline or company about which she/he is complaining, flight date, flight number, and origin and destination cities of complainant's trip. A consumer may also use the form to give a description of a specific problem or to ask for air-travel related information from the ACPD. The Department has limited its informational request to only that information necessary to meet its program and administrative monitoring and enforcement requirements.

On August 23, 2011, the Department published a 60-day notice in the **Federal Register** (76 FR 52732) asking for comments on whether this collection of information is necessary for the proper performance of the functions of the Department. We received one comment in the docket from a commenter that supported the Department collecting the information.

Respondents: Consumers that Choose to File an On-Line Complaint with the Aviation Consumer Protection Division.

Estimated Number of Respondents: 8,693 (based on CY 2011 data).

Estimated Total Burden on Respondents: 2,173.25 (hours), 130,395 (minutes).

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to

the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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 17, 2012.

Patricia Lawton,

Departmental PRA Clearance Officer, Office of the Secretary.

[FR Doc. 2012–4317 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2011–0170]

Request for Comments of a Previously Approved Information Collection

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on September 16, 2011 (76 FR 57795).

DATES: Comments must be submitted on or before March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Aleta Best, Office of the Assistant Secretary for Aviation and International Affairs (X–55), Office of the Secretary, W86–498, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–0797.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Code Sharing Arrangements and Long-Term Wet Leases.

OMB Control Number: 2105–0537.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: Codesharing is the name given to a common airline industry marketing practice where, by mutual agreement between cooperating carriers, at least one of the airline designator codes used on a flight is different from that of the airline operating the aircraft. In one version, two or more airlines each use their own designator codes on the same aircraft operation. Although only one airline operates the flight, each airline in a codesharing arrangement may hold out, market, and sell the flight as its own in published schedules. Codesharing also refers to the arrangements, such as when a code on a passenger's ticket is not that of the operator of the flight, but where the operator does not also hold out the service in its own name. Such codesharing arrangements are common between commuter air carriers and their larger affiliates, and the number of arrangements between U.S. air carriers and foreign air carriers has also been increasing. Arrangements falling into this category are similar to leases of aircraft with crew (wet leases).

The Department recognizes the strong preference of air travelers for on-line service (service by a single carrier) on connecting flights over interline service (service by multiple carriers). Codesharing arrangements are, in part, a marketing response to this demand for on-line service. Often, codesharing partners offer services similar to those available for on-line connections with the goal of offering ''seamless'' service (i.e., service where the transfers from flight to flight or airline to airline are facilitated). For example, they may locate gates near each other to make connections more convenient or coordinate baggage handling to give greater assurance that baggage will be properly handled. Codesharing arrangements can help airlines operate more efficiently because they can reduce costs by providing a joint service with one aircraft rather than operating separate services with two aircraft. Particularly in thin markets, this efficiency can lead to increased price and service options for consumers or enable the use of equipment sized appropriately for the market. Therefore, the Department recognizes that codesharing, as well as long-term wet leases, can offer significant economic benefits.

Although codesharing and wet-lease arrangements can offer significant consumer benefits, they can also be misleading unless consumers know that the transportation they are considering for purchase will not be provided by the airline whose designator code is shown on the ticket, schedule, or itinerary and unless they know the identity of the airline on which they will be flying. The growth in the use of codesharing, wetleasing, and similar marketing tools, particularly in international air transportation, had given the Department concern about whether the then-current disclosure rules (14 CFR 399.88) protected the public interest adequately and led the Department to adopt specific regulations requiring the disclosure of code-sharing arrangements and long-term wet leases on March 15, 1999. (14 CFR part 257)

These regulations required U.S. airlines, foreign airlines and travel agents doing business in the United States, to notify passengers of the existence of code-sharing or long-term wet lease arrangements. It also required U.S. airlines, foreign airlines and travel agents to tell prospective consumers, in all oral communications before booking transportation, that the transporting airline is not the airline whose designator code will appear on travel documents and identify the transporting airline by its corporate name and any other name under which that service is held out to the public.

Estimated Number of Respondents: 16,000, *excluding* travelers.

Estimated Number of Responses: 300 million (estimated number of passengers who may be traveling on a codeshare or wet-lease ticket).

Annual Estimated Total Annual Burden Hours: Annual reporting burden for this data collection is estimated at 618,750 hours for all travel agents and airline ticket agents, based on 15 seconds per phone call and an average of 1.5 phone calls per trip, for the approximately 33% of codeshare itineraries that involve personal contact. Most of this data collection (third party notification) is accomplished through highly automated computerized systems.

The estimated burden has changed from the previous collection based on adjustments to the set of respondents and changes to the number of annual airline passengers.

Frequency of Collection: Collection occurs at the time a passenger books an airline ticket.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget,

Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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 17, 2012.

Patricia Lawton,

Departmental PRA Clearance Officer, Office of the Secretary.

[FR Doc. 2012–4299 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2004–16951]

Request for Comments of a Reinstatement of a Previously Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on November 8, 2011 (76 FR 69320). No comments were received.

DATES: Comments must be submitted on or before March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Lauralyn Remo, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Title: Aircraft Accident Liability Insurance, 14 CFR Part 205.

OMB Control Number: 2106–0030.

Type of Request: Reinstatement of a Previously Approved Information Collection.

Abstract: 14 CFR Part 205 contains the minimum requirements for air carrier accident liability insurance to protect the public from losses, and directs that certificates evidencing appropriate coverage must be filed with the Department.

Respondents: U.S. and foreign air carriers.

Estimated Number of Respondents: 5,308.

Annual Estimated Total Burden on Respondents: 1,854 hours.

Frequency of Collection: On occasion.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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 17, 2012.

Patricia Lawton,

Departmental PRA Clearance Officer, Office of the Secretary.

[FR Doc. 2012–4298 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0013]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GOLIGHTLY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 26, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0013. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GOLIGHTLY is:

Intended Commercial Use of Vessel: ''Private charter day sails in New York City and surrounding waters.''

Geographic Region: ''New York.''

The complete application is given in DOT docket MARAD–2012–0013 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 13, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4140 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0056; Notice 2]

Yokohama Tire Corporation, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of Petition for Inconsequential Noncompliance.

SUMMARY: Yokohama Tire Corporation, (YTC),[1] replacement tires for passenger cars, manufactured between December 2, 2007, and September 19, 2009, failed to comply with paragraph S5.5.1(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* YTC has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* (dated January 19, 2010).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, YTC has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of YTC's petition was published, with a 30-day public comment period, on May 20, 2010, in the **Federal Register** (75 FR 28319). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0056.''

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Summary of YTC's Petition

YTC petitioned NHTSA for a determination that a noncompliance in approximately 8,238 size P215/60R15 93H Yokohama AVID H4S brand passenger car replacement tires manufactured between December 2, 2007, and September 19, 2009, at YTC's plant located in Salem, Virginia is inconsequential to motor vehicle safety.

YTC explains that the noncompliance is that, due to a mold labeling error, the markings on the non-compliant tires omit the partial tire identification number on one of the sidewalls as required by paragraph S5.5.1(b). YTC also indicates that the non-compliant tires include the full Tire Identification Number (TIN) on one sidewall but omit the partial serial number on the other sidewall. YTC reported that this noncompliance was brought to their attention when ''one of several molds were being certified and readied as part of a production quantity of replacement tires for the USA.''

YTC explained its belief that the Tire Identification Number (TIN) and the partial TIN are used to properly identify tires that are involved in a safety campaign. YTC also stated its belief that the full TIN is molded on the intended outboard sidewall of these tires and consumers could be directed to have both sidewalls inspected for the TIN if any safety campaign would be required for these tires in the future.

In summation, YTC asserts that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not affect the physical characteristics of the tires and all other labeling requirements have been met. Therefore, no corrective action is warranted.

NHTSA Decision: NHTSA does not agree with YTC's assessment that the noncompliance with FMVSS No. 139 is inconsequential to motor vehicle safety. As discussed below, the tire markings required by paragraph S5.5.1(b) of FMVSS No. 139 provide valuable information to assist consumers in determining if their tires are the subject of a safety recall.

Paragraph S5.5.1(b) of FMVSS No. 139 requires that radial tires manufactured on or after September 1, 2009 for motor vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or less be permanently labeled with (1) a full TIN required by 49 CFR part 574 on one sidewall of the tire (2) except for retreaded tires, either the full or a partial TIN containing all characters in the TIN, except for the date code, and at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.[2]

The tire recalls in the year 2000 highlighted the difficulty that consumers experienced when attempting to determine whether a tire is subject to a recall when a tire is mounted so that the sidewall bearing the TIN faces inward, i.e., underneath the vehicle. After a series of Congressional hearings about the safety of and experiences regarding the Firestone tires involved in those recalls, Congress passed and the President signed into law the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act on November 1, 2000. Public Law 106–414. 114 Stat. 1800.

One matter addressed by the TREAD Act was tire labeling. Section 11 of the TREAD Act required a rulemaking to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a recall.

In response to the TREAD Act's mandate, NHTSA published a final rule that, among other things, required that the TIN be placed on a sidewall of the tire and a full or partial TIN be placed on the other sidewall. See 67 FR 69600, 69628 (November 18, 2002), as amended 69 FR 31306 (June 3, 2004). In the preamble to the 2002 final rule, the agency identified the safety problem which prompted the issuance of the rule. 67 FR at 69602, 69606, and 69610. The agency explained that when tires are mounted so that the TIN appears on the inward facing sidewalls, motorists have three difficult and inconvenient options for locating and recording the TINs. Consumers must either: (1) Slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; (2) remove each tire, find and record the TIN, and then replace the tire; or (3) enlist the aid of a garage or service station that can perform option 1 or place the vehicle on a vehicle lift so that the TINs can be

[1] Yokohama Tire Company (YTC) is a replacement equipment manufacturer incorporated in the State of California.

[2] Tires manufactured after September 1, 2009 must be labeled with the TIN on the intended outboard sidewall of a tire and either the TIN or partial TIN on the other sidewall. 49 CFR 571.139 S5.5.1(b). If a tire manufactured after September 1, 2009 does not have an intended outboard sidewall, one sidewall must be labeled with the TIN and the other sidewall must have either a TIN or partial TIN. Id.

found and recorded. Without any TIN information on the outside sidewalls of tires, the difficulty and inconvenience of obtaining the TIN by consumers reduces the number of people who respond to a tire recall campaign and increases the number of motorists who unknowingly continue to drive vehicles with potentially unsafe tires.

YTC suggests that this noncompliance does not preclude motorists from checking the inboard sidewall if the TIN is not found on the outboard sidewall. This approach is inadequate. The noncompliance here is the exact problem that plagued millions of Firestone tire owners in 2000 and one that Congress mandated that NHTSA address. When the TIN is placed on one sidewall of a tire and that sidewall is mounted on the inboard side of a wheel, it is very difficult and inconvenient for the consumer to locate and record the TIN. In such situations, consumers who attempt to determine if a tire is within the scope of a recall may not be able to read the inboard sidewall without taking one of the three inconvenient steps discussed above. The difficulty and inconvenience of locating a TIN under these circumstances poses serious impediments to the successful recall of the noncompliant tires, which may result in motorists continuing to drive their vehicles with potentially unsafe tires.

While NHTSA has determined in the past that in some instances TIN marking omissions were inconsequential to motor vehicle safety, those determinations occurred prior to the adoption of FMVSS No. 139 pursuant to the TREAD Act. Following the enactment of the TREAD Act, NHTSA found that there is a safety need for a full TIN on one sidewall and a full or partial TIN on the other sidewall. For these reasons, FMVSS No. 139 now requires TIN markings on both sidewalls of a tire so that consumers can readily determine if a tire is subject to a safety recall.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, YTC's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: February 16, 2012.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

[FR Doc. 2012–4297 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0115; Notice 2]

Yokohama Tire Company, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice of Petition Denial.

SUMMARY: Yokohama Tire Company (YTC),[1] has determined that certain P215/60R15 93H AVID H4S passenger car replacement tires failed to comply with paragraph S5.5.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* YTC has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* (dated January 21, 2010).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, YTC has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of YTC's petition was published, with a 30-day public comment period, on August 20, 2010, in the **Federal Register** (75 FR 51524). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0115.''

Contact Information

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Summary of YTC's Petition

YTC petitioned NHTSA for a determination that a noncompliance in approximately 6,254 [2] P215/60R15 93H AVID H4S passenger car replacement tires that were manufactured in YTC's Salem, Virginia manufacturing plant during the period December 2, 2007 through September 19, 2009, is inconsequential to motor vehicle safety.

YTC describes the noncompliance as a labeling error that omits the Tire Identification Number (TIN)/partial TIN required by paragraph S5.5.1 on one of the tire sidewalls. YTC indicates that the noncompliant tires do however include the full TIN on the intended outboard sidewall.

YTC argues that the TIN and the partial TIN are used to properly identify tires that are involved in a safety campaign. YTC also stated its belief that the full TIN is molded on the intended outboard sidewall of these tires and consumers could be directed to have both sidewalls inspected for the TIN if any safety campaign would be required for these tires in the future.

YTC also explained that all of the subject tires have been tested and certified compliant with all of the durability requirements of FMVSS No. 139 for high speed, endurance and low inflation pressure performance. The tires also meet all of the physical dimension, resistance to bead unseating and strength requirements of FMVSS No. 139.

In addition, YTC indicated that warranty and claim data for the subject tires reveals a very small number of tire warranty returns, and no reports of claims associated with accidents or tire failure incidents.

YTC also informed NHTSA that it has corrected the problem that caused this noncompliance.

In summation, YTC asserts that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not affect the physical characteristics of the tires and all other labeling requirements have been met. Therefore, no corrective action is warranted.

NHTSA Decision

NHTSA does not agree with YTC's assessment that the noncompliance with FMVSS No. 139 is inconsequential to motor vehicle safety. As discussed below, the tire markings required by paragraph S5.5.1 of FMVSS No. 139 provide valuable information to assist consumers in determining if their tires are the subject of a safety recall.

Paragraph S5.5.1 of FMVSS No. 139 requires that radial tires manufactured

[1] Yokohama Tire Company (YTC) is a replacement equipment manufacturer incorporated in the State of California.

[2] YTC's petition identified 7,836 affected tires. Subsequent to filing its petition, YTC notified NHTSA that the actual number of affected tires is 6,254.

on or after September 1, 2009 for motor vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or less be permanently labeled with: (1) A full TIN required by 49 CFR part 574 on the intended outboard sidewall of the tire; (2) except for retreaded tires, either the full or a partial TIN containing all characters in the TIN, except for the date code, and at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.[3]

Tire recalls in the year 2000 highlighted the difficulty that consumers experienced when attempting to determine whether a tire is subject to a recall when a tire is mounted so that the sidewall bearing the TIN faces inward *i.e.,* underneath the vehicle. After a series of Congressional hearings about the safety of and experiences regarding the tires involved in those recalls, Congress passed and the President signed into law the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act on November 1, 2000. Public Law 106–414. 114 Stat. 1800.

One matter addressed by the TREAD Act was tire labeling. Section 11 of the TREAD Act required a rulemaking to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a recall.

In response to the TREAD Act's mandate, NHTSA published a final rule that, among other things, required that the TIN be placed on a sidewall of the tire and a full or partial TIN be placed on the other sidewall. See 67 FR 69600, 69628 (November 18, 2002), as amended 69 FR 31306 (June 3, 2004). In the preamble to the 2002 final rule, the agency identified the safety problem which prompted the issuance of the rule. 67 FR at 69602, 69606, and 69610. The agency explained that when tires are mounted so that the TIN appears on the inward facing sidewalls, motorists have three difficult and inconvenient options for locating and recording the TINs. Consumers must either: (1) Slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; (2) remove each tire, find and record the TIN, and then replace the tire; or (3) enlist the aid of a garage or service station that can perform option 1 or place the vehicle on a vehicle lift so that the TINs can be found and recorded. If the tires were mounted with the intended outward sidewall facing inboard, the intended inboard sidewall would be facing outboard and the TIN would not be visible. Without any TIN information on the outside sidewalls of tires, the difficulty and inconvenience of obtaining the TIN by consumers reduces the number of people who respond to a tire recall campaign and increases the number of motorists who unknowingly continue to drive vehicles with potentially unsafe tires.

YTC suggests that this noncompliance does not preclude motorists from checking the inboard sidewall if the TIN is not found on the outboard sidewall. This approach is inadequate. The noncompliance here is the exact problem that plagued millions of tire owners in 2000 and one that Congress mandated that NHTSA address. When the TIN is placed on one sidewall of a tire and that sidewall is mounted on the inboard side of a wheel, it is very difficult and inconvenient for the consumer to locate and record the TIN. In such situations, consumers who attempt to determine if a tire is within the scope of a recall may not be able to read the inboard sidewall without taking one of the three inconvenient steps discussed above. The difficulty and inconvenience of locating a TIN under these circumstances poses serious impediments to the successful recall of the noncompliant tires, which may result in motorists continuing to drive their vehicles with potentially unsafe tires.

While NHTSA has determined in the past that in some instances TIN marking omissions were inconsequential to motor vehicle safety, those determinations occurred prior to the adoption of FMVSS No. 139 pursuant to the TREAD Act. Following the enactment of the TREAD Act, NHTSA found that there is a safety need for a full TIN on one sidewall and a full or partial TIN on the other sidewall. For these reasons, FMVSS No. 139 now requires TIN markings on both sidewalls of a tire so that consumers can readily determine if a tire is subject to a safety recall.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, YTC's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: February 16, 2012.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

[FR Doc. 2012–4296 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–59–P

[3] Tires manufactured after September 1, 2009 must be labeled with the TIN on the intended outboard sidewall of a tire and either the TIN or partial TIN on the other sidewall. 49 CFR 571.139 S5.5.1(b). If a tire manufactured after September 1, 2009 does not have an intended outboard sidewall, one sidewall must be labeled with the TIN and the other sidewall must have either a TIN or partial TIN. Id.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2012–0015]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Availability.

SUMMARY: This notice announces NHTSA's publication of the 2012 text and data for the annual insurance cost information booklet that all car dealers must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information is intended to assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

ADDRESSES: Interested persons may obtain a copy of this booklet or read background documents by visiting *http://regulations.dot.gov* at any time, or visiting 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.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue SE. Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION:

Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, NHTSA amended 49 CFR part 582, *Insurance Cost Information Regulation,* to require all dealers of automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility.

Pursuant to 49 CFR 582.4, all automobile dealers are required to make booklets that include this comparative information, as well as certain mandatory explanatory text that is set out in section 582.5, available to prospective purchasers. Early each year, NHTSA produces a new version of this booklet to update the Highway Loss Data Institute's (HLDI) December Insurance Collision Report.

NHTSA is mailing a copy of the 2012 booklet to each dealer that the Department of Energy uses to distribute the ''Gas Mileage Guide.'' Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by March 26, 2012. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Ms. Ballard of NHTSA's Office of International Policy, Fuel Economy, and Consumer Programs (202) 366–5222 to receive a copy of the booklet and to be added to the mailing list. Dealers may also obtain a copy of the booklet through the NHTSA Web page at: *http://www.nhtsa.dot.gov/.* From there, click on the Vehicle Safety tab, then choose the Vehicle-Related Theft category, on that page, under the Additional Resources Panel, click on 2012 Comparison of Insurance Costs.

(49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on: February 17, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–4374 Filed 2–23–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35587]

Fannin Rural Rail Transportation District—Lease and Operation Exemption—Line of Texas Department of Transportation

Fannin Rural Rail Transportation District (FRRTD), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the Texas Department of Transportation (TxDOT), and to operate, a 34.78-mile rail line extending from milepost 94.0 in Paris to milepost 128.78 in Bonham, Tex. The line has been a part of Union Pacific Railroad Company's (UP) Bonham Subdivision.

Through the Board's offer of financial assistance process, FRRTD previously was authorized to acquire from UP, and to operate, a 33.5-mile portion of UP's Bonham Subdivision extending between milepost 94.0, near Paris, and milepost 127.5, east of Bonham, in Lamar and Fannin Counties, Tex.[1] After an agreement had been reached with UP for sale of the line but before consummating the transaction, FRRTD sold its interest in the rail line to TxDOT.[2]

FRRTD states that it leased the 33.5-mile portion of the line from TxDOT in 2006, apparently believing at the time that further Board authority was unnecessary. FRRTD has filed this notice to lease and operate the 1.28-mile portion of the line extending between milepost 127.5 and milepost 128.78 to be acquired from UP by TxDOT and to lease and operate the 33.5-mile portion extending between milepost 94.0 and milepost 127.5 that it already has leased from TxDOT. FRRTD has structured the filing to ensure that it possesses appropriate regulatory authority for the entire 34.78 miles of rail line.

Applicant states that Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad (TNER), will provide freight service over the 1.28-mile portion of the line pursuant to its previously authorized trackage rights[3] and that any future freight service on the currently dormant 33.5-mile portion will be provided by a third-party operator, subject to proper Board authorization. Applicant notes that FRRTD and TxDOT will possess a residual common carrier obligation on the 34.78-mile line and that FRRTD will provide tourist train operations on the line as well. Applicant states that the proposed lease does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

The transaction is expected to be consummated on or after March 9, 2012.

FRRTD certifies that its projected annual revenues as a result of this transaction will not exceed $5 million annually and will not result in it becoming a Class I or Class II rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 2, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35587, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Glenn M. Taylor, President, Fannin Rural Rail Transportation District, 514 Chestnut Street, Bonham, TX 75418.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 21, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–4335 Filed 2–23–12; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Union Pac. R.R.—Aban. Exemption—in Lamar and Fannin Cntys., Tex.,* AB 33 (Sub-No. 163X) (STB served Aug. 19, 2003).

[2] *See State of Tex., acting by and through the Tex. Dept. of Transp.—Acquisition Exemption—Union Pac. R.R.,* FD 34834 (STB served Feb. 24, 2006), where TxDOT obtained Board authority for the acquisition of the 33.5-mile line from UP. In *Texas Department of Transportation—Acquisition Exemption—Line of Union Pacific Railroad Company,* FD 35493 (STB served June 24, 2011), TxDOT recently obtained Board authority to acquire from UP 1.28 miles of rail line on UP's Bonham Subdivision extending between milepost 127.5 and milepost 128.78, in Fannin County Tex,, which is the remaining portion of the rail line FRRTD is now seeking Board authority to lease and operate.

[3] In *Mid-Michigan Railroad, Inc., d/b/a Texas Northeastern Railroad—Trackage Rights Exemption—Line of Texas Department of Transportation,* FD 35494 (STB served June 24, 2011), TNER obtained Board authority for a grant of local trackage rights by TxDOT over the 1.28-mile line of railroad.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35593]

Cedar River Railroad Company—Trackage Rights Exemption—Chicago, Central & Pacific Railroad Company

Pursuant to a written trackage rights agreement,[1] Chicago, Central & Pacific Railroad Company (CCP) has agreed to grant nonexclusive overhead trackage rights to Cedar River Railroad Company (CEDR) over approximately 5.2 miles of rail line between the connection with CEDR at approximately milepost 281.0 at Mona Junction in Cedar Falls, Iowa, and CCP's Waterloo Yard at approximately milepost 275.8 in Waterloo, Iowa.

The earliest this transaction may be consummated is March 9, 2012, the

[1] A redacted version of the trackage rights agreement between CCP and CEDR was filed with the notice of exemption. The unredacted version, as required by 49 CFR 1180.6(a)(7)(ii) and 1180.4(g)(1)(i), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

effective date of the exemption (30 days after the notice was filed).

CEDR states that CEDR and CCP are indirect subsidiaries of Canadian National Railway Company and that the proposed trackage rights are for the purpose of CEDR conducting interchange with CCP at CCP's Waterloo Yard. CEDR states that such interchange operations have been ongoing and may not require Board authorization,[2] but CEDR is seeking trackage rights authority out of an abundance of caution.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway Co.—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by March 2, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35593, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832 (Counsel for CEDR).

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: February 17, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–4300 Filed 2–23–12; 8:45 am]

BILLING CODE 4915–01–P

[2] CEDR cites *Indiana Rail Road Co.—Exemption—Acquisition & Operation,* FD 30789 (ICC served Oct. 10, 1986), *reconsideration denied* (ICC served Apr. 16, 1987), *aff'd sub nom. Black v. ICC,* 837 F.2d 1175 (DC Cir. 1988).

DEPARTMENT OF THE TREASURY

Proposed Collections; Comment Requests

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 Office of the State Small Business Credit Initiative (SSBCI) within the Department of the Treasury is soliciting comments concerning (1) the SSBCI Allocation Agreement for Participating States, (2) the SSBCI Allocation Agreement for Participating Municipalities, (3) the SSBCI Application Form, and (4) the SSBCI Technical Assistance Quarterly Review collection.

On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010 (the ''Act''). Title III of the Act created the State Small Business Credit Initiative (SSBCI), which was funded with $1.5 billion to strengthen State programs that support lending to small businesses and small manufacturers. Treasury allocated Federal funds to participating States, territories, the District of Columbia, and municipalities (''Participating States'') in order to support statutorily eligible State or municipal capital access programs and other eligible State or municipal credit support programs, including loan guarantee, loan participation, collateral support, and venture capital programs. SSBCI is a one-time program of limited duration. The first two information collections memorialize the reporting requirements for Participating States, as required by the Act. The third information collection is only required of Participating States that wish to request an amendment to their prior approved applications. The final information collection is a voluntary telephonic collection from Participating States that wish to take advantage of technical assistance made available from Treasury as Participating States administer their programs.

DATES: Written comments must be received on or before April 24, 2012 to be assured of consideration.

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

Fax: Attn: Request for Comments (SSBCI Proposed Information Collection) (202) 622–9947.

Mail: Attn: Request for Comments (SSBCI Proposed Information Collection). Office of State Small Business Credit Initiative, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via regulations.gov or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Deputy Director, SSBCI, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Title: SSBCI Allocation Agreement for Participating States.

OMB Control Number: 1505–0227.

Abstract: The SSBCI Allocation Agreement for States, which is required by Title III of the Small Business Jobs Act of 2010 (Pub. L. 111–240, ''the Act''), will memorialize the terms and conditions for funds made available to participating states under the SSBCI. Among other duties, included in the terms of this agreement is the requirement that all Participating States submit quarterly and annual reporting to Treasury which details the use of funds under the program. This information is necessary in order to comply with reporting requirements established by the Act.

The SSBCI Allocation Agreement for Participating Municipalities is a modified version of the SSBCI Allocation Agreement for Participating States that contains additional specific provisions for municipalities participating in the SSBCI, principally: (a) a requirement that municipal applicants applying jointly for SSBCI funds shall document and provide to Treasury a copy of a cooperative agreement that details the roles and responsibilities among each municipality as a condition of closing; and (b) a requirement that, for any loans or investments made outside of the geographic borders of a Participating Municipality, that Participating Municipality shall warrant in writing that such a transaction will result in significant economic benefit to that municipality.

The SSBCI Application form will collect information from Participating

States, territories, or municipalities that wish to request an amendment to their existing approved SSBCI Application throughout the term of the Allocation Agreement. This form will collect the following: (a) Information about proposed changes to the apportionment of SSBCI funds among programs; (b) program design information for proposed new programs; or, (c) proposed material changes to the design of programs. Only those participating states, territories, or municipalities that elect to request a modification to their original SSBCI Application will be required to complete this form.

The SSBCI Technical Assistance Quarterly Review collection is a voluntary collection from Participating States, territories, and municipalities that will be conducted telephonically on a quarterly basis and will not require a written submission to Treasury. The SSBCI Technical Assistance Quarterly Review will collect the following: (a) Qualitative data related to program performance; (b) an assessment of program implementation status to date; and (c) an assessment any future challenges to program performance. This data will be used by Treasury to determine the types and methods through which to offer technical assistance to participants in order to assist states with meeting the program performance goals of achieving the private leverage expectations of the SSBCI.

Type of Review: Extension of a currently approved collection.

Affected Public: States, territories, the District of Columbia and municipalities that were approved by Treasury to participate in the SSBCI.

SSBCI Quarterly and Annual Reporting Requirements

Estimated Number of Respondents: 62.

Estimated Average Time per Respondent: Approximately ten (10) hours per respondent per year. The estimated average time per respondent for the quarterly report is one (1) hour per report for a total of four (4) hours per year. The estimated average time per respondent for the annual report ranges from two (2) hours per year to approximately nineteen (19) hours per year depending on the use of electronic reporting mechanisms. The weighted average time per respondent for the annual report is 6.36 hours per year. The total estimated annual burden for this collection is 642 hours per year.

SSBCI Allocation Agreement for Participating Municipalities

Estimated Number of Respondents: 5.

Estimated Average Time per Respondent: SSBCI anticipates that 3 applicants will require a cooperative agreement. The estimate time to complete this document is 40 hours per agreement, for a net, one-time total of 120 hours. Municipalities that have applied for the SSBCI program anticipate a total of 195 loan or investment transactions per year. SSBCI estimates that approximately 20% of these transactions may occur outside of the boundaries of applicant municipalities and that for each applicable transaction, the warranty will take approximately 1 hour to complete. Therefore, the estimated annual burden associated with warrants will take 39 hours.

SSBCI Application Form

Estimated Number of Respondents: 15 per year.

Estimated Average Time per Respondent: The estimated average time per respondent to complete the sections of the application form that document program design is approximately nine (9) hours per respondent per year. SSBCI estimates that approximately 15 respondents will elect to request a modification each year for a total estimated annual burden of 135 hours per year.

SSBCI Technical Assistance Quarterly Review

Estimated Number of Respondents: 62.

Estimated Average Time per Respondent: Approximately four (4) hours per respondent per year. The estimated average time per respondent for the quarterly review is one (1) hour telephone call conducted a total of four (4) hours per year. The estimated total annual burden is 248 hours per year.

Estimated Total Annual Burden Hours for all Collections: 1,064 hours, plus a one-time total burden of 135 hours for municipalities that apply jointly.

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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the 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; (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.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–4257 Filed 2–23–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Name Change: Chrysler Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Chrysler Insurance Company (NAIC #10499) has changed its name to CorePointe Insurance Company effective March 2, 2011. In addition, the new address is 401 South Old Woodward Avenue, Suite 300, Birmingham, Michigan 48009. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2011 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: February 15, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2012–4203 Filed 2–23–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Name Change and Change in State of Incorporation: Nations Bonding Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 10 to the Treasury Department Circular 570; 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Nations Bonding Company (NAIC #11595) has formally changed its name to Merchants National Bonding, Inc., and has redomesticated from the state of Texas to the state of Iowa, effective January 1, 2012. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2011 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: February 15, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division.

[FR Doc. 2012–4204 Filed 2–23–12; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Announcement of Competition Under the America COMPETES Reauthorization Act of 2011: Badges for Veterans Contest

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: To encourage creation of systems which help good jobs find Veterans and Veterans find good jobs, the Secretary of Veterans Affairs (VA) announces a prize contest under Section 105 of the America COMPETES Reauthorization Act of 2011, Public Law 111–358 (2011) (the ''Act'').

DATES: Entries will be accepted until 5 p.m., Eastern Standard Time, February 27, 2012. Winners will be announced on or about March 1, 2012.

FOR FURTHER INFORMATION CONTACT: James M. Speros, Special Assistant to Chief Technology Officer, Office of the Secretary, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–7214. (This is not a toll-free number.) *Also, see Section 6.*

SUPPLEMENTARY INFORMATION: Veterans rejoin the civilian community with up-to-date, cutting edge job skills developed during training and work experience in their military service. These job skills are highly valued and desired by civilian employers. Veterans report challenges in ''translating'' military job skills to their civilian counterparts and in obtaining civilian credit for military training. The easier task is drawing direct linkages between skills acquired in the military and the duties performed in civilian jobs. More challenging is obtaining civilian recognition of military training when formal education or other credential is a prerequisite for employment, self employment, or licensure leading to employment.

Through the Badges for Vets Contest (''Vets Contest''), VA and its collaborators, the U.S. Departments of Education, Labor, and Energy, seek an easily understandable means to translate military training and experience into their civilian equivalents. The badges created under this system will be marketable credentials enabling employers to quickly identify Veterans as among the best qualified in any job applicant pool, or which identify Veterans as qualified to perform services if self-employed.

Because a Veteran employed or self-employed in a civilian occupation can far more readily re-enter non-military society, Veteran employment is an objective of several programs administered by VA and its Government collaborators. The Badges for Vets Contest will advance the mission of VA by encouraging the development of systems which help good jobs find Veterans and Veterans find good jobs.

The Vets Contest will be conducted in cooperation with the ''Badges for Lifelong Learning Competition'' (''Competition'') administered by the Humanities, Arts, Science, and Technology Advanced Collaboratory (HASTAC) Initiative with the support of the Mozilla Foundation and the McArthur Foundation, *http://www.dmlcompetition.net/Competition/4/badges-competition-cfp.php.* The goal of the Competition is support for the creation of digital tools to identify, recognize, measure, and account for skills, competencies, knowledge, and achievements acquired during the course of lifelong learning. The Mozilla Open Badge Infrastructure, *http://openbadges.org,* has been selected to enable interoperability and seamless collection of badges. The Vets Contest is described generally at *http://www.dmlcompetition.net/Competition/4/badges-projects.php?id=2667.*

VA does not anticipate that it will issue badges or, except as an employer, actively participate in the resulting badges program. Instead, VA believes it can serve Veterans and employers by acting as a catalyst for the development of meaningful badge systems for use by Veterans and employers.

Contest Requirements and Rules

1. *Subject of the Contest.* The goal of the Vets Contest is to support the development of systems that deliver real, substantial and sustainable benefits to employers and to Veterans by enabling employers to quickly identify Veterans who have military education and skills that meet requirements for civilian jobs, or which help Veterans who want to start their own business demonstrate their qualifications to their customers.

2. *Amount of the prize.* VA will award up to $25,000 to as many as three entrants. VA may elect to award two additional prizes of up to $25,000 each.

3. *Participation in the Contest* will be through the Badges for Lifelong Learning Competition.

a. The Vets Contest will be administered by VA according to the rules and requirements posted on the Competition Web site, *http://www.dmlcompetition.net/Competition/4/badges-competition-cfp.php,* including those on the ''Terms and Conditions'' page, *http://www.dmlcompetition.net/Competition/4/badges-terms-and-conditions.php#IP.*

b. The rules in this Notice supplement the rules on the Competition Web site. If there is any conflict between any requirement stated on the Competition Web site and the provisions of this Notice, the provisions of this Notice will govern.

c. Important: Entries must be made through the Competition Web site: *http://fastapps.dmlcompetition.net/user/login?url=application%2Fsubmit%2Fdmlc-4v.* Before submitting an entry, an entrant must register for a FastApps account at *http://fastapps.dmlcompetition.net/user/register.* Registration for a FastApps account constitutes ''registration to participate in the competition'' required by Section 105(g)(1) of the Act.

d. Entries must comply with form, content and length requirements set forth on the Competition Web site, including *http://www.dmlcompetition.net/Competition/4/badges-stage-2.php.*

4. *Basis on which a winner will be selected:*

a. An entrant must demonstrate to the satisfaction of the judges that the entrant's proposed badge system will deliver real, substantial, and sustainable benefit to both employers and Veterans by achieving two separate but interrelated goals. First, an entrant must demonstrate that a significant number of employers will accept the badge as a credential demonstrating occupational qualifications actually desired in a specific occupational area. Second, an entrant must demonstrate to the judges that Veterans will have clear and achievable pathways to acquire badges which are desired by employers. Entries which the judges determine do not meet these criteria will not be awarded a prize.

b. Badges must address one of the following priority occupational areas:

- Supply Administration and Logistics, which may include specialties such as a supply chain procurement, automated logistics management, and lean Six Sigma.
- Law Enforcement, which may include specialties such as criminal investigation and analysis.
- Medical Care and Treatment, with specific focus on Physicians' Assistants.
- Motor Vehicle Operators, with specific focus on occupations requiring a Commercial Driver's License.
- Automotive Service and Repair, with specific focus on emerging technologies such as electric-drive vehicles and alternative fuels.
- Information Technology, including all phases of software development and IT project management.

Included in these priority areas are those with the largest number of Military Occupational Specialty (MOS) Codes earned by recently discharged Veterans for specific training and experience during military service, as identified by Department of Defense.

c. Badges must incorporate the Mozilla Open Badge Infrastructure, *http://openbadges.org.*

d. When determining whether an entry meets the criteria to be awarded a prize and when rating and ranking multiple entries, judges may consider any factor mentioned on the Competition Web site and in addition may consider the following:

i. *Pathways to badges.* In some of the priority occupational areas, Veterans may be able to earn digital badges designating specific civilian-marketable skills based solely on military training and experience (MTE). In these cases, judges may consider whether a proposed badge system can deliver value to employers and Veterans by:

- Identifying specific skills and competencies desired by employers;
- Verifying that Veterans can demonstrate those skills based on relevant MTE; or
- Awarding and validating digital badges that employers will recognize and Veterans can use to demonstrate job qualifications.

Judges may also consider whether badge systems provide pathways by which Veterans can:

- Acquire formal civilian education or other credit based on their MTE;
- Acquire civilian licensure or other credential based on MTE; or
- A combination of the two.

When state licensure or occupational certification is required to be marketable in a priority occupational area, judges may consider whether a badge system supports pathways by which Veterans supplement MTE with specific required education.

ii. *Effectiveness and Sustainability.* Judges may consider whether the proposed badge system is likely to be effective and sustainable and may assess the following:

1. Whether proposed badge systems are built on partnerships with organizations that:

- Are widely representative of employers who have a recurring need to employ individuals with skill sets in the priority occupational areas;
- Have—or demonstrate that they can develop—programs and processes that deliver validated credentials or accomplishments in the priority areas; and
- Can demonstrate they have or can develop:
  - ○ Programs to validly assess prior learning acquired from education, training or experience and particularly MTE;
  - ○ Articulation agreements with accredited institutions that support formal recognition of MTE through the granting of academic credit or satisfaction of prerequisites;
  - ○ Programs that identify additional training or experience required to meet essential prerequisites for occupational certification or licensure;
  - ○ Programs to assist Veterans to obtain financing for additional training or experience necessary to earn a specific badge, license or professional certification; or
  - ○ Programs that assure a Veteran who chooses to acquire additional training or experience is prepared for success when seeking formal occupational certification or licensure.

2. How a program will define its success if implemented. Measures of success may include the number of issued badges or other credentials. Judges may determine that more meaningful metrics include:

- Dropout and success rates for Veterans who seek additional training.
- Market share of employers that accept the badge as meeting qualification requirements.
- The number of Veterans who are actually hired into positions for which a badge shows they qualify.
- Six-month retention and one-year promotion rates.
- Employer and Veteran satisfaction.

5. *Eligibility.* To be eligible to participate in the Vets Contest and win a prize, an entrant:

a. Must create an account on the Challenge.gov Web site by supplying their name and email address. Creating an account will constitute ''registration to participate in the competition'' as provided in the Act.

b. If an individual, must be a citizen of or permanent resident of the United States; and if an entity, must be incorporated in and maintain a primary place of business in the United States.

c. May not be a Federal entity or Federal employee acting in the scope of the employee's employment.

d. Must agree to assume any and all risks and waive any 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 their participation in the Vets Contest, whether the injury, death, damage, or loss arises through negligence of otherwise. *Provided, however,* that participants will not be required to waive claims against VA arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential information of the entrant.

e. Shall be responsible for obtaining 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 or participation in the Vets Contest.

f. Must have complied with all requirements of this Notice and all requirements established by the Act.

6. *Procedures for obtaining additional information.*

a. During the period of the Vets Contest, VA will operate and maintain a moderated discussion board at

http://challenge.gov/VAi2/262-badges-for-vets to which potential participants or entrants may submit questions to VA.

b. VA may choose not to respond to any question or comment or to delete questions or comments which it determines are not relevant to the competition. VA's responses to questions on the discussion board are not official guidance.

c. VA will also maintain a blog on the *http://challenge.gov/VAi2/262-badges-for-vets,* Web site on which it may post official guidance related to the Vets Contest. All entrants are bound by official guidance on the blog which is posted prior to submission of a participant's entry.

7. *Intellectual Property.*

a. VA does not accept any responsibility for a registered entrant's lack of compliance with Intellectual Property or other Federal law. Entrants are subject to the Competition's Intellectual Property (''IP'') policies set forth on *http://www.dmlcompetition.net/Competition/4/badges-terms-and-conditions.php#IP.*

b. The winner of the Vets Contest will, in consideration of the prize to be awarded, grant to VA a perpetual non-exclusive royalty-free license to use any and all intellectual property pertaining to the winning entry for any governmental purpose, including the right to permit such use by any other agency or agencies of the Federal Government.

c. VA may, in its sole and exclusive discretion, choose to negotiate with any registered entrant to acquire a license to use any intellectual property developed in connection with the Vets Contest.

8. *Judges and Judging Procedures.*

a. Subject to the requirements of Public Law 111–358, Sec 24(k), the Director, VA Innovations Initiative, acting on behalf and with the authority of the Secretary of VA, will appoint one or more qualified individuals to act as judges of the Vets contest, and may appoint himself as a judge. Judges may include individuals from outside VA, including from the private sector and individuals nominated by the Competition. Judges will operate in a transparent manner.

b. 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 registered entrant in the Vets Contest, and may not have a familial or financial relationship with an individual who is a registered entrant.

c. Specific tasks related to the judging process may be delegated to VA employees or employees of a collaborating Federal agency.

d. Judges shall have the authority to disregard any minor error in any entry that does not create any substantial benefit or detriment to any entrant.

e. Decisions of the judges are final.

9. *Payment of Prizes, use of Prize Money and Post-Award Performance.*

a. Prize money will be paid in quarterly installments starting on or about April 1, 2012, and must be used specifically for the awarded project according to the budget proposed by the winning entrant.

b. Post-award performance will be monitored by HASTAC in accordance with Competition rules and procedures, and payment of installments is contingent on (1) receipt by HASTAC's of acceptable quarterly financial and progress reports, (2) HASTAC's recommendation to VA that the prize installments be paid, and (3) VA's independent determination that acceptable quarterly financial and progress reports have been submitted.

c. VA may elect to pay prize money directly to the winner instead of making payments through HASTAC. If VA elects to pay prize money directly, the winner will provide VA with sufficient information to support payment transactions in accordance with VA fiscal policy and the issuance of Internal Revenue Service 1099s.

Dated: February 16, 2012.

John R. Gingrich,

Chief of Staff.

[FR Doc. 2012–4314 Filed 2–23–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 37 February 24, 2012

Part II

Department of Transportation

National Highway Traffic Safety Administration

Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices; Notice

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0053]

Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed Federal guidelines.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is concerned about the effects of distraction due to drivers' use of electronic devices on motor vehicle safety. Consequently, NHTSA is issuing nonbinding, voluntary NHTSA Driver Distraction Guidelines (NHTSA Guidelines) to promote safety by discouraging the introduction of excessively distracting devices in vehicles.

This notice details the contents of the first phase of the NHTSA Driver Distraction Guidelines. These NHTSA Guidelines cover original equipment in-vehicle device secondary tasks (communications, entertainment, information gathering, and navigation tasks not required to drive are considered secondary tasks) performed by the driver through visual-manual means (meaning the driver looking at a device, manipulating a device-related control with the driver's hand, and watching for visual feedback).

The proposed NHTSA Guidelines list certain secondary, non-driving related tasks that, based on NHTSA's research, are believed by the agency to interfere inherently with a driver's ability to safely control the vehicle. The Guidelines recommend that those in-vehicle devices be designed so that they cannot be used by the driver to perform such tasks while the driver is driving. For all other secondary, non-driving-related visual-manual tasks, the NHTSA Guidelines specify a test method for measuring the impact of task performance on driving safety while driving and time-based acceptance criteria for assessing whether a task interferes too much with driver attention to be suitable to perform while driving. If a task does not meet the acceptance criteria, the NHTSA Guidelines recommend that in-vehicle devices be designed so that the task cannot be performed by the driver while driving. In addition to identifying inherently distracting tasks and providing a means for measuring and evaluating the level of distraction associated with other non-driving-related tasks, the NHTSA Guidelines contain several design recommendations for in-vehicle devices in order to minimize their potential for distraction.

NHTSA seeks comments on these NHTSA Guidelines and any suggestions for how to improve them so as to better enhance motor vehicle safety.

DATES: *Comments:* You should submit your comments early enough to ensure that the docket receives them not later than April 24, 2012.

Public Meetings: NHTSA will hold public meetings in March 2012 in three locations: Washington, DC; Los Angeles, California; and Chicago, Illinois. NHTSA will announce the exact dates and locations for each meeting in a supplemental **Federal Register** Notice.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the ''Privacy Act'' heading below.

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

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

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Dr. W. Riley Garrott, Vehicle Research and Test Center, telephone: (937) 666–3312, facsimile: (937) 666–3590. You may send mail to this person at: The National Highway Traffic Safety Administration, Vehicle Research and Test Center, P.O. Box B–37, East Liberty, OH 43319.

SUPPLEMENTARY INFORMATION: These proposed NHTSA Guidelines will lead to issuance of final NHTSA Guidelines, which will not have the force and effect of law and will not be regulations. Therefore, NHTSA is not required to provide notice and an opportunity for comment. NHTSA is doing so, however, to ensure that its final NHTSA Guidelines benefit from the input of all knowledgeable and interested persons.

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I. Executive Summary

A. The Problem of Driver Distraction and Related Research

The term ''distraction,'' as used in connection with these guidelines, is a specific type of inattention that occurs when drivers divert their attention away from the driving task to focus on another activity. These distractions can be from electronic devices, such as navigation systems and cell phones, or more conventional distractions such as interacting with passengers and eating. These distracting tasks can affect drivers in different ways, and can be categorized into the following types:

- *Visual distraction:* Tasks that require the driver to look away from the roadway to visually obtain information;
- *Manual distraction:* Tasks that require the driver to take a hand off the steering wheel and manipulate a device;
- *Cognitive distraction:* Tasks that require the driver to avert their mental attention away from the driving task.

The impact of distraction on driving is determined not just by the type of distraction, but also the frequency and duration of the task. That is to say, even if a task is less distracting, a driver who engages in it frequently or for long durations may increase the crash risk to a level comparable to that of much more difficult task performed less often.

NHTSA is concerned about the effects of driver distraction on motor vehicle safety. Crash data show that 17 percent (an estimated 899,000) of all police-reported crashes reportedly involved some type of driver distraction in 2010. Of those 899,000 crashes, distraction by a device/control integral to the vehicle was reported in 26,000 crashes (3% of the distraction-related police-reported crashes).

For a number of years, NHTSA has been conducting research to better understand how driver distraction impacts driving performance and safety. The research has involved both integrated and portable devices, various task types, and both visual-manual and auditory-vocal tasks (*i.e.,* tasks that use voice inputs and provide auditory feedback). Additionally, both NHTSA and the Federal Motor Carrier Safety Administration (FMCSA) have sponsored analyses focused on distracted driving using data from naturalistic driving studies performed by the Virginia Tech Transportation Institute (VTTI).

The automobile industry, Europe, and Japan have all conducted valuable research that has increased the available knowledge regarding driver distraction and its effects on safety. The results of this work are summarized in various sets of guidelines that minimize the potential for driver distraction during visual-manual interactions while the vehicle is in motion. NHTSA has drawn heavily upon these existing guidelines in the development of its Driver Distraction Guidelines.

B. NHTSA Driver Distraction Program

In April 2010, NHTSA released an ''Overview of the National Highway Traffic Safety Administration's Driver Distraction Program,'' [1] which summarized steps that NHTSA intends to take to reduce crashes attributable to driver distraction. One part of this program is the development of nonbinding, voluntary guidelines for minimizing the distraction potential of in-vehicle and portable devices. The guidelines will be developed in three phases. The first phase will explore visual-manual interfaces of devices installed in vehicles. The second phase will include portable and aftermarket devices. The third phase will expand the guidelines to include auditory-vocal interfaces.

C. Today's Proposal

This notice proposes the first phase of these NHTSA Driver Distraction Guidelines, which cover certain devices installed in vehicles as original equipment that are operated by the driver through visual-manual means (meaning the driver looking at a device, manipulating a device-related control with the driver's hand, and watching for visual feedback from the device). The driver distraction research discussed above shows that the types of tasks correlated with the highest crash/near crash risk odds ratios tend to have primarily visual-manual means of interaction, and, accordingly, this first phase of guidelines focuses on visual-manual interfaces.

The purpose of the NHTSA Guidelines is to limit potential driver distraction associated with secondary, non-driving-related, visual-manual tasks (*e.g.,* information, navigation, communications, and entertainment) performed using integrated electronic devices. The NHTSA Guidelines are not appropriate for conventional controls and displays (*e.g.,* heating-ventilation-air conditions controls, instrument gauges or telltales) because operating these systems is part of the primary driving task. Likewise, the NHTSA Guidelines are not appropriate for collision warning or vehicle control systems, which are designed to aid the driver in controlling the vehicle and avoid crashes. These systems are meant to capture the driver's attention.

To facilitate the development of guidelines, NHTSA studied the various existing guidelines relating to driver distraction prevention and reduction and found the ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems'' developed by the Alliance of Automobile Manufacturers (Alliance Guidelines [2]) to

[1] ''Overview of the National Highway Traffic Safety Administration's Driver Distraction Program,'' DOT–HS–811–299, April 2010. Available at *http://www.nhtsa.gov/staticfiles/nti/distracted_driving/pdf/811299.pdf.*

[2] Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced

Continued

be the most complete and up-to-date. The Alliance Guidelines provided valuable input in current NHTSA efforts to address driver distraction issues. While NHTSA drew heavily on that input in developing the NHTSA Guidelines, it did incorporate a number of changes in an effort to further enhance driving safety, enhance guideline usability, improve implementation consistency, and incorporate the latest driver distraction research findings.

Since light vehicles comprise the vast majority of the vehicle fleet, NHTSA focused its distraction research on this type of vehicle, instead of heavy trucks, medium trucks, motorcoaches, or motorcycles. Therefore, the NHTSA Guidelines contained in this notice cover light vehicles, *i.e.,* all passenger cars, multipurpose passenger vehicles, and trucks and buses with a Gross Vehicle Weight Rating (GVWR) of not more than 10,000 pounds. While much of what NHTSA has learned about light vehicle driver distraction undoubtedly applies to other vehicle types, additional research would be desirable to assess whether all aspects of these NHTSA Guidelines are appropriate for those vehicle types.

The NHTSA Guidelines limit potential driver distraction associated with non-driving-related, visual-manual tasks through several approaches:

1. The NHTSA Guidelines list certain secondary, non-driving-related tasks that, based on NHTSA's research, are believed by the agency to interfere inherently with a driver's ability to safely control the vehicle. The Guidelines recommend that those in-vehicle devices be designed so that they cannot be used by the driver to perform such tasks while the driver is driving. The list of tasks considered to inherently interfere with a driver's ability to safely operate the vehicle include: displaying images or video not related to driving; displaying automatically scrolling text; requiring manual text entry of more than six button or key presses during a single task; or requiring reading more than 30 characters of text (not counting punctuation marks). The NHTSA Guidelines specify that this recommendation is intended to prevent the driver from engaging in tasks such as watching video footage, visual-manual text messaging, visual-manual internet browsing, or visual-manual social media browsing while driving. The recommendation is not intended to prevent the display of images related to driving, such as images related to the status of vehicle occupants or vehicle maneuvering or images depicting the rearview or blind zone areas of a vehicle.

2. For all other secondary, non-driving-related visual-manual tasks, the NHTSA Guidelines specify a test method for measuring the impact of performing a task on driving safety and time-based acceptance criteria for assessing whether a task interferes too much with driver attention to be suitable to perform while driving. If a task does not meet the acceptance criteria, the NHTSA Guidelines recommend that in-vehicle devices be designed so that the task cannot be performed by the driver while driving. More specifically, the NHTSA Guidelines include two test methods for assessing whether a task interferes too much with driver attention. One test method measures the amount of time that the driver's eyes are drawn away from the roadway during the performance of the task. The research mentioned above shows that long glances by the driver away from the roadway are correlated with an increased risk of a crash or near-crash. The NHTSA Guidelines recommend that devices be designed so that tasks can be completed by the driver while driving with glances away from the roadway of 2 seconds or less and a cumulative time spent glancing away from the roadway of 12 seconds or less. The second test method uses a visual occlusion technique to ensure that a driver can complete a task in a series of 1.5 second glances with a cumulative time spent glancing away from the roadway of not more than 9 seconds.

3. In addition to identifying inherently distracting tasks and providing a means for measuring and evaluating the level of distraction associated with other non-driving-related tasks, the NHTSA Guidelines contain several design recommendations for in-vehicle devices in order to minimize their potential for distraction. The NHTSA Guidelines recommend that all device functions designed to be performed by the driver through visual-manual means should require no more than one of the driver's hands to operate. The NHTSA Guidelines further recommend that each device's active display should be located as close as practicable to the driver's forward line of sight and include a specific recommendation for the maximum downward viewing angle to the geometric center of each display.

The agency believes that the NHTSA Guidelines are appropriate for any device that the driver can easily see and/or reach (even if it is intended for use solely by passengers), and, accordingly, any task that is associated with an unacceptable level of distraction should be made inaccessible to the driver while driving. However, the NHTSA Guidelines are not appropriate for any device that is located fully behind the front seat of the vehicle or for any front-seat device that cannot reasonably be reached or seen by the driver.

NHTSA has opted to pursue nonbinding, voluntary guidelines rather than a mandatory Federal Motor Vehicle Safety Standard (FMVSS) for three principal reasons. First, this is an area in which learning continues, and NHTSA believes that, at this time, continued research is both necessary and important. Second, technology is changing rapidly, and a static rule, put in place at this time, may face unforeseen problems and issues as new technologies are developed and introduced. Third, available data are not sufficient at this time to permit accurate estimation of the benefits and costs of a mandatory rule in this area. NHTSA's firm belief that there are safety benefits to be gained by limiting and reducing driver distraction due to integrated electronic devices is sufficient reason for issuing the NHTSA Guidelines, but in order to issue a rule, we need a defensible estimate of the magnitude of such benefits and the corresponding costs. (See Executive Order 13563.)

Since these voluntary NHTSA Guidelines are not a FMVSS, NHTSA's normal enforcement procedures are not applicable. As part of its continuing research effort, NHTSA does intend to monitor manufacturers' voluntary adoption of these NHTSA Guidelines to help determine their effectiveness and sufficiency.

The main effect that NHTSA expects to achieve through its NHTSA Guidelines is better-designed in-vehicle integrated electronic device interfaces that do not exceed a reasonable level of complexity for visual-manual secondary tasks. While voluntary and nonbinding, the NHTSA Guidelines are meant to discourage the introduction of egregiously distracting non-driving tasks performed using integrated devices (*i.e.,* those that the NHTSA Guidelines list as being inherently distracting and those that do not meet the acceptance criteria when tested under the test method contained in the Guidelines).

NHTSA seeks comments as to how to improve the NHTSA Guidelines so as to improve motor vehicle safety. Because these Guidelines are voluntary and nonbinding, they will not require action

In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

of any kind, and for that reason they will not confer benefits or impose costs. Nonetheless, and as part of its continuing research efforts, NHTSA welcomes comments on the potential benefits and costs that would result from voluntary compliance with the draft Guidelines.

NHTSA will review submitted comments and plans to issue a final version of the visual-manual portion of its NHTSA Guidelines in the form of a **Federal Register** notice during the first half of calendar year 2012.

II. Background

A. Acronyms Used in Document

ADAM Advanced Driver Attention Metrics
AM Amplitude Modulation
ANPRM Advance Notice of Proposed Rulemaking
CAMP Collision Avoidance Metrics Partnership
CANbus Controller Area Network bus
CD Compact Disc
CDS Crashworthiness Data System (NASS–CDS)
DFD Dynamic Following and Detection
DOT Department of Transportation
EOT Enhanced Occlusion Technique
EORT Eyes-Off-Road Time
FARS Fatality Analysis Reporting System
FM Frequency Modulation
FMCSA Federal Motor Carrier Safety Administration
FMVSS Federal Motor Vehicle Safety Standard
FR Federal Register
GES General Estimates System (NASS–GES)
GVWR Gross Vehicle Weight Rating
HMI Human-Machine Interface
HVAC Heating, Ventilation, and Air Conditioning
ISO International Standards Organization
ISOES International Society for Occupational Ergonomics and Safety
IVIS In-Vehicle Information Systems
JAMA Japanese Automobile Manufacturers Association
LCT Lane Change Task
MGD Mean Glance Duration
MNTE Manual Number and Text Entry
NASS National Automotive Sampling System
NHTSA National Highway Traffic Safety Administration
NMVCCS National Motor Vehicle Crash Causation Survey
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
OE Original Equipment
OMB Office of Management and Budget
PAR Police Accident Report
PDT Peripheral Detection Task
R Task Resumability Ratio
SAE SAE International
SDLP Standard Deviation of Lane Position (lane position variability)
SHRP2 Strategic Highway Research Program 2
STI Systems Technology Incorporated
STISIM Systems Technology Incorporated Driving Simulator
TEORT Total Eyes-Off-Road Time
TGT Total Glance Time to Task
VTTI Virginia Tech Transportation Institute

B. The Driver Distraction Safety Problem

There has been a large amount of research performed on the topic of driver distraction and its impact on safety. Research noted here will provide a brief overview of the distraction safety problem. Many other reports and papers have been published on various aspects of driver distraction. Some of these additional reports and papers may be found at www.distraction.gov.

NHTSA data on distracted driving-related crashes and the resulting numbers of injured people and fatalities is derived from the Fatality Analysis Reporting System (FARS) [3] and the National Automotive Sampling System (NASS) General Estimates System (GES).[4]

The most recent data available, 2010 data, show that 17 percent of all police-reported crashes (fatal, injury-only and property-damage-only) involve reports of distracted driving. As can be seen in Table 1, the percent of all police-reported crashes that involve distraction has remained consistent over the past five years. These distraction-related crashes lead to thousands of fatalities and over 400,000 injured people each year, on average.

An estimated 899,000 of all police-reported crashes involved a report of a distracted driver in 2010. Of those 899,000 crashes, 26,000 (3%) specifically stated that the driver was distracted when he was adjusting or using an integrated device/control. From a different viewpoint, of those 899,000 crashes, 47,000 (5%) specifically stated that the driver was distracted by a cell phone (no differentiation between portable and integrated). It should be noted that these two classifications *are not* mutually exclusive, as a driver who was distracted by the radio control may have also been on the phone at the time of the crash and thus the crash may appear in both categories. While all electronic devices are of interest, the current coding does not separate other electronic devices other than cell phones.

TABLE 1—POLICE–REPORTED CRASHES AND CRASHES INVOLVING DISTRACTION, 2006–2010 (GES)

Year	Number of police-reported crashes	Police-reported crashes involving a distracted driver	Distraction-related crashes involving an integrated control/device *	Distraction-related crashes involving an electronic device *
2006	5,964,000	1,019,000 (17%)	18,000 (2%)	24,000 (2%)
2007	6,016,000	1,001,000 (17%)	23,000 (2%)	48,000 (5%)
2008	5,801,000	967,000 (17%)	21,000 (2%)	48,000 (5%)
2009	5,498,000	957,000 (17%)	22,000 (2%)	46,000 (5%)
2010	5,409,000	899,000 (17%)	26,000 (3%)	47,000 (5%)

* The categories for Integrated Control/Device and Electronic Device are not mutually exclusive. Therefore the data *cannot* be added or combined in any manner.

Identification of specific driver-activities and driver-behavior that serves as the distraction has presented challenges, both within NHTSA's data collection and on police accident reports. Therefore, a large portion of the crashes that are reported to involve distraction do not have a specific behavior or activity listed; rather they specify *other distraction* or *distraction unknown.* One could assume that some portion of those crashes involve an electronic device, either portable or integrated.

[3] FARS is a census of all fatal crashes that occur on the roadways of the United States of America. It contains data on all fatal crashes occurring in all 50 states as well as the District of Columbia and Puerto Rico.

[4] NASS GES contains data from a nationally-representative sample of police-reported crashes. It contains data on police-reported crashes of all levels of severity, including those that result in fatalities, injuries, or only property damage. National numbers of crashes calculated from NASS GES are estimates.

NHTSA is making substantial data collection revisions to FARS and working on revisions to Model Minimum Uniform Crash Criteria (MMUCC) to better capture and classify the crashes related to distraction.[5] One such improvement is the ability to separate the involvement of integrated vehicle equipment as the distraction in fatal crashes in FARS. With this improvement, NHTSA looks to track the involvement of integrated devices over time in fatal crashes. As manufacturers are increasingly developing communications systems that can integrate portable devices into the vehicle or developing fully-integrated systems in the vehicle, this tracking of data will be essential in monitoring distraction involvement in fatal crashes.

i. Estimation of Distraction Crash Risk Via Naturalistic Driving Studies

One approach to estimating the driving risks due to various types of distraction is naturalistic driving studies. Naturalistic data collection is an excellent method of determining distraction risks because test participants (drivers) volunteer to drive an instrumented vehicle in the same manner that they normally do for some period of time. Unlike commanded task testing, in which an in-vehicle experimenter instructs a test participant when to perform a task, in naturalistic studies test participants perform tasks at will. The unobtrusive data recording instrumentation installed in the vehicle eliminates the distraction under-reporting problem seen in police accident reports by recording data that describes what test participants are doing at any time while driving.

For light vehicles, the NHTSA-sponsored 100-Car Naturalistic Driving Study,[6] [7] [8] [9] [10] performed by the Virginia Tech Transportation Institute (VTTI), provides information about the effects of performing various types of secondary tasks on crash/near crash risks. Secondary tasks include communications, entertainment, informational, interactions with passengers, navigation, and reaching for objects tasks (along with many others) that are not required for driving. For the 100-Car Study, VTTI collected naturalistic driving data for 100 vehicles from January 2003 through July 2004. Each participant's vehicle was unobtrusively fitted with five video cameras, sensors that measured numerous vehicle state and kinematic variables at each instant of time, and data acquisition. The vehicles were then driven by their owners during their normal daily activities for 12 to 13 months while data were recorded. No special instructions were given to drivers as to when or where to drive and no experimenter was present in the vehicle during the driving. All of this resulted in a large data set of naturalistic driving data that contains information on 241 drivers (100 primary drivers who performed most of the driving and 141 secondary drivers who drove the instrumented vehicles for shorter periods of time) driving for almost 43,000 hours and traveling approximately 2 million miles.

Data from the 100-Car Naturalistic Driving Study provides the best information currently available about the risks associated with performing a variety of secondary tasks while driving light vehicles (vehicles under 10,000 pounds GVWR). However, even though this was a large, difficult, and expensive study to perform, from an epidemiological viewpoint, the study was small (100 primary drivers, 15 police-reported and 82 total crashes, including minor collisions). Drivers from only one small portion of the country, the Northern Virginia-Washington, DC, metro area, were represented.

The 100-Car Study was deliberately designed to maximize the number of crash and near-crash events through the selection of subjects with higher than average crash- or near-crash risk exposure.[11] This was accomplished through the selection of a larger sample of drivers below the age of 25, and by the inclusion of a sample that drove more than the average number of miles.

Due to the rapid pace of technological change, some devices (*e.g.,* smart phones) and secondary tasks of great current interest (*e.g.,* text messaging) were not addressed by 100-Car Study data because they were not widely in use at the time.

Subsequent to the 100-Car Naturalistic Driving Study, the Federal Motor Carrier Safety Administration (FMCSA) sponsored an analysis of naturalistic driving data [12] to examine the effects of driver distraction on safety for commercial motor vehicles (three or more axle trucks, tractors-semitrailers (including tankers), transit buses, and motor coaches). This analysis used data collected during two commercial motor vehicle naturalistic driving studies. Since the data analyzed was collected during two studies, this study will, hereinafter, be referred to as the ''Two Study FMCSA Analyses.''

The Two Study FMCSA Analyses combined and analyzed data from two large-scale commercial motor vehicle naturalistic driving studies: the Drowsy Driver Warning System Field Operational Test [13] and the Naturalistic Truck Driving Study.[14] The combined database contains naturalistic driving data for 203 commercial motor vehicle drivers, 7 trucking fleets, 16 fleet locations, and approximately 3 million miles of continuously-collected kinematic and video data. This data set was filtered using kinematic data thresholds, along with video review and validation, to find safety-critical events (defined in this report as crashes, near-crashes, crash-relevant conflicts, and unintentional lane deviations). There were a total of 4,452 safety-critical events in the database: 21 crashes, 197 near-crashes, 3,019 crash-relevant conflicts, and 1,215 unintentional lane deviations. In addition, 19,888 time segments of baseline driving data were randomly selected for analysis.

[5] Since this is a re-coding of state records into a uniform data set, and does not make contact with any specific subjects, no OMB clearance is required for these revisions.

[6] Neale, V.L., Dingus, T.A., Klauer, S.G., Sudweeks, J., and Goodman, M., ''An Overview of the 100-Car Naturalistic Study and Findings,'' ESV Paper 05–0400, June 2005.

[7] Dingus, T.A., Klauer, S.G., Neale, V.L., Petersen, A., Lee, S.E., Sudweeks, J., Perez, M.A., Hankey, J., Ramsey, D., Gupta, S., Bucher, C., Doerzaph, Z.R., Jermeland, J., and Knipling, R.R., ''The 100-Car Naturalistic Driving Study, Phase II—Results of the 100-Car Field Experiment,'' DOT HS 810 593, April 2006.

[8] Klauer, S.G., Dingus, T.A., Neale, V.L., Sudweeks, J.D., and Ramsey, D.J., ''The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data,'' DOT HS 810 594, April 2006.

[9] Guo, F., Klauer, S.G., McGill, M.T., and Dingus, T.A., ''Task 3—Evaluating the Relationship Between Near-Crashes and Crashes: Can Near-Crashes Serve as a Surrogate Safety Metric for Crashes?,'' DOT HS 811 382, September 2010.

[10] Klauer, S.G., Guo, F., Sudweeks, J.D., and Dingus, T.A., ''An Analysis of Driver Inattention Using a Case-Crossover Approach On 100-Car Data: Final Report,'' DOT HS 811 334, May 2010.

[11] Neale, V.L., Dingus, T.A., Klauer, S.G., Sudweeks, J., and Goodman, M., ''An Overview of the 100-Car Naturalistic Study and Findings,'' ESV Paper 05–0400, June 2005.

[12] Olson, R.L., Hanowski, R.J., Hickman, J.S., and Bocanegra, J., ''Driver Distraction in Commercial Vehicle Operations,'' FMCSA–RRR–09–042, September 2009.

[13] Hanowski, R.J., Blanco, M., Nakata, A., Hickman, J.S., Schaudt, W.A., Fumero, M.C., Olson, R.L., Jermeland, J., Greening, M., Holbrook, G.T., Knipling, R.R., and Madison, P., ''The Drowsy Driver Warning System Field Operational Test, Data Collection Methods,'' DOT HS 811 035, September 2008.

[14] Blanco, M., Hickman, J.S., Olson, R.L., Bocanegra, J.L., Hanowski, R.J., Nakata, A., Greening, M., Madison, P., Holbrook, G.T., and Bowman, D., ''Investigating Critical Incidents, Driver Restart Period, Sleep Quantity, and Crash Countermeasures in Commercial Vehicle Operations Using Naturalistic Data Collection,'' in press, 2008.

One major source of differences in the results obtained from analyses of the 100-Car Study with those obtained from the Two Study FMCSA Analyses is the different time frames in which their data collections were performed. The 100-Car Naturalistic Driving Study data collection was from January 2003 through July 2004. The Drowsy Driver Warning System Field Operational Test collected data from May 2004 through September 2005 and the Naturalistic Truck Driving Study collected data from November 2005 through May 2007. Due to the current rapid changes occurring in portable and other consumer electronics, the specific types of electronic device related distraction observed across studies, while similar, were not identical. For example, while the Two Study FMCSA Analyses found a high safety critical event risk due to drivers engaging in text messaging, there was no text messaging observed during the 100-Car Study. This is because the widespread popularity of text messaging did not occur until after the 100-Car Study data collection was completed.

ii. Summary of Naturalistic Driving Study Distraction Risk Analyses

Figure 1 gives a graphical representation of some of the secondary task risk odds ratios determined by the 100-Car Naturalistic Driving Study and the Two Study FMCSA Analyses. In this figure, a risk odds ratio of 1.00 (shown as ''1'' in the figure) equates to the risks associated with baseline driving. Risk odds ratios above 1.00 indicate secondary tasks that increase driving risks while risk odds ratios below 1.00 indicate protective effects (*i.e.,* performing these secondary tasks makes a crash or near-crash event less likely to occur than driving and not performing any secondary task.) This figure provides a quick, visual, summary of the risks associated with performing a variety of secondary tasks while driving both light and heavy vehicles.

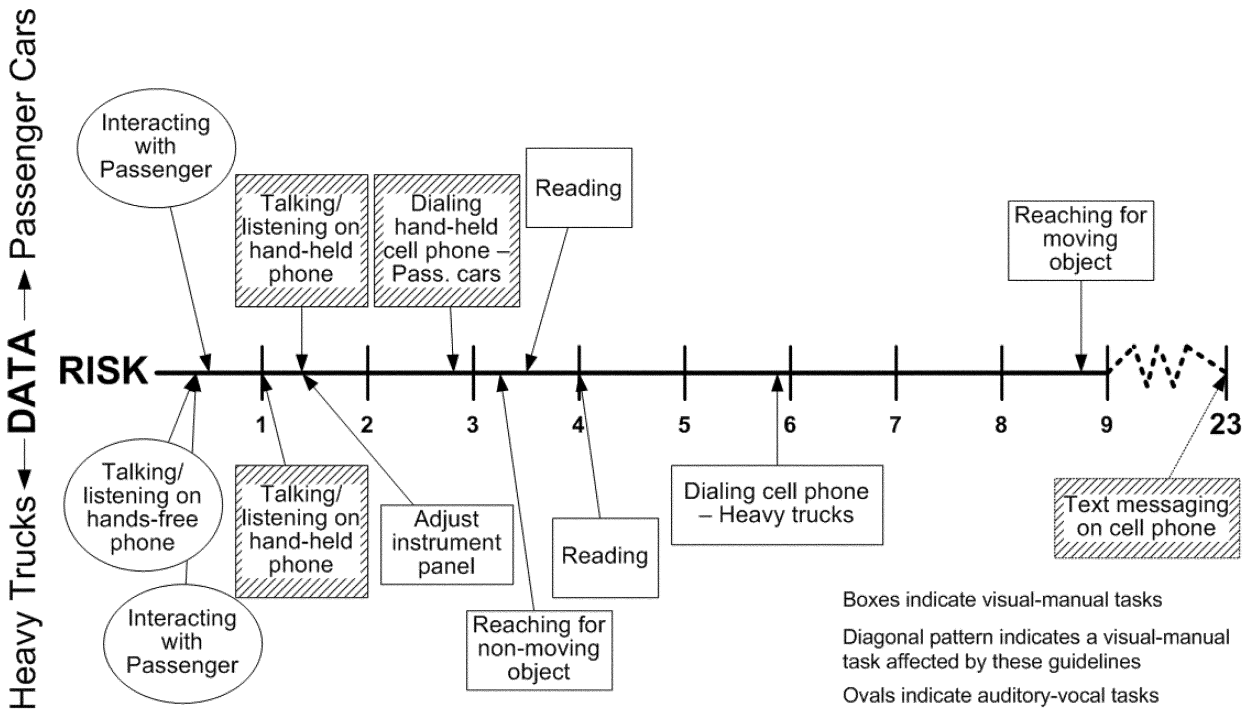

Figure 1: Risk Odds Ratios Determined by the Original 100-Car Study Analyses and Two Study FMCSA Analyses

In summary, the various naturalistic data study analyses established several important things about driver distraction which are directly relevant to the NHTSA Guidelines for reducing driver distraction due to device interface design:

- Secondary task performance is very common while driving. They were observed during the majority (54%) of the randomly selected baseline time segments analyzed during the 100-Car Study analyses. Some secondary task performance involves the use of electronic devices; these secondary tasks are the primary focus of this document.
- Secondary task performance while driving has a broad range of risk odds ratios associated with different secondary tasks. The observed risk odds ratios range from 23.2, indicating a very large increase in crash/near-crash risk (a risk ratio of 1.0 means that a secondary task has the same risk as average driving; a risk ratio of 23.2 means that risk associated with performance of this secondary task is increased by 2,220 percent compared to average driving), to 0.4 (any value less than 1.0 indicates a situation with less risk than average driving indicating a protective effect; a risk ratio of 0.4 means that risk associated with performance of this secondary task is reduced by 60 percent compared to average driving). This indicates that it may well be possible to improve at least some of the secondary tasks with high risk odds ratios (*i.e.,* risky tasks) so as to make them substantially safer to perform. The logical place to reduce crash/near-crash

risk odds ratios for these secondary tasks is through improvements to their driver interface.

• It is clear from naturalistic driving research that the secondary tasks with the highest risk odds ratios tend to have primarily visual-manual interaction means with only a relatively small cognitive component. Of course, every secondary task results in some cognitive load; however, tasks that could be said to not require a lot of thought, such as Reaching for a Moving Object, are towards the right side of Figure 1. Only the secondary tasks, ''Interacting with Passenger'' and ''Talking/Listening on Hands-Free Phone,'' are almost exclusively cognitive in nature. Both of these secondary tasks have risk odds ratios that are statistically significantly less than 1.00 (at the 95 percent confidence level). These two heavily cognitive secondary tasks appear to have protective effects.

For this reason, and because it is far less clear how to measure the level of cognitive distraction, the NHTSA Guidelines will initially only apply to the visual-manual aspects of devices' driver interfaces. Subsequent phases of development of these NHTSA Guidelines are planned to extend them to cover the auditory-vocal portions of device interfaces.

• Long (greater than 2.0 seconds) glances by the driver away from the forward road scene are correlated with increased crash/near-crash risk. When drivers glance away from the forward roadway for greater than 2.0 seconds out of a 6-second period, their risk of an unsafe event substantially increases relative to the baseline.

C. NHTSA's Driver Distraction Program

NHTSA's safety mission is to ''save lives, prevent injuries, and reduce economic costs due to road traffic crashes.'' One focus of this mission is the prevention of road traffic crashes for which driver distraction is a contributing factor.[15]

In April 2010, NHTSA released an ''Overview of the National Highway Traffic Safety Administration's Driver Distraction Program,'' [16] which summarized steps that NHTSA intends to take to ''help in its long-term goal of eliminating a specific category of crashes—those attributable to driver distraction.'' NHTSA's Driver Distraction Program consists of four initiatives:

1. Improve the understanding of the extent and nature of the distraction problem. This includes improving the quality of data NHTSA collects about distraction-related crashes along with better analysis techniques.

2. Reduce the driver workload associated with performing tasks using both built-in and portable in-vehicle devices by working to limit the visual and manual demand associated with secondary tasks performed using in-vehicle devices. Better device interfaces will help to minimize the amount of time and effort involved in a driver performing a task using the device. Minimizing the workload associated with performing non-driving, or ''*secondary,*'' tasks with a device will permit drivers to maximize the attention they focus toward the *primary* task of driving.

3. Keep drivers safe through the introduction of crash avoidance technologies. These include the use of crash warning systems to re-focus the attention of distracted drivers as well as vehicle-initiated (*i.e.,* automatic) braking and steering to prevent or mitigate distracted driver crashes.

Although not the focus of this notice, NHTSA is, in parallel with its NHTSA Guidelines development effort, performing a large amount of research in support of the crash avoidance technologies initiative. For example, NHTSA has completed, and reports should be published shortly, research about how to best warn distracted drivers. We are also performing a large amount of research on forward collision avoidance and mitigation technologies such as Forward Collision Warning, Collision Imminent Braking, and Dynamic Brake Assist.

4. Educate drivers about the risks and consequences of distracted driving. This includes targeted media messages, drafting and publishing sample text-messaging laws for consideration and possible use by the states, and publishing guidance for a ban on text messaging by Federal government employees while driving.

This notice is part of NHTSA's effort to address the second of these initiatives, reducing driver workload by working to limit the visual and manual demand associated with in-vehicle device interface designs. As discussed in NHTSA's Driver Distraction Program, NHTSA's intent is to ''*develop voluntary guidelines for minimizing the distraction potential of in-vehicle and portable devices*''.[17] The current notice only contains voluntary NHTSA Guidelines for integrated in-vehicle devices; portable devices will be addressed by Phase 2 of the NHTSA Guidelines.

Drivers perform secondary tasks (communications, entertainment, informational, and navigation tasks not required to drive [18]) using an in-vehicle electronic device by interacting with the device through its driver interface. These interfaces can be designed to accommodate interactions that are visual-manual (visual display and manual controls), auditory-vocal, or a combination of the two. Some devices may allow a driver to perform a task through either manual control manipulation with visual feedback or through voice command with auditory feedback to the driver.

For the purposes of this document, a driver's interactions with device interfaces are described in terms of two functional categories based upon the mode of interaction: visual-manual and auditory-vocal. Visual-manual interactions involve the driver looking at a device, making inputs to the device by hand (*e.g.,* pressing a button, rotating a knob), and visual feedback being provided to the driver. Auditory-vocal interactions involve the driver controlling the device functions through voice commands and receiving auditory feedback from the device. Note that a single device's driver interface may accommodate both visual-manual and auditory-vocal interactions.

These proposed voluntary NHTSA Guidelines are appropriate for in-vehicle device tasks that are performed by the driver through visual-manual means. The goal of the NHTSA Guidelines is to discourage the implementation of tasks performed using in-vehicle electronic devices unless the tasks and device driver interfaces are designed to minimize driver workload experienced by a driver when performing the tasks while driving. The NHTSA Guidelines specify criteria and a test method for assessing whether a secondary task performed using an in-vehicle device may be suitable for performance while driving, due to its minimal impact on driving performance and, therefore, safety. The NHTSA Guidelines also seek to identify secondary tasks that interfere with a driver's ability to safely control the vehicle and to categorize those tasks as being unsuitable for performance by the driver while driving.

[15] Information on NHTSA's efforts to address this problem can be found at *http://www.distraction.gov/.*

[16] ''Overview of the National Highway Traffic Safety Administration's Driver Distraction Program,'' DOT–HS–811–299, April 2010. Available at *http://www.nhtsa.gov/staticfiles/nti/distracted_driving/pdf/811299.pdf.*

[17] *Ibid,* P. 21.

[18] Navigation tasks clearly have to be performed to drive. However, such tasks as destination entry do not have to be performed while driving but can instead be performed while the vehicle is stationary.

III. Why distraction guidelines?

NHTSA is proposing voluntary NHTSA Guidelines to limit and/or reduce visual-manual driver distraction due to integrated electronic devices, instead of a mandatory Federal Motor Vehicle Safety Standard (FMVSS), for several reasons. First, the rapid pace of technology evolution cannot be fully addressed with a static rule put in place at this time. Second, data is not sufficient at this time to permit accurate estimation of the benefits of a possible distracted driving rule, though NHTSA firmly believes that there are safety benefits to be gained by limiting and reducing driver distraction due to integrated electronic devices. Finally, NHTSA rules must have repeatable, objective means for determining compliance and driver distraction testing involves drivers with inherent individual differences that present a unique challenge. Each of these reasons is discussed in detail below.

• In 2002, the Alliance of Automobile Manufacturers developed a set of guidelines to address the agency's call that manufacturers should develop a set of design principles to which future products would be designed. The intent was to address the increasing use of navigation units, infotainment, and complex controls appearing in vehicles that, if used while driving, could present an additional source of distraction for drivers leading to an increase in crashes. Since that time, NHTSA has been monitoring and conducting driver distraction research using a sample of the designs that have been developed in accordance with the Alliance Guidelines. Our observations are as follows: (1) Manufacturers have different interpretations of the guidelines themselves, leading to different implementations, (2) newer techniques exist to evaluate these interfaces than existed nearly a decade ago, (3) the guidelines have not kept pace with technology, and (4) more recent data compiled from naturalistic driving studies implies that more stringent criteria are needed. Given these observations, we believe it is appropriate to issue Federal guidelines to ensure that current and future products continue to be designed in such a way as to mitigate driver distraction as opposed to adding to it. In addition, we believe Federal guidelines are appropriate because they can keep pace with rapidly changing technology by providing a benchmark for designers while allowing the agency and other researchers to continue their work in this rapidly evolving area, including the assessment of test procedures for regulatory purposes.

• In-vehicle communications and electronics are currently evolving at a pace that is not amenable to regulation. We believe that establishing Federal guidelines at this time is appropriate for these rapidly changing in-vehicle technologies, since it will provide a comprehensive means to ensure the reasonableness of designs. As new systems, features, functions, and types of control inputs are developed, NHTSA should be able to develop voluntary NHTSA Guidelines to address any potential safety issues as they arise. These NHTSA Guidelines can be issued more quickly than regulations that go through the rulemaking process.

• Existing data provide a sufficient basis on which to establish general NHTSA Guidelines that, if followed, will deter manufacturers from introducing in-vehicle information and communications systems that induce the kinds and duration of visual-manual distraction that are demonstrably unsafe. In future years, data from a major naturalistic research study that is currently being conducted through the Strategic Highway Research Program 2 (SHRP2) [19] should provide better information on the precise causation of distraction related incidents.

• Additionally, the test method developed by NHTSA in these NHTSA Guidelines in its current form would not meet the statutory requirements for establishing compliance with a FMVSS. Specifically, NHTSA's authorizing legislation requires that FMVSS contain objective and repeatable procedures, such as engineering measurement, for determining compliance or non-compliance of a vehicle with the standard. Driver distraction testing involves human drivers with inherent individual differences that present a unique challenge. A FMVSS with a compliance test procedure that entails driver involvement would not meet those requirements due to the individual variability of the drivers involved in the test.

Consider a brake compliance test; it tests the manufactured parts that comprise the braking, wheel, and tire systems. NHTSA has gone to considerable effort to tightly prescribe the actions of the professional test driver so that they do not influence test results. The main sources of test non-repeatability are the manufacturing tolerances of the vehicle components and the variability in the road surface. Again, NHTSA has tried to specify the road surface so as to minimize test variability. Due to the tight specification of test driver's actions and road surface, brake compliance testing is highly repeatable.

In comparison, driver distraction tests involve average drivers as a critical part of the test of the in-vehicle system. The driver's actions cannot be tightly prescribed, as was done for brake testing. Unfortunately, the level of driver distraction due to performing a task using a device inherently depends upon the personal characteristics and capabilities of the driver. The driver's manual dexterity, multi-tasking ability, driving experience, state of health, age, intelligence, and motivation (among other factors) may all influence the level of distraction experienced while performing a task. In an effort to ''average out'' individual differences, a group of 24 test participants is used for the NHTSA Driver Distraction Guideline tests described in this document. Furthermore, these NHTSA Guidelines contain provisions designed to ensure that test participants are not biased either for or against a task/device. However, there remains a chance that one group of 24 test subjects will produce a test result that finds a task or device suitable for performance while the vehicle is in motion, while testing with another group of 24 subjects may find that the task or device should be locked out. Therefore, the test would not be repeatable and therefore is not appropriate for a FMVSS.[20]

IV. NHTSA Research To Develop Driver Distraction Metrics and Measurement Methods

A. Timeline of NHTSA Driver Distraction Measurement Research

NHTSA has been performing research addressing issues related to driver distraction for nearly 20 years. Early research examined truck driver

[19] Information about SHRP2 is at: *http://trb.org/StrategicHighwayResearchProgram2SHRP2/Blank2.aspx.*

[20] One possible solution to the issue of non-repeatability due to individual variability has been thought of by NHTSA. The idea is to remove repeatability as an issue by only testing any given task on a device one time. A company that wished to know whether a task and/or device is acceptable for being performed while a vehicle is not in ''Park'' would perform the NHTSA specified test using all of the NHTSA specified test procedures for test participant selection, test conduct, etc., and document the results. If NHTSA subsequently was interested in monitoring whether that particular task and/or device met the distraction test's acceptance criteria, NHTSA would consider the company's documented record of the test as conclusive proof of meeting the acceptance criteria of the test and not perform the test itself. NHTSA would only perform testing if a company had not performed the test. However, NHTSA has never tried such an approach and does not wish to consider such a novel approach with a complex topic such as driver distraction.

workload and the effects of using a route navigation system on driving performance. In the last decade, research has been focused on assessing the impact of cell phone use on driver performance and behavior. As the availability of in-vehicle electronic devices has increased, NHTSA's research focus has shifted to development of methods and metrics for measuring distraction resulting from the use of any such device while driving. Each research study has contributed to the development of a broad set of metrics that characterize the impact of the performance of distracting tasks on driving performance in a repeatable and objective manner. The development of valid and sensitive measures of distraction effects on driving performance is challenging because distraction measurement inherently involves human test subjects. This section summarizes several recent NHTSA studies that focused on developing a valid, robust protocol for measuring driver distraction caused by the use of in-vehicle electronic devices.

B. ''15-Second Rule'' Study

In the 1990s, SAE International worked to develop a recommended practice for determining whether or not a particular navigation system function should be accessible to the driver while driving. The draft recommended practice (SAE J2364) [21] [22] asserted that if an in-vehicle task could be completed within 15 seconds by a sample of drivers in a static (*e.g.,* vehicle parked) setting, then the function was suitable to perform while driving. NHTSA conducted a preliminary assessment of the diagnostic properties of this proposed rule. Ten subjects, aged 55 to 69 years, completed 15 tasks, including navigation system destination entry, radio tuning, manual phone dialing, and adjusting the Heating, Ventilation, and Air Conditioning (HVAC) controls in a test vehicle. Correlations between static task performance and dynamic task performance were relatively low. The results were interpreted to suggest that static measurement of task completion time could not reliably predict the acceptability of a device. Based on these results, NHTSA looked to other metrics and methods for use in assessing secondary task distraction in subsequent research.

C. Collision Avoidance Metrics Partnership (CAMP) Driver Workload Metrics Project [23]

The Driver Workload Metrics project conducted by the Collision Avoidance Metrics Partnership (CAMP) consortium,[24] in cooperation with NHTSA, sought to develop performance metrics and test procedures for assessing in-vehicle system secondary task distraction and its impact on driving performance. The CAMP identified four categories of driving performance metrics as having direct implications for safety: driver eye glance patterns, lateral vehicle control, longitudinal vehicle control, and object-and-event detection. A number of potential surrogates thought to have predictive value with respect to the above-mentioned performance measures were identified. CAMP's analyses sought to determine which performance metrics discriminated between driving with a secondary task and driving alone. The majority of metrics that passed the evaluation criteria were related to eye-glance behavior. Visual-manual tasks affected driving performance more than auditory-vocal tasks. The project concluded that eye-glance data contain important information for assessing the distraction effects of both auditory-vocal and visual-manual tasks. One significant conclusion of this work was that the interference to driving caused by in-vehicle secondary tasks was multidimensional and no single metric could measure all effects.

D. Measuring Distraction Potential of Operating In-Vehicle Devices [25]

Following the Driver Workload Metrics project, in 2006, NHTSA explored the feasibility of adapting one or more existing driver distraction measurement protocols for use with production vehicles rather than pre-production prototypes. NHTSA wanted a well-documented, simple, non-destructive test that would allow test vehicles to be obtained by lease and therefore minimize research costs. Additional protocol criteria included: (1) Ease of implementation, (2) the test protocol's state-of-development, including extent of use and documentation, (3) the level of training and staffing required, (4) objective measures, and (5) the availability and interpretability of data.

Test venues meeting these criteria included the personal computer-based Advanced Driver Attention Metrics (ADAM) Lane Change Task (LCT) [26] and the Systems Technology Inc. (STI) low-cost, low-fidelity driving simulator (STISIM–Drive). The LCT is a standalone driving simulation that requires drivers to execute lane changes when prompted by signs appearing in the scenario. The LCT combines vehicle control performance, object detection, and response speed into a single summary performance measure. Based on CAMP [27] study recommendations, the STISIM driving scenario used involved car following with occasional oncoming traffic, in combination with the Peripheral Detection Task (PDT) to provide a visual object-event detection component. A Seeing Machines faceLab eye tracking system was used with both primary test venues.

Two initial experiments were conducted to evaluate the metrics associated with the STISIM and LCT test venues and to assess the metrics' sensitivity for detecting known and hypothesized differences between different secondary tasks. Results showed that most metrics were sensitive to changes in visual-manual load associated with visual search tasks. STISIM driving performance and PDT metrics were the most sensitive objective metrics and were generally more sensitive than LCT metrics. A third experiment that compared the sensitivity of measures obtained in the laboratory with that of an established test track protocol showed similarity among patterns of workload ratings. However, the laboratory simulator measures were more sensitive to secondary task load differences than the corresponding test track measures.

Overall, the laboratory environment provided better control of test conditions, particularly visibility, and less measurement error than the test track. The limited fidelity of the simulator did not reduce the sensitivity of the simulator-based metrics for detecting the targeted differences between task conditions. The breadth of

[21] Green, P., ''Estimating Compliance with the 15-Second Rule for Driver-interface Usability and Safety,'' Proceedings of the Human Factors and Ergonomics Society 43rd Annual Meeting, 1999.

[22] Green, P., ''The 15-second Rule for Driver Information Systems,'' ITS America Ninth Annual Meeting Conference Proceedings, Washington, DC, 1999.

[23] Angell, L., Auflick, J., Austria, P. A., Kochhar, D., Tijerina, L., Biever, W., Diptiman, T., Hogsett, J., and Kiger, S., ''Driver Workload Metrics Task 2 Final Report,'' DOT HS 810 635, November 2006.

[24] CAMP included researchers from Ford, GM, Nissan, and Toyota.

[25] Ranney, T.A., Baldwin, G.H.S., Vasko, S.M., and Mazzae, E.N., ''Measuring Distraction Potential of Operating In-Vehicle Devices,'' DOT HS 811 231, December 2009.

[26] Mattes, S., ''The lane change task as a tool for driver distraction evaluation,'' in GfA/17th Annual Conference of the International-Society-for-Occupational-Ergonomics-and-Safety (ISOES) Stuttgart, Germany: Ergonomia Verlag OHG, Bruno-Jacoby-Weg 11, D–70597, 2003.

[27] Angell, L., Auflick, J., Austria, P. A., Kochhar, D., Tijerina, L., Biever, W., Diptiman, T., Hogsett, J., and Kiger, S., ''Driver Workload Metrics Task 2 Final Report,'' DOT HS 810 635, November 2006.

STISIM/PDT measurement capabilities is also consistent with the general consensus that multiple measures are necessary to fully characterize distraction effects. Thus, the driving simulator protocol was retained for further research.

E. Developing a Test To Measure Distraction Potential of In-Vehicle Information System Tasks in Production Vehicles [28]

In 2009, NHTSA continued its efforts to develop a sensitive method of driver distraction measurement using production vehicles. Research was conducted using the visual occlusion technique, which involves periodic interruption of vision (via electronically shuttered goggles or some other apparatus) during the performance of a secondary task to simulate the driver glancing at the roadway while driving. By summing the duration of periods of unoccluded vision, the technique provides an estimate of the time that the driver looks away from the roadway to perform the secondary task. Because in the traditional occlusion method, participants have no primary task load (to simulate the demands of driving), the task completion time estimates do not include time during which participants continue to work on the secondary task during occluded intervals. To address this ''blind operation'' concern, an Enhanced Occlusion Technique (EOT) was also examined. This technique incorporated an auditory tracking task intended to simulate the demands of driving without interfering with the visual demands of occlusion.

The study compared task completion times obtained with the traditional occlusion protocol with those obtained using the EOT to assess their relative abilities to assess the distraction effects of secondary tasks. The experiment also sought to determine the extent to which blind operation is eliminated by the EOT. Data from occlusion trials were also used to compute indices of task resumability (R), which indicate how amenable a task is to completion under conditions of interruption, as in driving. Three navigation system tasks were used, including destination entry by address, selecting a previous destination, and searching a list of cities. Results showed that the EOT eliminated some blind operation, but not all of it. Specifically, with traditional occlusion, approximately 23 percent of the actions required to perform the task was accomplished during occluded intervals. With the EOT, the corresponding percentage was 11 percent. The R metrics differed between the traditional occlusion and EOT conditions, but neither R metric revealed differences between secondary task conditions. This led to the conclusion that task resumability (R) does not reflect the same performance degradation revealed by the driving performance metrics. The destination entry by address task was associated with a significantly higher level of (auditory) tracking error than the previous destination task.

A complementary experiment was conducted as part of this project using a multiple-target detection task to assess the distraction potential of three navigation systems with comparable functionality. Participants performed two navigation system tasks (destination entry by address and previous destination) using one original equipment system and two portable systems, each differing in their rated usability. Metrics revealed strong and consistent differences between baseline driving and driving with a secondary task. Three objective metrics (car-following coherence, detection task mean response time and the proportion of long glances) revealed differences between the destination entry by address and previous destination tasks generally. Based on the results of these experiments, it was concluded that it is feasible to use a simulator-based test to assess the distraction potential of secondary tasks performed with original equipment systems integrated into production vehicles. Test results indicated that a broad range of metrics, including measures of car-following, lateral vehicle control, target detection, and visual performance, were consistently and robustly sensitive to differences between categories of secondary tasks and between baseline driving and driving while performing secondary tasks. Fewer metrics were found to be sensitive to differences between visual-manual task conditions: Lane-position variability (SDLP), the time required for a following vehicle to react to lead vehicle speed changes, and detection task response time.

While the EOT represented an improvement over the traditional occlusion paradigm for providing information about the time required to perform various secondary tasks, task duration estimates obtained with either the traditional occlusion protocol or the EOT both differed from comparable values obtained in a controlled driving situation. Due to their increased sensitivity for detecting differences within task conditions, the SDLP, the time required for a following vehicle to react to lead vehicle speed changes, detection task response time and proportion of correct responses are considered core metrics for assessing distraction potential using driving simulation methods. Measures based on eye position data, primarily the proportion of long glances away from the forward roadway, also exhibited differences between tasks.

F. Distraction Effects of Manual Number and Text Entry While Driving [29]

In 2010, NHTSA conducted research to further develop its driving simulator method in order to assess the distraction potential of secondary tasks performed using in-vehicle information systems in production vehicles or portable electronic devices. The ''Dynamic Following and Detection'' (DFD) method combines car following and visual target detection, can be used with different vehicles, and requires minimal set up effort. Performance degradation in measures of lateral position, car following, and visual target detection, which are recorded for trials with secondary tasks, is compared to baseline driving performance and trials with a benchmark task (destination entry). NHTSA conducted a study to assess the effects of performing Manual Number and Text Entry (MNTE) tasks using integrated and portable devices in a driving simulator scenario to compare the DFD metrics with metrics specified in the Alliance of Automobile Manufacturers Driver-Focus Telematics Guidelines (the Alliance Guidelines). This study was also intended to evaluate different test participant selection criteria and sample sizes.

Specifically, the study examined Alliance Guidelines' Principle 2.1, which states:

Systems with visual displays should be designed such that the driver can complete the desired task with sequential glances that are brief enough not to adversely affect driving.[30]

The Alliance proposed two alternatives for assessing compliance. Alternative A includes two criteria that should be met: (1) durations of single

[28] Ranney, T.A., Baldwin, G.H.S., Parmer, E., Domeyer, J., Martin, J., and Mazzae, E. N., ''Developing a Test To Measure Distraction Potential of In-Vehicle Information System Tasks in Production Vehicles,'' DOT HS 811 463, November 2011.

[29] Ranney, T.A., Baldwin, G.H.S., Parmer, E., Martin, J., and Mazzae, E. N., ''Distraction Effects of Manual Number and Text Entry While Driving,'' DOT HS 811 510, August 2011.

[30] P. 38, Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

glances to the task should generally not exceed 2 seconds; and (2) total glance time to the task (TGT) should not exceed 20 seconds. Alternative B identifies two driving performance measures (lane exceedance frequency and car-following headway variability) and outlines a generic test protocol in which task-related degradation is related to degradation on a benchmark task (radio tuning).

For the MNTE study, an experiment was conducted in which 100 participants aged 25 to 64 years performed number and text entry tasks during 3-minute drives using the STISIM driving simulator. Sensors connected to the steering, brake, and throttle of a single stationary 2010 Toyota Prius (with engine off) provided control inputs to the fixed-base driving simulator. The significant overlap in data collection requirements between Alliance and DFD protocols allowed the necessary data for a side-by-side comparison to be obtained from a single experiment. The experiment had three independent variables: (1) Portable device (hard button cell phone or touch-screen cell phone) [31]; (2) benchmark (radio tuning or destination entry); and (3) driver age. Secondary tasks performed included two methods of phone dialing (10-digit dialing [32] and contact selection), text messaging, destination entry and radio tuning.

Study results showed that text messaging was associated with the highest level of distraction potential. Ten-digit dialing was the second most distracting task; radio tuning had the lowest level. Although destination entry was no more demanding than radio tuning when task duration effects were eliminated with DFD metrics, it exposes drivers to more risk than radio tuning and phone tasks due to its considerably longer duration. Modest differences between phones were observed, including higher levels of driving performance degradation associated with the touch screen relative to the hard button phone for several measures. Additional analyses demonstrated that the way in which task duration is considered in the definition of metrics influenced the outcomes of statistical tests using the metrics. The results are discussed in the context of the development of guidelines for assessment of the distraction potential of tasks performed with in-vehicle information systems and portable devices.

Additional analyses were conducted to compare the DFD and Alliance Guidelines' decision criteria in a simulated compliance scenario. With the large sample size (N = 100), both protocols supported the conclusion that neither text messaging nor 10-digit dialing is suitable for combining with driving; however, when a smaller (N = 40) sample was used, the protocols led to different conclusions. Considering only the vehicle performance metrics (not the eye glance metrics), samples of 20 participants did not provide sufficient statistical power to differentiate among secondary tasks.

Driver age had significant effects on both primary and secondary task performance; younger drivers completed more secondary task trials on a given drive with relatively less primary task interference than older drivers. Tests conducted using samples with wide age ranges (25–64) required larger samples to compensate for reduced homogeneity relative to samples with narrow age ranges.

Based on these results, two issues were identified as having implications for developing guidelines to assess the distraction potential of tasks performed with in-vehicle and portable systems. The first issue pertains to the question of how to incorporate task duration into the construction and interpretation of metrics. Secondary tasks differ in duration and these differences influence the overall exposure to risk. Metrics that summarize performance over varying durations are influenced by differences in task duration. In contrast, metrics that normalize for task duration summarize task performance over equivalent time intervals and thus represent the expected magnitude of performance degradation at any point in time during which a task is performed. These approaches provide complementary information, which could be used together to characterize the total exposure to risk associated with different tasks. One approach toward integration involves using duration-controlled metrics to estimate the average level of performance degradation associated with a particular secondary task and then multiplying this estimate by the average or some specified percentile (*e.g.,* 85th) task duration to estimate the total exposure to risk associated with performing the task once.

The finding having the most prominent implications for developing driver distraction guidelines for visual-manual interactions was that the driving simulation method of measuring distraction potential is most sensitive to differences in distraction levels of secondary tasks when performed using more than 40 test participants of homogeneous age range.

G. Principal Findings of NHTSA Driver Distraction Metric Research

Each of the research studies described above provided information which laid the foundation for the NHTSA Guidelines. The principal findings include the following:

- Visual-manual secondary tasks affected driving performance more than auditory-vocal tasks.[33] This could change as auditory-vocal interfaces become more prevalent and allow drivers to perform more complex secondary tasks.
- Eye-glance data contained important information for assessing the distraction effects of both auditory-vocal and visual-manual tasks.[34]
- The interference to driving caused by in-vehicle secondary tasks was multidimensional and no single metric could measure all effects.[35]
- CAMP Driver Workload Metrics project concluded that cognitive distraction played a much smaller role than visual distraction.[36] Again, this could change as auditory-vocal interfaces become more prevalent and allow drivers to perform more complex secondary tasks.

The research involved the development of sensitive test procedures and metrics for measuring driver distraction. Some of the conclusions drawn from the research which contributed to the basis of content in the NHTSA Guidelines include:

- Experimentation involving a fixed-based driving simulator in a laboratory environment provided better control of test conditions, particularly visibility, and less measurement error than did experimentation utilizing a test track.[37]
- Limited fidelity of driving simulation did not reduce the sensitivity of simulator-based metrics for detecting targeted differences between task conditions.[38]
- Metrics found to be sensitive to differences between visual-manual task conditions include lane-position

[31] Test participants were unfamiliar with the device being used as per the test procedure requirements.

[32] Dialing using 10 digits was the only number of digits examined in this study.

[33] Angell, L., Auflick, J., Austria, P. A., Kochhar, D., Tijerina, L., Biever, W., Diptiman, T., Hogsett, J., and Kiger, S., ''Driver Workload Metrics Task 2 Final Report,'' DOT HS 810 635, November 2006.

[34] *Ibid.*

[35] *Ibid.*

[36] *Ibid.*

[37] Ranney, T.A., Baldwin, G.H.S., Vasko, S.M., and Mazzae, E.N., ''Measuring Distraction Potential of Operating In-Vehicle Devices,'' DOT HS 811 231, December 2009.

[38] *Ibid.*

variability (SDLP), the time required for a following vehicle to react to lead vehicle speed changes, and detection task response time.[39]

• Metrics found to be sensitive to differences between auditory-vocal task conditions included the time required for a following vehicle to react to lead vehicle speed changes, detection task response time, and detection task proportion of correct responses.[40]

• Core metrics for assessing distraction potential using driving simulator-based methods include lane-position variability, the time required for a following vehicle to react to lead vehicle speed changes, detection task response time, and the proportion of correct responses due to their increased sensitivity for detecting differences within task conditions.[41]

• Differences in sample size and sample construction (test participant age) have significant differences on test outcome. Sample sizes larger than 40 participants are needed for the vehicle performance metrics in order to provide adequate statistical power and avoid effects of sample composition.[42]

• A driving scenario involving a following task with constant lead vehicle speed seems to provide a less realistic level of driving task difficulty and may not sufficiently engage test participants in the test protocol.[43]

With regard to specific tasks and their treatment in the NHTSA Guidelines for visual-manual tasks, the following research findings provided key input:

• Text messaging was found to be more distracting than any other secondary task considered in this study on a number of metrics. The Alliance and DFD metrics and decision criteria both supported the conclusion that text messaging is not suitable for performance while driving.[44]

• Phone dialing using 10 digits was found to be only slightly less distracting than text messaging. For larger sample sizes, the Alliance and DFD metrics and decision criteria both suggested that 10-digit phone dialing is not suitable for performance while driving.[45] This study did not examine 7-digit phone dialing. However, NHTSA is currently performing research to examine the suitability of 7-digit phone dialing while driving.

V. Driver Distraction Prevention and Reduction Guidelines

A. Currently Existing Driver Distraction Guidelines

On July 18, 2000, NHTSA held a public meeting to address a growing concern in the traffic safety community—driver distraction. This meeting addressed the rapid emergence of informational and entertainment devices, as well as cellular telephones. Consistent with NHTSA's regulatory authority, the Agency issued a challenge to the automotive industry—develop interface guidelines to reduce the distraction potential of emerging technologies. The Alliance of Automobile Manufacturers accepted the challenge by developing a set of ''best practices'' for ''telematic'' (communication, entertainment, information, and navigation) devices. The first version of the Alliance's Statement of Principles, Criteria and Verification Procedures on Driver Interactions with Advanced In-Vehicle Information and Communication Systems (referred to elsewhere in this document as the Alliance Guidelines), were published in December 2000. Updates to the Alliance Guidelines was published in April 22, 2002 (Version 2.0), November 19, 2003 (Version 2.1), and, the most recent version (Version 3.0), on June 26, 2006.[46]

The Alliance Guidelines consist of 24 principles (organized into five groups: Installation Principles, Information Presentation Principles, Principles on Interactions with Displays/Controls, System Behavior Principles, and Principles on Information about the System) that apply to each device's driver interface to ensure safe operation while driving. Each principle includes, when appropriate for that principle, a rationale, verification methods, acceptability criteria, and examples. Quoting from the Alliance Guidelines,[47] its principles are as follows:

Section 1: Installation Principles

- Principle 1.1: The system should be located and fitted in accordance with relevant regulations, standards, and the vehicle and component manufacturers' instructions for installing the systems in vehicles.
- Principle 1.2: No part of the system should obstruct the driver's field of view as defined by applicable regulations.
- Principle 1.3: No part of the physical system should obstruct any vehicle controls or displays required for the driving task.
- Principle 1.4: Visual displays that carry information relevant to the driving task and visually-intensive information should be positioned as close as practicable to the driver's forward line of sight.
- Principle 1.5: Visual displays should be designed and installed to reduce or minimize glare and reflections.

Section 2: Information Presentation Principles

- Principle 2.1: Systems with visual displays should be designed such that the driver can complete the desired task with sequential glances that are brief enough not to adversely affect driving.
- Principle 2.2: Where appropriate, internationally agreed upon standards or recognized industry practice relating to legibility, icons, symbols, words, acronyms, or abbreviations should be used. Where no standards exist, relevant design guidelines or empirical data should be used.
- Principle 2.3: Available information relevant to the driving task should be timely and accurate under routine driving conditions
- Principle 2.4: The system should not produce uncontrollable sound levels liable to mask warnings from within the vehicle or outside or to cause distraction or irritation.

Section 3: Principles on Interactions with Displays/Controls

- Principle 3.1: The system should allow the driver to leave at least one hand on the steering control.
- Principle 3.2: Speech-based communication systems should include provision for hands-free speaking and listening. Starting, ending, or interrupting a dialog, however, may be done manually. A hands-free provision should not require preparation by the driver that violates any other principle while the vehicle is in motion.
- Principle 3.3: The system should not require uninterruptible sequences of manual/visual interactions. The driver should be able to resume an operator-interrupted sequence of manual/visual interactions with the system at the point of interruption or at another logical point in the sequence.
- Principle 3.4: In general (but with specific exceptions) the driver should be able to control the pace of interaction with the system. The system should not require the driver to make time-critical responses when providing input to the system.
- Principle 3.5: The system's response (*e.g.* feedback, confirmation) following driver

[39] Ranney, T.A., Baldwin, G.H.S., Parmer, E., Domeyer, J., Martin, J., and Mazzae, E.N., ''Developing a Test to Measure Distraction Potential of In-Vehicle Information System Tasks in Production Vehicles,'' DOT HS 811 463, November 2011.

[40] *Ibid.*

[41] *Ibid.*

[42] *Ibid.*

[43] *Ibid.*

[44] Ranney, T.A., Baldwin, G.H.S., Parmer, E., Martin, J., and Mazzae, E.N., ''Distraction Effects of Manual Number and Text Entry While Driving,'' DOT HS 811 510, August 2011.

[45] *Ibid.*

[46] Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions With Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

[47] PP 1–5, Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

input should be timely and clearly perceptible.

Principle 3.6: Systems providing non-safety-related dynamic (*i.e.* moving spatially) visual information should be capable of a means by which that information is not provided to the driver.

Section 4: System Behavior Principles

Principle 4.1: Visual information not related to driving that is likely to distract the driver significantly (*e.g.,* video and continuously moving images and automatically scrolling text) should be disabled while the vehicle is in motion or should be only presented in such a way that the driver cannot see it while the vehicle is in motion.

Principle 4.2(a): System functions not intended to be used by the driver while driving should be made inaccessible for the purpose of driver interaction while the vehicle is in motion.

Principle 4.2(b): The system should clearly distinguish between those aspects of the system, which are intended for use by the driver while driving, and those aspects (*e.g.* specific functions, menus, etc) that are not intended to be used while driving.

Principle 4.3: Information about current status, and any detected malfunction, within the system that is likely to have an adverse impact on safety should be presented to the driver.

Section 5: Principles on Information about the System

Principle 5.1: The system should have adequate instructions for the driver covering proper use and safety-relevant aspects of installation and maintenance.

Principle 5.2: Safety instructions should be correct and simple.

Principle 5.3: System instructions should be in a language or form designed to be understood by drivers in accordance with mandated or accepted regional practice.

Principle 5.4: The instructions should distinguish clearly between those aspects of the system that are intended for use by the driver while driving, and those aspects (*e.g.* specific functions, menus, etc.) that are not intended to be used while driving.

Principle 5.5: Product information should make it clear if special skills are required to use the system or if the product is unsuitable for particular users.

Principle 5.6: Representations of system use (*e.g.* descriptions, photographs, and sketches) provided to the customer with the system should neither create unrealistic expectations on the part of potential users, nor encourage unsafe or illegal use.

The Alliance Guidelines provide a comprehensive set of recommendations designed to limit visual-manual distraction while driving. The document includes relevant definitions, human factors principles for good device driver-interface design, methods for verifying compliance with the principles, and a number of examples. These Alliance Guidelines serves as an excellent foundation for the development of the NHTSA Guidelines.

In addition to the Alliance Guidelines, numerous other standards and guidelines documents have been developed. A summary of these is contained in the SAE paper ''Driver Interface/HMI Standards to Minimize Driver Distraction/Overload.''[48] The two other sets of these guidelines that most directly deal with driver distraction (in addition to the Alliance Guidelines) were:

- Commission Recommendation of 26 May 2008 on Safe and Efficient In-Vehicle Information and Communication Systems; Update of the European Statement of Principles on Human-Machine Interface (referred to as the ''European Guidelines'').[49]
- The Japan Automobile Manufacturers Association Guidelines for In-vehicle Display Systems—Version 3.0 (referred to as the ''JAMA Guidelines'').[50]

The European Guidelines consist of 34 principles that each in-vehicle device's driver interface should meet to ensure safe operation while driving, as well as 16 safety recommendations for drivers, employers, advertisers, and personnel working for vehicle-for-hire operations. Driver interface principles are grouped into the following areas: Overall Design Principles, Installation Principles, Information Principles, Interactions with Controls and Displays Principles, System Behavior Principles, and Information about the System Principles, most of which are similar to the corresponding principles in the Alliance Guidelines. The principles present in the European Guidelines that are not present in the Alliance Guidelines are typically understood in the latter and do not have verification methods given in the former. For example, the first European Guidelines principle is:

> The system supports the driver and does not give rise to potentially hazardous behavior by the driver or other road users.[51]

While this principle is not explicitly written in the Alliance Guidelines, reading them clearly shows that this principle is the underlying one for all of the Alliance Guidelines.

Unlike the Alliance Guidelines, the European Guidelines do not prescribe testing methods and acceptance criteria for determining whether a task can safely be performed by the driver while a vehicle is in motion. For example, one very important Alliance Guidelines principle, Principle 2.1, is:

> Systems with visual displays should be designed such that the driver can complete the desired task with sequential glances that are brief enough not to adversely affect driving.[52]

The Alliance Guidelines then follow this statement with many pages describing how to verify that a device's interface meets this principle. In contrast, the corresponding European Guidelines principle reads:

> Visually displayed information presented at any one time by the system should be designed in such a way that the driver is able to assimilate the relevant information with a few glances which are brief enough not to adversely affect driving.[53]

However, the European Guidelines limit statements about the verification process to:

> Compare design alternatives for the presentation of information: the number and duration of glances needed to detect and acquire relevant information presented at any one time should be minimized.[54]

The JAMA Guidelines consist of four basic principles and 25 specific requirements that apply to each device's driver interface to ensure safe operation while driving. Specific requirements are grouped into the following areas: Installation of Display Systems, Functions of Display Systems, Display System Operation While Vehicle in Motion, and Presentation of Information to Users. Additionally, there are three annexes: Display Monitor Location, Content and Display of Visual Information While Vehicle in Motion, and Operation of Display Monitors While Vehicle in Motion, as well as one appendix: Operation of Display Monitors While Vehicle in Motion.

[48] Green, P., ''Driver Interface/HMI Standards to Minimize Driver Distraction/Overload,'' SAE Paper 2008–21–2002, 2008.

[49] Commission of the European Communities, ''Commission Recommendation of 26 May 2008 on Safe and Efficient In-Vehicle Information and Communication Systems; Update of the European Statement of Principles on Human-Machine Interface,'' 2008.

[50] Japan Automobile Manufacturers Association, ''Guideline for In-Vehicle Display Systems, Version 3.0,'' Japan Automobile Manufacturers Association, Tokyo, Japan, August 2004.

[51] P. 7, Commission of the European Communities, ''Commission Recommendation of 26 May 2008 on Safe and Efficient In-Vehicle Information and Communication Systems; Update of the European Statement of Principles on Human-Machine Interface,'' 2008.

[52] P. 38, Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

[53] P. 13, Commission of the European Communities, ''Commission Recommendation of 26 May 2008 on Safe and Efficient In-Vehicle Information and Communication Systems; Update of the European Statement of Principles on Human-Machine Interface,'' 2008.

[54] *Ibid.*

Approximately one-half of the specific requirements in the JAMA Guidelines are essentially identical to the corresponding principles in the Alliance and European Guidelines.

Like the Alliance Guidelines, the JAMA Guidelines prescribe acceptance criteria for determining whether a task can safely be performed by the driver while a vehicle is in motion. Based on the specified acceptance criteria, the JAMA Guidelines imply the use of the same testing methods (the JAMA Guidelines do not actually specify testing methods) as are contained in the Alliance Guideline's Alternative A verification options: *Eye Tracker Measurement, Video Recording of Test Participant's Eyes/Face,* and *Testing using Occlusion.* However, the JAMA acceptance criteria are more constraining than those found in the Alliance Guidelines. The JAMA Guidelines limit the maximum driver total glance time while performing a task (JAMA uses the same definition for task as is used in the Alliance Guidelines) to 8.0 seconds or 7.5 seconds if occlusion is used (compare to the Alliance Guidelines limits of 20.0 seconds for maximum driver total glance time or 15.0 seconds for occlusion).

The JAMA Guidelines also contain a recommended limit on the amount of dynamic test that can be displayed to the driver at one time. As the JAMA Guidelines state:

> The number of letters (*e.g.,* characters, kana, alphabets) displayed at a time shall not exceed 31,[55] provided that a number such as ''120'' or a unit such as km/h'' is deemed to be a single letter irrespective of the number of digits. Punctuation marks are not included in the count of letters.[56]

The JAMA Guidelines are far shorter, and, as a result, far less detailed than either the Alliance or European Guidelines.

Of the various driver distraction prevention and reduction guidelines that were reviewed, NHTSA has decided that the current version of the Alliance Guidelines serves as the best basis for the development of the NHTSA Guidelines. They are the most complete of the three guideline sets considered and contain far more information about verification procedures than do the European or JAMA Guidelines. There are only a few contradictions between the three sets of guidelines, with the principal one being the JAMA Guidelines previously discussed prohibition on performing non-driving related tasks while in motion.

The Alliance and European Guidelines are quite similar; a device that meets one set of these guidelines will meet the other. The Japanese Guidelines are more restrictive—they do not allow quite a number of devices to function whenever the vehicle is in motion. As a result, a vehicle that strictly follows the JAMA Guidelines should meet all of the recommendations of both the Alliance and European Guidelines but not necessarily vice-versa.

When there are items contained in either the European or JAMA Guidelines that are not in the Alliance Guidelines, NHTSA has carefully considered them and included them in the NHTSA Guidelines when we agree with them (*e.g.,* the 30 character limit in the NHTSA Guidelines on the amount of text that may be read comes from the JAMA Guidelines).

As a convenience to readers, NHTSA has placed copies of the Alliance, European, and JAMA Guidelines into the distraction docket.[57]

B. Why NHTSA Is Issuing Its Own Guidelines for Limiting and Reducing Driver Distraction

NHTSA has decided to issue its own guidelines for limiting and reducing driver distraction associated with the use of in-vehicle electronic devices while driving. Voluntary guidelines developed by others in the past have been instrumental in the development of these NHTSA Guidelines. The NHTSA Guidelines are being issued for the following reasons:

- So as to have guidelines available for all passenger cars, multipurpose passenger vehicles, and trucks and buses with a Gross Vehicle Weight Rating (GVWR) of not more than 10,000 pounds.
- So as to have guidelines applicable to all communications, entertainment, information, and navigation devices installed in vehicles as original equipment.
- So as to incorporate the latest driver distraction research into the guidelines. There has been much research on driver distraction in the five years since the Alliance Guidelines were last updated; NHTSA believes that it is valuable to incorporate the results of this recent research into guidelines that serve to reduce or prevent driver distraction prevention.
- Per the Highway Safety Act of 1970, NHTSA is responsible for reducing deaths, injuries and economic losses resulting from motor vehicle crashes; in short, NHTSA is responsible for vehicle safety. While manufacturers also have a strong interest in safety, they are also influenced by other factors, such as market forces. Therefore, the NHTSA Guidelines will focus solely on safety and the safety impact of final (*i.e.,* consumer-ready) products. In contrast, other guidelines focus more on the design process, which involves consideration of factors in addition to safety, and include metrics that can be used on prototype designs.
- NHTSA has identified some aspects of the current Alliance Guidelines that are loosely specified or provide multiple compliance assessment options that may correspond to different levels of associated safety. NHTSA would like to specify a test procedure that is straight-forward, clearly defined, and well-substantiated in order to aid the voluntary adoption of its NHTSA Guidelines. Minimizing the opportunity for variability in carrying out the test procedure will ensure that manufacturers would be able to easily and consistently implement the NHTSA Guidelines across their light vehicle fleets.

Before undertaking this guideline effort, NHTSA met with several manufacturers in 2010 to determine how they had implemented the Alliance Guidelines. During these meetings, NHTSA learned that implementation varies across, and sometimes within, manufacturers. This information has been useful to NHTSA to attain a better understanding of the practical considerations and constraints facing manufacturers when developing vehicle technologies. This information has been taken under consideration by NHTSA while drafting the new NHTSA Guidelines.

The NHTSA Guidelines, while adopting much of the content of the Alliance Guidelines, incorporate a number of changes in an effort to further enhance driving safety, to enhance guideline usability, to improve implementation consistency, and to incorporate the latest driver distraction research findings. The proposed NHTSA Guidelines and their rationales, including the rationale for departures from the Alliance Guidelines, are

[55] The JAMA Guidelines appear inconsistent as to the maximum number of letters that they allow to be displayed at one time. The above quote, which is taken from page 7 of the JAMA Guidelines appears to set the maximum allow number of letters to 31. However, the statement on page 13, ''display of 31 or more letters at a time is prohibited,'' appears to contradict this 31 character maximum value. NHTSA has selected the more conservative of these two values for its proposal.

[56] P. 7, Japan Automobile Manufacturers Association, ''Guideline for In-Vehicle Display Systems, Version 3.0,'' Japan Automobile Manufacturers Association, Tokyo, Japan, August 2004.

[57] Docket No. NHTSA–2010–0053.

discussed in detail in later portions of this notice.

C. First Phase of NHTSA's Driver Distraction Guidelines Focuses on Original Equipment Devices With Visual-Manual Driver Interfaces

As discussed in NHTSA's Driver Distraction Program, NHTSA's intent is to ''develop voluntary guidelines for minimizing the distraction potential of in-vehicle and portable devices.'' Electronic devices in a motor vehicle can divided into three broad classes, depending upon their origin. These devices may have been built into a vehicle when it is manufactured (*i.e.,* original equipment devices), installed in a vehicle after it has been built (*i.e.,* aftermarket devices), or brought into a vehicle (portable devices). The current notice only contains voluntary NHTSA Guidelines for visual-manual interactions associated with original equipment devices. Portable devices will be addressed by Phase 2 of the NHTSA Guidelines. These and the remaining phases of the NHTSA Guidelines are outlined in Table 2.

As noted earlier, drivers perform tasks using an in-vehicle electronic device by interacting with the device through its driver interface. The driver interfaces of these devices can be designed to accommodate interactions that are visual-manual, auditory-vocal, or a combination of the two.

The goal of the NHTSA Guidelines is to discourage the design of in-vehicle device interfaces that do not minimize driver distraction associated with secondary task performance. The NHTSA Guidelines specify criteria and a test method for assessing whether a secondary task performed using an in-vehicle device may be suitable for performance while driving, due to its minimal impact on driving performance and, therefore, safety. The NHTSA Guidelines also seek to identify secondary tasks that interfere with a driver's ability to safely control their vehicle and to categorize those tasks as ones that are not suitable for performance by the driver while driving.

For each of the three possible origins of in-vehicle electronic devices, both visual-manual and auditory-vocal interaction modes may be possible. Table 2 indicates the order in which NHTSA plans to develop its NHTSA Guidelines to address the different device origins and interfaces.

TABLE 2—MATRIX SHOWING NHTSA DRIVER DISTRACTION GUIDELINE PHASES BASED ON DEVICE ORIGINS AND INTERACTION TYPES

Type of interaction	Origin of device		
	Original equipment	Aftermarket	Portable
Visual-Manual	NHTSA Driver Distraction Guidelines, Phase 1.	NHTSA Driver Distraction Guidelines, Phase 2.	NHTSA Driver Distraction Guidelines, Phase 2.
Auditory-Vocal	NHTSA Driver Distraction Guidelines, Phase 3.	NHTSA Driver Distraction Guidelines, Phase 3.	NHTSA Driver Distraction Guidelines, Phase 3.

This notice proposes Phase 1 of the NHTSA Driver Distraction Guidelines. NHTSA plans to issue Phase 2 (aftermarket and portable devices) of its NHTSA Guidelines in 2013 and Phase 3 (auditory-vocal interfaces) in 2014. Our NHTSA Guidelines are being developed in these phases because:

- While some international and voluntary consensus standards exist that relate to visual-manual interfaces for in-vehicle devices, no similar standards for devices with auditory-vocal interfaces exist. Auditory-vocal interfaces are newer than are visual-manual interfaces; as a consequence less research has been performed on driver distraction while using auditory-vocal interfaces. Research is needed on such subjects as how to best measure the level of driver distraction induced when auditory-vocal interfaces are used. Based on this shortage of research, NHTSA intends to delay the extension of its NHTSA Guidelines to cover auditory-vocal interfaces until Phase 3 of guideline development.
- From naturalistic driving research, the secondary tasks with the highest risk odds ratios tend to be primarily visual-manual in nature with only a relatively small cognitive component. Of course, every secondary task results in some cognitive load; however, tasks such as Reaching for a Moving Object or Eating require that the driver's eyes and hands be used to perform non-driving tasks but do not require a lot of thought. It is not until the ninth highest risk odds ratio in Figure 1; Talking/Listening to a Hand-Held Device that a secondary task appears that is heavily cognitive in nature.[58] Furthermore, this secondary task's risk odds ratio is not statistically significantly different from 1.00 at the 95 percent confidence level. In fact, there are no secondary tasks in Figure 1 that have risk odds ratios which are statistically significantly greater than 1.00 that are primarily cognitive in nature.
- There may be special challenges associated with guidelines for both aftermarket and portable devices. Given that for some device types the only substantial difference between an integrated and a portable version of the device will be the device location (fixed or variable), most of the NHTSA visual-manual Driver Distraction Guideline criteria are expected to also be appropriate for aftermarket and portable devices with visual-manual driver interfaces. However, NHTSA thinks that additional research is necessary to determine if there are other considerations for guidelines for aftermarket and portable devices. Therefore, NHTSA intends to implement the extension of its NHTSA Guidelines to cover aftermarket and portable devices in Phase 2 of guideline development.

D. Past NHTSA Actions on Driver Distraction

Before this notice, NHTSA had published one **Federal Register** notice that was related to driver distraction. On June 3, 2008, NHTSA denied[59] a petition from the Center for Auto Safety requesting that NHTSA do the following:

1. Issue a Notice of Proposed Rulemaking (NPRM) to require that any personal communication systems integrated into a vehicle, including cellular phones and text messaging

[58] It could be argued that ''Reading'' generates high cognitive distraction. Clearly ''Reading'' generates a high visual load. Unfortunately, we do not, at this time, have the ability to measure the cognitive load generated by ''Reading.'' However, it seems reasonable that the cognitive distraction generated would vary depending upon what is being read. NHTSA believes that what are most commonly being read by drivers are signs or simple printed material that are not expected to generate high cognitive distraction.

[59] **Federal Register**, Vol. 73, No. 107, pp. 31663–31665, June 3, 2008.

systems, be inoperative when the transmission shift lever is in a forward or reverse gear.

2. Issue an Advance Notice of Proposed Rulemaking (ANPRM) to consider requiring that other integrated telematic systems in vehicles that significantly increase crash rates be inoperative when the transmission shift lever is in a forward or reverse gear.

3. Increase efforts to support state programs to limit cell phone use by drivers in moving vehicles in the same manner that it supports state programs against drunk driving.

Part of NHTSA's rationale for denying the Center for Auto Safety petition was, as stated in the **Federal Register** notice, the concern that:

> If integrated cell phones and other telematic devices were required to be inoperative, drivers could instead use portable devices such as their regular cell phones.[60]

NHTSA remains concerned about the possibility of drivers increasing their use of portable devices due to restrictions being placed on integrated devices. Based on this concern, NHTSA considers it essential that guidelines for aftermarket and portable devices be developed as rapidly as feasible following the development of NHTSA Guidelines for original equipment devices. As shown in Table 2 and explained in the discussion following this table, the development of NHTSA Guidelines for aftermarket and portable visual-manual device interfaces (Phase 2) is planned to begin immediately following the completion of the original equipment visual-manual NHTSA Guidelines (Phase 1).

E. Challenges Relating to the Development of Interface Guidelines To Minimize Driver Distraction

Developing guidelines for device driver interfaces that minimize distraction and its impact on driving performance is complicated. Research is ongoing to identify the best methods and metrics by which to measure the effects of distraction on driving performance. Even though research on this topic has not been completed, NHTSA thinks it important to be proactive and provide guidance on how manufacturers may limit the range and complexity of in-vehicle device tasks that may be considered in the future so as to ensure the safety of drivers and fellow road users. Therefore, NHTSA presents in this notice its current ''best'' proposal based on information currently available.

The challenges involved in developing driver distraction guidelines and assessing whether covered devices meet associated criteria are many and non-trivial. These challenges include:

1. Ensuring that criteria that device tasks should meet are rigorously developed, validated, and substantiated by experimental data.

2. Developing Guideline criteria that are generalized to all device types covered by these NHTSA Guidelines, including a wide range of existing devices and tasks as well as ones that may appear in future vehicles but have not yet been conceived.

3. Identifying sensitive metrics for measuring distraction and the most appropriate characteristics of the sample population used to assess the metrics.

4. Developing a test scenario for use in assessing the degree to which in-vehicle device tasks meet Guideline criteria that simulates the demand of actual driving under suitable and ''representative'' conditions.

5. Developing a repeatable and well-defined test protocol for use in assessing the degree to which in-vehicle device tasks meet Guideline criteria that implement the chosen driving scenario.

6. Formulating a tightly specified task definition to ensure that similar tasks are assessed for their ability to meet Guideline criteria in a similar manner by all relevant manufacturers.

7. Establishing criteria for the sample of experimental subjects to be tested using the test protocol (*i.e.,* number of test participants; test participant age ranges, experience, etc.).

8. Assessing whether minimizing total eyes-off-road time spent on a given secondary task actually results in an overall reduction in the total amount of eyes-off-road time spent on all secondary tasks, especially as the number of secondary tasks multiply with the introduction of more and more entertainment, communication and information devices, and capabilities.

Each of these challenges is elaborated upon in the following paragraphs.

1. The Guideline and task performance criteria that devices should meet need to be rigorously developed, valid, and substantiated by experimental data. While driver distraction is a topic for which most of the general public has opinions, decisions relating to what tasks a driver should be free to perform while driving should be made based on objective data. Having a data-based means of substantiating distraction guidelines provides a firm foundation to guarantee that measurable safety improvements are actually achieved.

2. Developing appropriate Guideline criteria for the broad range of current and future device task types and input methods is highly challenging. To date, a variety of manual means through which drivers can make control inputs to in-vehicle systems have been used. NHTSA Guidelines for systems with visual-manual interaction means should cover all types of traditional input controls, touch screens, and means of providing feedback to the driver. Beyond control input method, the types of tasks available vary and the extent of electronic device related tasks that may become available in future vehicles cannot be known at this time. For these reasons, establishing guidelines that will remain relevant in the long-term is a challenging issue.

3. Various metrics for characterizing distraction's impact on driving performance have been developed, but are still being debated within the research community and industry. Metric sensitivity and the relationship between the metrics and crash risk are topics of much contention. Some metrics require testing large numbers of test participants in order to achieve sufficient statistical power to allow significant effects to be observed, if they exist. Acceptance criteria need to be selected and justified based on safety data.

4. A test scenario that simulates the demands of actual driving under suitable and ''representative'' conditions needs to be defined in order to provide a baseline for use in measuring the impact of distracted driving. It should be insensitive to the dynamics of the vehicles being tested so as to minimize the need for complex and expensive vehicle characterization testing.

The amount of interference created by secondary task performance while driving is dependent on the complexity of the driving scenario in which the secondary task is performed. Drivers will have more spare attentional capacity that may be used to perform secondary tasks in less complex traffic conditions than they would in more complex traffic conditions. Therefore, secondary task performance would be expected to impact driving performance less in a low complexity driving situation than in a high complexity one. Choosing the most appropriate level of driving scenario complexity for assessment of distraction effects is difficult and important.

5. A test procedure must be developed to be able to assess adherence to the driver distraction guidelines criteria. While typical compliance testing measures the effects of a known magnitude and type of stimulus on a

[60] *Ibid,* P. 31664.

specific vehicle design's motion or structural integrity, a test of driver distraction measures the effects of a stimulus, the magnitude of which is difficult to quantify, on the ability of a non-standardized and variable system (*i.e.,* the driver) to control a vehicle safely. Given that the population of drivers varies widely in a number of aspects including driving skill, multi-tasking ability, attentional focus capacity, and propensity to perform non-driving tasks while driving, the sample of drivers needed for a test to determine adherence to the NHTSA Guidelines would need to be much larger than the sample size of one typically associated with a vehicle performance compliance test. Appropriate data reduction methods and tools also must be developed.

6. In order to have a standardized test for measuring the impact of secondary task performance on driving performance and safety, the test criteria must be well-specified. In particular, a clear definition of a ''task'' must be asserted to specify the series of driver actions needed to perform a secondary task that should be assessed for adherence to the NHTSA Guidelines' criteria. Unclear task specifications can result in inconsistent guideline adherence test performance throughout the industry. While the definition of task used in the Alliance Guidelines is short and conceptually clear, it can be difficult to determine for real devices whether something is one task or several. This is particularly challenging to do for devices and tasks that have not yet been developed.

7. Characteristics of the sample of test participants to be subjected to the test protocol (number of test participants; test participant criteria including age, experience, conflicts of interest, etc.) need to be identified. NHTSA is particularly worried about prior test participant experience with the devices that are being evaluated. Devices are frequently far more difficult to use (and hence, distracting) when drivers are not familiar with them. However, the vast majority of device usage is by drivers who use a device daily and are highly familiar with their operation.

8. It must be determined whether minimizing the total eyes-off-road time spent on a given secondary task actually results in an overall reduction in the total amount of eyes-off-road time spent on all secondary tasks. This is particularly important as the number of non-driving secondary tasks seemingly multiplies as more entertainment, communication and information devices, and capabilities are introduced into vehicles. (Are the number and variety of secondary tasks in fact multiplying or does it just seem that way?) Many people have speculated that making it safer for drivers to perform secondary tasks while driving will encourage drivers to perform more secondary tasks while driving. This is another application of risk homeostasis theory; people have an acceptable level of risk that they are comfortable with and they compensate for reductions in risk by taking on additional risks so as to maintain a relatively constant level of risk.

There is undoubtedly a certain amount of truth to risk homeostasis theory with regard to driving safety. For example, over the last 50 years, numerous safety improvements have been implemented in motor vehicles. Risk homeostasis theory predicts that drivers would drive more dangerously so as to maintain their overall acceptable level of risk. One way to do this is by driving faster. There is some evidence that this has happened. Speed limits have been increased. While drivers used to speed when the national speed limit was 55 mph, they still speed today when interstate highway speed limits have been increased to 65 to 75 mph. However, there is a clearly decreasing trend in the number of motor vehicle fatalities, especially when they are normalized by the number of vehicle miles traveled.

What seems to have happened in the past is that safety improvements have been partially, but not totally, offset by riskier driving behavior (frequently by increases in driving speed). However, substantial improvement in safety has remained, even after the changes in driver behavior. True risk homeostasis did not occur, but we did see behavioral adaptation as drivers partially compensated for the decrease in risk.

NHTSA anticipates that similar changes in driver behavior may be seen due to these NHTSA Guidelines. Some portion of the otherwise expected improvement in safety and reduction in driver workload associated with task performance may be used by drivers to perform more secondary tasks. However, there should also be an improvement in overall driving safety.

While NHTSA's primary focus is driving safety, other things are also important to drivers. Drivers, like any other category of people, will seek to have their personal needs met. Drivers are not forced to perform additional secondary tasks just because they have a vehicle designed for safe in-vehicle secondary task performance. Drivers perform these additional secondary tasks to meet their own needs. Even though some portion of the expected improvement in safety may be negated by the performance of more secondary tasks, the overall quality of life will be improved for drivers and other road users.

VI. Justification for Specific Portions of NHTSA Guidelines for Reducing Driver Distraction During Interactions With In-Vehicle Systems

A. Intended Vehicle Types

These proposed NHTSA Guidelines are appropriate for all passenger cars, multipurpose passenger vehicles, and trucks and buses with a GVWR of not more than 10,000 pounds. These are what NHTSA has traditionally called ''light vehicles.'' This category of vehicles has been the primary focus of NHTSA's past driver distraction research. Additionally, light vehicles have been a major platform for the push to incorporate built-in advanced technology, entertainment, and communications functions into vehicles. Focusing on this vehicle category serves as a step towards ensuring that the increasing features being offered in all vehicles do not produce an overwhelmingly distracting in-vehicle environment for the driver that can degrade safety. For these reasons, NHTSA has focused its distraction research on light vehicles. While much of what NHTSA has learned about light vehicle driver distraction undoubtedly applies to other vehicle types, additional research would be needed to assess whether all aspects of these NHTSA Guidelines are appropriate for application to those vehicle types.

B. Existing Alliance Guidelines Provide a Starting Point

The NHTSA Guidelines derive in part from the document ''Statement of Principles, Criteria, and Verification Procedures on Driver Interactions with Advanced In-Vehicle Information and Communication Systems including 2006 Updated Sections'' that was developed by the Alliance of Automobile Manufacturer's Driver-Focus Working Group (frequently referred to as the Alliance Guidelines).[61] Portions of the Alliance Guidelines have been carried over to the NHTSA Guidelines without changes. When the NHTSA Guidelines differ from the Alliance Guidelines, it is either due to recent research that has been performed since the development

[61] Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

of the Alliance Guidelines or because NHTSA believes that the changes made will increase the safety of the motoring public.

A number of the Alliance Guideline principles are not included in the NHTSA Guidelines. While NHTSA generally agrees with the excluded principles, NHTSA thinks that these principles are not appropriate to include in these NHTSA Guidelines.

The excluded principles, and their reasons for exclusion, are as follows:

• Principle 1.1: The system should be located and fitted in accordance with relevant regulations, standards, and the vehicle and component manufacturers' instructions for installing the systems in vehicles.[62]

NHTSA assumes that vehicle manufacturers will follow this principle when deciding where to locate devices within their vehicles. However, verification by NHTSA that devices meet this principle is difficult. The Alliance Guidelines verification section for this principle does not offer much guidance; it merely states:

Design to conform and validate by appropriate means as may be specified by relevant standards or regulations or manufacturer-specific instruction.[63]

As discussed above, NHTSA intends to monitor whether vehicles meet these NHTSA Guidelines to help determine their effectiveness and sufficiency. Accordingly, the NHTSA Guidelines do not include principles for which there is no reasonable method for NHTSA to assess Guideline adherence. It is hard for NHTSA to do this, at least for some devices, without having access to information known to the manufacturer but not necessarily to NHTSA. For these reasons, we do not believe it is feasible for NHTSA to develop the methods needed to monitor adherence to this principle.

• Principle 1.5: Visual displays should be designed and installed to reduce or minimize glare and reflections.[64]

Vehicle manufacturers report that they follow this principle when installing when deciding where to locate devices within their vehicles. Additionally, verification by NHTSA that devices meet this principle is difficult. The Alliance Guidelines verification section for this principle again does not offer much guidance; it merely states:

Verification should be done by appropriate means (*e.g.,* analysis, inspection, demonstration, or test).[65]

Furthermore, glare and reflections on device interfaces only indirectly contribute to driver distraction (and thereby affect safety). Finally, glare and reflection reduction and minimization is a complex problem that is best left to the vehicle designer. For all of these reasons, it does not seem feasible for NHTSA at this time to develop the complicated methods needed to monitor adherence to this principle.

• Principle 5.1: The system should have adequate instructions for the driver covering proper use and safety-relevant aspects of installation and maintenance.[66]

• Principle 5.2: Safety instructions should be correct and simple.[67]

• Principle 5.3: System instructions should be in a language or form designed to be understood by drivers in accordance with mandated or accepted regional practice.[68]

• Principle 5.4: The instructions should distinguish clearly between those aspects of the system that are intended for use by the driver while driving, and those aspects (*e.g.* specific functions, menus, etc) that are not intended to be used while driving.[69]

All four of these principles relate to the adequacy of the instructions that are provided to the driver. NHTSA does not have an objective means to determine instruction adequacy for a potentially broad range of device instructions. Therefore, we have excluded these four principles from the NHTSA Guidelines.

• Principle 5.5: Product information should make it clear if special skills are required to use the system or if the product is unsuitable for particular users. [70]

• Principle 5.6: Representations of system use (*e.g.* descriptions, photographs, and sketches) provided to the customer with the system should neither create unrealistic expectations on the part of potential users, nor encourage unsafe or illegal use.[71]

Both of these principles relate to the appropriateness of content in information about the device provided to the driver by the vehicle manufacturer. NHTSA does not believe that it is appropriate for NHTSA to determine the appropriateness of content in information provided to the driver by the vehicle manufacturer. Therefore, we have excluded both of these principles from the NHTSA Guidelines.

C. International Harmonization and Voluntary Consensus Standards

NHTSA is aware of the fact that since vehicles designed in many countries are sold in the United States and that vehicles designed in the United States are sold in many countries, motor vehicle manufacturers' desire internationally harmonized regulations. Unfortunately, comprehensive, internationally-harmonized, driver distraction prevention and reduction guidelines do not yet exist. (Although the high degree of similarity between the Alliance and European Guidelines is a good start towards international harmonization, NHTSA would like to see these guidelines made more stringent so as to better protect the safety of the motoring public.) Where international and voluntary consensus standards exist that are useful for portions of the NHTSA Guidelines, they have been carefully considered and utilized when appropriate. Specifically, for performing occlusion testing, NHTSA has used International Standards Organization (ISO) International Standard 16673:2007, ''Road Vehicles—Ergonomic Aspects of Transport Information and Control Systems—Occlusion Method to Assess Visual Demand due to the use of In-Vehicle Systems.'' Additionally, NHTSA has used SAE Surface Vehicle Recommended Practice J941–2010, ''Motor Vehicle Drivers' Eye Locations,'' published March 16, 2010, to determine the driver's eye point when determining the downward viewing angle to device displays.

NHTSA hopes that, in the future, it will be possible to develop the NHTSA Guidelines into an internationally harmonized practice.

The remainder of this section consists of a detailed discussion and justification of major items in the NHTSA Guidelines.

D. Statement of General Responsibilities

New in-vehicle technologies are being developed at an extremely rapid pace. NHTSA does not have the resources to evaluate the safety implications of every new device before it is introduced into vehicles. Such a practice would dramatically slow the rate of introduction of new technology into vehicles. Finally, and most importantly, adopting such a practice is unnecessary in light of the National Traffic and Motor Vehicle Safety Act of 1966's [72] requirement that each manufacturer bears primary responsibility for products that they produce that are in

[62] P. 13, Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

[63] *Ibid,* P. 14.

[64] *Ibid,* P. 37.

[65] *Ibid,* P. 37.

[66] *Ibid,* P. 79.

[67] *Ibid.*

[68] *Ibid.*

[69] *Ibid.*

[70] *Ibid.*

[71] *Ibid.*

[72] 80th Congress, Statute 718.

motor vehicles. A manufacturer that produces a vehicle or item of motor vehicle equipment that either does not comply with the FMVSSs or contains a defect creating an unreasonable risk to safety must recall the vehicle or equipment and provide the owner a remedy. 49 U.S.C. 30118–30120.

Accordingly, a section has been included in the NHTSA Guidelines emphasizing that, to protect the general welfare of the people of the United States; manufacturers are responsible for refraining from introducing new in-vehicle devices that create unreasonable risks to the safety of the driving public.

E. Scope—Devices for Which the NHTSA Guidelines Are Appropriate

The NHTSA Guidelines are appropriate for all information, navigation, communications, and entertainment systems integrated into the vehicle by the vehicle manufacturer. Note that, unlike the Alliance Guidelines, these NHTSA Guidelines are considered to be appropriate for both conventional and advanced varieties of information, navigation, communications, and entertainment systems.

The NHTSA Guidelines are not appropriate for collision warning or vehicle control systems. These systems are intended to aid the driver in controlling the vehicle and avoiding crashes and, therefore, are justified in capturing the driver's attention. The purpose of collision warning systems, in particular, is to alert the driver quickly to an unsafe condition and motivate the driver to make control inputs in an effort to avoid a crash. The idea of minimizing distraction stemming from this type of system is in conflict with their purpose—providing safety warnings to inattentive drivers.

In addition, other conventional controls and displays such as heating-ventilation-air conditioning (HVAC), instrument panel gauges and telltales, etc., are also out-of-scope for the NHTSA Guidelines. This is because operating vehicle control systems and looking at the related displays are part of the primary driving task, and are therefore not considered a distraction. Furthermore, attempting to include these devices in the scope of these NHTSA Guidelines could result in conflicts with either current or possible future Federal Motor Vehicle Safety Standards.

F. Definition of a Task

NHTSA tasked the Virginia Tech Transportation Institute (VTTI) to examine the Alliance Guideline's existing definition of a task to assess whether improvements to the definition could be made. In addition to reviewing the Alliance Guidelines, VTTI interviewed nine outside experts from academia, government, and industry about their use, and possible improvements to, the Alliance Guideline's definition.

VTTI's interviews found that experts were generally satisfied with the Alliance Guideline's definition of a task but believed that it could use some clarifications. Based on their self-reporting, the experts were generally using the Alliance Guideline's definition of a task consistently except for differences as to the precise start and end points of a task. These differences could affect whether a task meets the acceptance criteria for assessing whether a secondary task performed using an in-vehicle device may be suitable for performance while driving, due to its minimal impact on driving performance and, therefore, safety.

Additional details regarding this VTTI expert panel effort will be summarized in a NHTSA report to be released in 2012.

One VTTI recommendation that has been adopted in the NHTSA Guidelines is to emphasize that only tasks that can be reasonably subjected to a test should be subjected to a test, *i.e.,* do not test a task that is unbounded in duration and do not test a task that has no measurable magnitude or dose. Therefore, VTTI recommended that NHTSA refer to tasks in its NHTSA Guidelines as Testable Tasks. These Testable Tasks have well defined points at which the Start of Data Collection and End of Data Collection occur, which should resolve the differences seen between various experts on this issue of task start and end points.

Finally, VTTI recommended that NHTSA provide additional explanatory information and examples about Testable Task definitions. This information will be provided in a forthcoming NHTSA Technical Report.

G. Definition of Lock Out

To achieve the purpose of the NHTSA Guidelines, tasks that that do not meet the guideline criteria (or devices that are inherently distracting such as full-motion video displays) should be disabled so that they will not be accessible (*i.e.,* be ''locked out'') to the driver while ''driving'' a motor vehicle.

On October 1, 2009, President Obama issued an Executive Order, ''Federal Leadership on Reducing Text Messaging While Driving,'' [73] that instructed Federal employees and contractors not to perform text messaging while driving a United States Government owned vehicle, while driving their personal vehicle on official, United States Government, business, or while driving and using a United States Government owned electronic device. The Executive Order defines driving as follows:

> ''Driving'' means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise. It does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.[74]

NHTSA is proposing to make its definition of ''driving'' in the context of these NHTSA Guidelines consistent with the Executive Order's definition of ''driving.'' However, because these NHTSA Guidelines are meant for vehicle manufacturers designing in-vehicle integrated electronic device interfaces, the agency is proposing a definition that is framed in terms of the status of the vehicle rather than the conduct of the driver. Specifically, the NHTSA Guidelines recommend disabling unreasonably distracting tasks and/or devices while driving. For the NHTSA Guidelines, ''while driving'' is defined as any time the vehicle's engine is turned on and its transmission is not in ''Park'' (for automatic transmission vehicles; for manual transmission vehicles this changes to when the transmission is not in ''Neutral'' or the parking brake is ''Off'').[75]

[73] Executive Order, ''Federal Leadership on Reducing Text Messaging While Driving,'' October 1, 2009, retrieved from *http://www.whitehouse.gov/the_press_office/Executive-Order-Federal-Leadership-on-Reducing-Text-Messaging-while-Driving/* on March 22, 2011.

[74] The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) and Pipeline and Hazardous Materials Safety Administration (PHMSA) use a slightly different definition of driving. Their definition limits driving to operating a commercial motor vehicle on a highway. NHTSA is basing its definition of driving upon the one contained in the Executive Order because NHTSA is concerned with all vehicles operating on any type of roadway.

[75] Without the addition of expensive equipment vehicle manufacturers cannot know when the driver has pulled over to the side of, or off of, an active roadway and has halted in a location where the vehicle can safely remain stationary. For automatic transmission-equipped vehicles, the vehicle manufacturer can determine the position of the gear shift (this information is available on the Controller Area Network Bus (CANbus) for all modern vehicles). So operationally, NHTSA is equating placing the vehicle in ''park'' with ''the vehicle has halted in a location where the vehicle can safely remain stationary.'' For manual transmission vehicles, placing the vehicle in ''park'' is replaced by placing the vehicle in ''neutral'' with the parking brake on. Again, these are things that the vehicle manufacturer easily determine

H. Per Se Lock Outs

The NHTSA Guidelines contain a recommended list of ''*per se*'' lock outs for in-vehicle devices tasks that are considered unsafe for performance by the driver while driving. *Per se* lock outs are ones based on either public policy or law. They are meant for in-vehicle device tasks that are either obviously inappropriate for performance by a vehicle driver while driving or ones (such as photographic or graphical moving or still images not related to driving) for which the task-based test paradigm used to determine the acceptability of a task for performance while driving will not work due to the task being unbounded in some aspect.

After much consideration, NHTSA has decided to propose the following list of tasks considered to be suitable for lock out on a *per se* basis:

• Displaying photographic or graphical moving visual images not related to driving. This would include things such as video phone calls and other forms of video communication, as well as pre-recorded video footage, and television. Images considered to be related to driving include information that is useful in monitoring vehicle occupant status, maneuvering the vehicle, or assisting in route planning. Short, scrolling lists under the control of the driver (*e.g.,* navigation system destinations) should not be significantly distracting provided the information is presented in accordance with these NHTSA Guidelines. A visual image depicting blind zone areas around the vehicle would be considered information related to the driving task. Also, weather information that relates to the vicinity of the car, intended route information (such as a closed exit), or emergency information (such as the approach of an emergency response vehicle) are all considered to be information related to driving.

• Displaying photographic or graphical static visual images not related to driving. This would include album art and personal photos, among other things.

• Automatically scrolling text.

• Manual text entry (*e.g.,* drafting text messages, keyboard-based text entry). The driver should not input more than 6 button or key presses during the performance of a task. This limit is based on an assumed driver eyes-off-road time of 2.0 seconds per button or key press and NHTSA's maximum permitted total eyes-off-road time for a task of 12.0 seconds.

• Reading more than 30 characters, not including punctuation marks, of visually presented text (a number, no matter how many digits it contains, and a units designation (*e.g.,* mpg) each count as only one character). This character limit is taken from the JAMA Guidelines and is intended to prevent such tasks as reading text messages, reading electronic books, and manual Internet browsing. As pointed out by Transport Canada:

> The JAMA Guidelines are currently the most demanding recommendations set by the industry internationally.[76]

NHTSA believes that all of these activities are either obviously inappropriate for performance by a vehicle driver (*e.g.,* manual text entry while driving) or ones for which the task-based test paradigm used to determine lock outs on a task-by-task basis will not work (*e.g.,* viewing video images not related to driving, viewing static images not related to driving, and automatically scrolling text) or both (*e.g.,* reading more than 30 characters of visually presented text).

Rearview images presented for the purpose of aiding a driver to detect obstacles in the vehicle's path during a backing maneuver should not be locked out when presented in accordance with the allowable circumstances specified in FMVSS No. 111 since this information is driving related and for the purposes of improving safety.

I. Steering Wheel-Mounted Control Restrictions

The NHTSA Guidelines recommend that all device functions accessed via visual-manual interaction by the driver should be operable by using, at most, one of the driver's hands in order to be considered suitable for performance while driving.

For device controls located on the steering wheel, the Alliance Guidelines state that no device tasks should require simultaneous manual inputs from both hands, except in the following condition: one of the two hands maintains only a single finger input (*e.g.,* analogous to pressing ''shift'' on a keyboard). After due consideration, NHTSA has decided that it is not comfortable with this exception. NHTSA is concerned that tasks that require the simultaneous use of both hands, even one for which only a single finger input is required from one hand, will result in an unsafe situation. Therefore, the NHTSA Guidelines recommend against driver interfaces that utilize this special case of two-handed control.

J. Maximum Downward Viewing Angle

The NHTSA Guidelines recommend that the each device's active display area be located as close as practicable to the driver's forward line of sight. They include a specific recommendation for the maximum downward viewing angle to the geometric center of each display.

To determine a display's downward viewing angle, a nominal driver eye point must be selected. The NHTSA Guidelines recommend that the nominal driver eye point be that contained in the March 2010 revision of SAE Surface Vehicle Recommended Practice J941 ''Motor Vehicle Drivers' Eye Locations.''

Each device's display(s) should be mounted in a position where the downward viewing angle, measured at the geometric center of each active display area, is less than at least one of the following two angles:

• The 2D Maximum Downward Angle, or

• The 3D Maximum Downward Angle.

The 2D Maximum Downward Angle is equal to:

• 30.00 degrees for a vehicle with the height of the nominal driver eye point less than or equal to 1700 millimeters above the ground.

• Given by the following equation for nominal driver eye point heights greater than 1700 millimeters above the ground:

(available from the CANbus) and do not add extra cost.

[76] ''Strategies for Reducing Driver Distraction from In-Vehicle Telematics Devices: A Discussion Document,'' prepared by the Standards Research and Development Branch of the Road Safety and Motor Vehicle Regulations Directorate of Transport Canada, TP 14133 E, April 2003.

$$\theta_{2DMax} = 0.014333\, h_{Eye} + 15.07$$

where:

- θ_{2DMax} is the 2D Maximum Downward Angle, and
- h_{Eye} is the height of the nominal driver eye point above the ground.

The 3D Maximum Downward Angle is equal to:

- 28.16 degrees for a vehicle with the height of the nominal driver eye point less than or equal to 1146.2 millimeters above the ground.
- Given by the following equation for nominal driver eye point heights greater than 1146.2 millimeters above the ground:

$$\theta_{3DMax} = 63.025357\, \tan^{-1}\left[0.829722 \tan\left(0.263021 + 0.000227416\, h_{Eye}\right)\right]$$

where:

- θ_{3DMax} is the 3D Maximum Downward Angle, and
- h_{Eye} is the height above the ground of the nominal driver eye point.

These recommendations for the maximum display downward viewing angle are the same as those contained in the Alliance Guidelines except that the nominal driver eye point is slightly different. The Alliance Guidelines set the nominal driver eye point at the point specified in the June 1997 revision of SAE Surface Vehicle Recommended Practice J941 ''Motor Vehicle Drivers' Eye Locations.'' The Alliance Guidelines then add 8.4 mm to the height of the driver's nominal eye point. The driver's eye point location used by the NHTSA Guidelines is close to that used by the Alliance Guidelines for typical seat back angles. Therefore, this change is not expected to have any effects on the stringency of the NHTSA Guidelines compared to the Alliance Guidelines. The only reason for making this change is to avoid using an older version of an SAE standard when a newer version has already been adopted.

K. Tests Considered To Determine What Tasks Should Be Accessible While Driving

During development of the NHTSA Guidelines for visual-manual interfaces, the Agency considered seven test protocols and sets of acceptance criteria for determining whether performance of a task while driving is unreasonably distracting and should be locked out. This section will discuss the origins of these seven test protocols and sets of acceptance criteria. The subsequent section will discuss which of these test protocols and criteria NHTSA prefers for use in determining whether a task is unreasonably distracting.

Several of the candidate test protocols and sets of acceptance criteria were taken from the Alliance Guidelines. The Alliance Guidelines contain two alternatives for determining whether a task is unreasonably distracting for drivers while driving. These alternatives are discussed under Principle 2.1 of the Alliance Guidelines:

> Systems with visual displays should be designed such that the driver can complete the desired task with sequential glances that are brief enough not to adversely affect driving.[77]

[77] Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions With Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC, P. 38.

The Alliance Guideline's Alternative A reads:

> A visual or visual-manual task intended for use by a driver while the vehicle is in motion should be designed to the following criteria:
> A1. Single glance durations generally should not exceed 2 seconds; and
> A2. Task completion should require no more than 20 seconds of total glance time to display(s) and controls.[78]

The Alliance Guidelines include the following three verification procedures for Alternative A:

1. *Eye Tracker Measurement.* An eye tracker is used to measure the number and length of glances to the device while performing a task while driving either in a driving simulator, on a test track, or on an actual roadway using a standard driving scenario.

2. *Video Recording of Test Participant's Eyes/Face.* Post-testing, video of the test participant's eyes and face is reviewed and the number and length of glances to the device while performing a task while driving either in a driving simulator, on a test track, or on an actual roadway using a standard driving scenario is determined.

[78] *Ibid,* P. 39.

3. *Occlusion Testing.* Test participants perform the secondary task (but not the driving task) while undergoing alternating periods of time when they can and cannot see. The periods of time when they can and cannot see are generated either by occlusion goggles or some other means such as an opaque shutter that is placed and removed periodically from in front of the test participants' eyes. When performing occlusion testing, the Alliance Guidelines reduce the maximum permitted single glance durations to 1.5 seconds (forced by the occlusion cycle time) and the maximum permitted total glance time to 15 seconds. Note that the Alliance Guidelines occlusion testing technique uses a different occlusion cycle time (1.5 seconds open/1.0 second closed) than that called for by ISO International Standard 16673:2007, ''Road Vehicles—Ergonomic Aspects of Transport Information and Control Systems—Occlusion Method To Assess Visual Demand due to the use of In-Vehicle Systems'' (1.5 seconds open/1.5 seconds closed).

In developing these Guidelines, NHTSA considered the Alliance Principle 2.1 Alternative A techniques for determining whether a task is unreasonably distracting to be performed by drivers while driving. For test participant and other road user safety reasons, NHTSA has decided to recommend that NHTSA Guideline testing for the purposes of determining whether a task is suitable for performance while driving should not be performed on either test tracks or public roadways. NHTSA's fear is that, if such testing were performed on either test tracks or public roadways, it might be discovered that a task is unreasonably distracting by having a crash occur. Therefore, the NHTSA Guidelines suggest limiting testing to that performed in driving simulators, vehicle mockups, or similar, non-dangerous, testing venues.

NHTSA considered three test protocols and sets of acceptance criteria for determining whether a task is too distracting to be performed by drivers while driving that were based on Alliance Principle 2.1 Alternative A. For the purposes of this notice, Alliance Alternative A Verification Option 1, *Eye Tracker Measurement,* and Verification Option 2, *Video Recording of Test Participant's Eyes/Face* were considered together by NHTSA as *Option EGDS: Eye Glance Testing Using a Driving Simulator.* Alliance Alternative A Verification Option 3, *Testing using Occlusion,* was considered by NHTSA as *Option OCC: Occlusion Testing.* Additionally, NHTSA considered a third verification option that is a variant of the Alliance Alternative A techniques, *Option STEP: Step Counting.*

The idea behind *Option STEP: Step Counting* is to first perform a detailed task analysis of the task under consideration on the device being studied. After the detailed task analysis has decomposed the task into elemental components, a number of ''steps'' are assigned to each elemental component. Tasks that require more than a set number of steps are considered to be too distracting to be performed by drivers while driving.

The Alliance Guideline's Alternative B reads:

> Alternatively, the impact of a device-related visual or visual-manual task on driving safety can be assessed directly by measuring concurrent driving performance under dynamic conditions and relating it to driving performance under specified reference conditions. The influence of such a secondary task shall not be greater than that of a scientifically-accepted reference task in terms of:
>
> B1. Lateral position control: Number of lane exceedances observed during secondary task execution should not be higher than the number of lane exceedances observed while performing one or more reference tasks (*e.g.,* manual radio tuning) under standard test conditions (*e.g.,* same drivers, driving scenario) replicating routine driving tasks; and
>
> B2. Following headway: Car following headway variability observed during secondary task execution should not be worse than car following headway observed while performing one or more reference tasks under standard test conditions (*e.g.,* same drivers, same driving scenario) replicating routine driving tasks. This measure is influenced by speed changes of preceding traffic or lane changes of other vehicles.[79]

For Alliance Principle 2.1 Alternative B, the recommended Alliance reference task is radio tuning. This task (which will be referred to as manual radio tuning) does not use a preset button to switch to a desired radio station. Manual radio tuning consists of first toggling betweens bands (AM to FM or vice versa) and then using the tuning controls to select a station at a specified frequency.

Alliance Principle 2.1 Alternative B consists of performing a task while driving either in a driving simulator, on the test track, or on an actual roadway using a standard driving scenario. However, for previously discussed reasons of safety, the NHTSA Guidelines research limit testing for this alternative to driving simulators.

NHTSA considered two test protocols and sets of acceptance criteria for determining whether a task is too distracting to be performed by drivers while driving that were based on Alliance Alternative B. These were *Option DS–BM: Driving Test Protocol with Benchmark* and *Option DS–FC: Driving Test Protocol with Fixed Acceptance Criteria. Option DS–BM* is based on the test protocols used by Alliance member companies when performing Alternative B testing and uses, as its name implies, radio tuning as its reference task.

One concern with Alliance's implementation of the radio tuning reference task is that it is insufficiently specific to prevent designers from developing radios that are more difficult for drivers to tune. While the Alliance has told NHTSA that they intended the reference radio to be representative of a 1980's production radio, the Guideline text lacks the detail needed to ensure a fixed-difficulty reference task. As a result, some designers may interpret the Alliance Guidelines to permit more complicated radios to be used, thereby increasing the difficulty of the reference task and allowing more complex secondary tasks to meet the benchmark acceptance criteria. To better achieve the goal of a fixed-difficulty reference task, NHTSA considered a similar option that instead uses fixed driving performance values for lane exceedances and headway variability. This testing option is called *Option DS–FC: Driving Test Protocol with Fixed Acceptance Criteria.*

Over the past few years, NHTSA has worked independently on the development of a test protocol and acceptance criteria for determining whether a secondary task is too distracting for drivers to perform while driving. This research is documented in a recently released NHTSA technical report.[80] The test protocol combines eye glance metrics similar to those of Alliance Alternative A, driving performance variability metrics similar to those of Alliance Alternative B, and target detection metrics to attain a comprehensive protocol that NHTSA believes is useable for both visual-manual and auditory-vocal driver interfaces.

In developing this protocol, NHTSA considered two existing test protocols and sets of acceptance criteria for determining whether a task is too distracting to be performed by drivers while driving that were based upon its

[79] *Ibid,* p. 39.

[80] Ranney, T.A., Baldwin, G.H.S., Parmer, E., Domeyer, J., Martin, J., and Mazzae, E. N., ''Developing a Test to Measure Distraction Potential of In-Vehicle Information System Tasks in Production Vehicles,'' DOT HS 811 463, November 2011.

research. These were *Option DFD–BM: Dynamic Following and Detection Protocol with Benchmark* and *Option DFD–FC: Dynamic Following and Detection Protocol with Fixed Acceptance Criteria. Option DFD–BM* uses route navigation system destination entry (entry of the full address including house number, street name, and city name) as a reference task. Unlike *Option DS–BM,* where the acceptance criteria are that the appropriate metric values should not be worse than radio tuning, for *Option DFD–BM* the acceptance criteria are that the appropriate metric values should be better than those associated with the destination entry reference task.

The use of a destination entry reference task gives NHTSA similar concerns as were noted for the radio tuning reference task. If a very detailed navigation system interface is not specified in the guidelines, the opportunity may be left for designers to create route navigation systems for which the destination entry task is more difficult. The result would be a non-fixed reference task that could be used to justify more complex secondary tasks as being suitable for performance while driving. To alleviate this concern, NHTSA also considered *Option DFD–FC: Dynamic Following and Detection Protocol with Fixed Acceptance Criteria. Option DFD–FC* is very similar to *Option DFD–BM* except that instead of using a reference task to determine acceptance, under *Option DFD–BM* fixed values for the metrics would be used.

Table 3 summarizes the seven test protocols and sets of acceptance criteria for determining whether a task is unreasonably distracting and should be locked out while driving.

TABLE 3—SUMMARY OF DISTRACTION TEST PROTOCOLS AND ACCEPTANCE CRITERIA CONSIDERED BY NHTSA

Option letter	Test name	Performance measures	Acceptance criteria	Testing venue
EGDS	Eye Glance Testing Using a Driving Simulator.	• Duration of individual eye glances away from forward road view. • Sum of individual eye glance durations away from forward road view.	• 85% of individual glance durations less than 2.0 seconds. • Mean of individual glance durations less than 2.0 seconds. • Sum of individual eye glance durations less than or equal to 12.0.	Driving Simulator.
OCC	Occlusion Testing	• Sum of shutter open times	• Sum of shutter open times less than 9.0 seconds.	Occlusion.
STEP	Step Counting	• Number of steps required for task.	• Less than 6 steps required for task.	Task Analysis.
DS–BM	Driving Test Protocol with Benchmark.	• Standard deviation of headway • Lane exceedances	• Performance measures not greater than benchmark values.	Driving Simulator.
DS–FC	Driving Test Protocol with Fixed Acceptance Criteria.	• Same as *Option DS–BM*	• Performance measures not greater than specified values.	Driving Simulator.
DFD–BM	Dynamic Following and Detection Protocol with Benchmark.	• Duration of individual eye glances away from forward road view. • Sum of individual eye glance durations away from forward road view. • Standard deviation of lane position. • Car following delay. • Percent of visual targets detected. • Visual detection response time.	• *Option EGDS* eye glance acceptance criteria *plus*. • Performance measures less than benchmark values.	Driving Simulator.
DFD–FC	Dynamic Following and Detection Protocol with Fixed Acceptance Criteria.	• Same as *Option DFD–BM*	• *Option EGDS* eye glance acceptance criteria plus • Performance measures less than specified values.	Driving Simulator.

L. NHTSA's Preferred Tests for Determining What Tasks Should Be Accessible While Driving

NHTSA has thoroughly evaluated all seven of the candidate test protocols and acceptance criteria for determining what tasks should be accessible while driving listed in Table 3. The evaluation criteria used included:

- Test protocol discriminatory capability,
- Difficulty of performing test protocol, and
- Repeatability of test protocol.

NHTSA is not, at this time, removing any of the test protocols and acceptance criteria that are listed in Table 3 from consideration for use as a task acceptability test protocol(s) in the NHTSA Guidelines. However, the Agency is indicating that it prefers two of the Table 3 test protocols and that one, or both, of these test protocols are more likely to be selected. Following due consideration of comments received in response to this notice, NHTSA will select the test protocols and acceptance criteria for determining what visual-manual tasks should be accessible while driving.

NHTSA has decided that it prefers the following two test protocols and their associated acceptance criteria:

- *Option EGDS: Eye Glance Testing Using a Driving Simulator,* and
- *Option OCC: Occlusion Testing.*

The Agency's reasons for choosing these two options as its preferred test protocols and acceptance criteria are

discussed in the remainder of this subsection.

Two of the test protocols and acceptance criteria that NHTSA considered, *Option DS–BM: Driving Test Protocol with Benchmark* and *Option DFD–BM: Dynamic Following and Detection Protocol with Benchmark,* include benchmark tasks. For *Option DS–BM,* the benchmark task is manual radio tuning while the benchmark task for *Option DFD–BM* is entering an address into a route navigation system.

The goal of using a benchmark task is to increase the discriminatory power of a test protocol by comparing the performance of test participants performing a task using a device against that for the benchmark task. Both theoretically, and in NHTSA's experimental testing, the use of a benchmark task reduces the impact of individual test participant differences on the outcome of testing.

However, NHTSA has decided that the drawbacks of using a benchmark task outweigh the advantages. The main drawbacks regarding the use of a benchmark task are:

• The determination as to what tasks may be performed by the driver while driving depends not just on the task and the device under consideration but also on the design of the device with which the reference task is performed. The level of detail of the benchmark task specification will affect the repeatability of test results. For example, if a reference task of manual radio tuning was specified with minimal radio interface specifications, then performing a task with a device might be deemed unsuitable for performance while driving in a vehicle that had a very easy to tune radio but suitable for performance while driving in a second vehicle that had a more difficult to tune radio. Testing recently performed for NHTSA by VTTI has found large vehicle-to-vehicle differences in driver performance during manual radio tuning so NHTSA knows that this concern is real and not just hypothetical.

• Not all vehicles have a suitable device for performing the benchmark task. While virtually all production vehicles have radios suitable for performing the manual radio tuning task, the Alliance Guidelines did consider it necessary to include specifications for simulating a built-in radio to bound the difficulty of the benchmark task. Many production vehicles do not have a built-in route navigation system. Again, specifications could be developed for simulating a built-in route navigation system. However, simulating the device used for the reference task increases testing complexity and cost while reducing the meaningfulness of a test.

Based upon its evaluation, NHTSA believes that two eye glance-related test protocols and acceptance criteria, *Option EGDS: Eye Glance Testing Using a Driving Simulator,* and *Option OCC: Occlusion Testing,* are both acceptable methods for determining which tasks should have lock outs during driving.

The eye glance-related test protocols have a number of advantages. These include:

• A clear relationship between eye glance-related metrics and driving safety exists. A driver's vigilant monitoring of the road and nearby vehicles is essential to safe driving.

• A substantial research base exists that verifies the correctness of the above statement and provides quantitative support for it. Based on analyses of past naturalistic data, we know that looking away from the forward roadway for up to 2.0 seconds has no statistically significant effect on the risk of a crash or near-crash event occurring. However, eyes-off-road times of greater than 2.0 seconds have been shown to increase risk at a statistically significant level. The risk of a crash or near-crash event increases rapidly as eyes-off-road time increases above 2.0 seconds.[81]

• An obvious relationship between visual-manual distraction and eye glance measures exists. Visual-manual distraction strongly implies that the driver is looking away from the forward road scene.

• Eyes-off-road time is measureable. While not easy to measure, researchers have been working for more than 30 years to develop better techniques for measuring driver eyes-off-road times. A large amount of effort has focused on such topics as the best ways to ensure coding reliability when reducing eye glance video and the development of automated eye trackers.

• Commercially available occlusion goggles allow occlusion testing to be performed without having to develop new hardware.

• ISO standards exist for both eye glance measurement (ISO 15007–1 and ISO 15007–2) and occlusion testing (ISO 16673). This allows us to take advantage of years of test development effort by the research community.

While both of these test protocols have some drawbacks, NHTSA generally considers these issues to be relatively minor.

Option EGDS: Eye Glance Testing Using a Driving Simulator suffers from two problems:

• The need for a driving simulator in which to perform testing. A driving simulator is an expensive piece of test equipment that typically requires special, highly trained staff to operate correctly. The driving simulator should be configured to model the dynamics of the vehicle being tested. *Option EGDS* is not alone in having this problem; *Options DS–BM, DS–FC, DFD–BM,* and *DFD–FC* also require a driving simulator.

• Difficulty in accurately measuring eye glance behavior from data collected during testing. There are two main methods for determining eye glance characteristics from test data: through the use of an eye tracker and by manually extracting eye glance locations and durations from video recorded data. There are substantial operational problems associated with both of these methods. For example, using an eye tracker requires extensive calibration for each test participant, which substantially adds to the time and expense of testing. Manually reducing video recorded data to obtain eye glance characteristics is highly labor intensive, time consuming, and expensive. While both methods can be used to determine the angle at which a participant's head is aimed with respect to center, identifying the particular point of gaze (*i.e.,* where the eyes are pointed, or eye glance location) is challenging. Both methods of measuring eye glance behavior are even more difficult for test participants who wear eye glasses, such that participants who require them to drive are at times avoided, substantially reducing the test participant pool (in NHTSA's experience, this is particularly a problem when trying to recruit older test participants).

Option OCC: Occlusion Testing avoids both of the drawbacks that are present for *Option EGDS: Eye Glance Testing Using a Driving Simulator.* Testing does not have to be performed in a driving simulator so the driving simulator related issues are avoided. The occlusion apparatus constrains when driver eye glances to the task device occur, so the eye glance analysis difficulties present for *Option EGDS* are not present for *Option OCC.*

NHTSA's proposed occlusion testing uses a field factor of 75 percent to relate shutter open time during occlusion testing to eyes-off-road time measured during driving simulator testing. The Alliance Guidelines and ISO International Standard 16673:2007(E), ''Road Vehicles—Ergonomic Aspects of Transport Information and Control

[81] Klauer, S.G., Dingus, T.A., Neale, V.L., Sudweeks, J.D., and Ramsey, D.J., ''The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data,'' DOT HS 810 594, April 2006.

Systems—Occlusion Method to Assess Visual Demand due to the use of In-Vehicle Systems'' also uses this 75 percent field factor. The JAMA Guidelines, however, use a field factor of 93.75 percent.

The theoretical rationale of a field factor is that every time a driver looks away from the forward roadway (for occlusion testing, each such eye glance is assumed to be 2.0-seconds long), the first 0.50 seconds is spent transitioning the driver's eyes from the roadway to the object being looked at (*i.e.,* a saccade). As a result, only 1.5-seconds of a 2.0-second eye glance are available for actually looking at and manipulating the device interface. Therefore, occlusion testing is performed in 1.5-second shutter open time periods each corresponding to one 2.0-second eye glance focused away from the forward roadway.

NHTSA performed a small study to experimentally determine the most appropriate field factor.[82] NHTSA's testing produced a field factor of 78 percent for occlusion testing that was quite close to the field factor of 75 percent in the ISO Standard 16673. Since the NHTSA Guidelines occlusion test procedure is based on the ISO Standard 16673, the theoretical field factor of 75 percent is used instead of the experimentally determined field factor of 78 percent throughout the remainder of this document. Note that the use of the theoretical field factor is slightly conservative in the sense that it results in shorter viewing intervals; using the experimentally determined field factor would increase the viewing intervals from 1.50 seconds to 1.56 seconds.

However, *Option OCC* has one major drawback of its own. *Option OCC* does not really test for adherence to the criterion that single glance durations generally should not exceed 2.0 seconds. The use of an occlusion apparatus forcibly restricts single glance durations to be no more than 1.5 seconds long (which, with the 75 percent field factor being applied to occlusion testing, equates to a 2.0 second eye glance). If a test participant can complete a task using the occlusion protocol, it has been demonstrated that drivers can complete the task with sub-2.0 second eye glance durations. However, just because drivers can accomplish a task with sub-2.0 second eye glances does not mean that they actually will limit themselves to sub-2.0 second eye glance durations when not constrained by occlusion apparatus. *Option OCC* does not include any mechanism for ensuring that, during actual driving, drivers will limit themselves to sub-2.0 second eye glance durations while performing a given task.

Option STEP: Step Counting has a major advantage over all of the other test protocols and acceptance criteria considered by NHTSA in that it does not require human testing to determine whether a task is suitable for performing while driving. The task analysis that is performed for this method should be quite objective since it is generally quite clear how many button presses or other manual operations have to be performed in order to perform a task. The objectivity of *Option STEP* would be helpful if, at some future time, NHTSA decided to convert its NHTSA Guidelines into a Federal Motor Vehicle Safety Standard.

Since no human performance testing is actually performed, *Option STEP* also avoids both of the drawbacks that are present for *Option EGDS: Eye Glance Testing Using a Driving Simulator.*

While not having human performance testing gives *Option STEP* some major advantages, it is also the source of this option's major drawback. *Option STEP* is based on data using past and present vehicle designs about the eyes-off-road time required for drivers to perform common manual actions, such as button presses. However, there are no guarantees that the eyes-off-road time required to perform these actions will remain the same for future devices and in-vehicle tasks. NHTSA does not want to determine that tasks performed on future devices are safe to perform while driving without performing any human performance testing.

Another issue with *Option STEP* is determining exactly what constitutes a step in all situations. While it is fairly clear what a step is for pressing buttons, it is not clear for driver operation of such interface items as knobs or joysticks.

Based on recent NHTSA testing, the two test protocols and acceptance criteria that NHTSA considered which were based on just driving performance, *Option DS–BM: Driving Test Protocol with Benchmark* and *Option DS–FC: Driving Test Protocol with Fixed Acceptance Criteria,* both suffer from low statistical power when performed using an economically reasonable number of test participants. When testing of a task/device was performed using just 20 test participants, there were almost no statistically significant differences in driver performance, even between tasks that were found to be different by other testing protocols. In order to obtain the power necessary to provide the discriminatory capability needed to determine which tasks should require lock outs during driving, many more (on the order of 100) test participants would need to be tested. This would make this test protocol impractically time consuming and expensive to perform for the large number of tasks that will need to be screened.

One of the reasons for the low discriminatory capability of the *Options DS–BM* and *DS–FC* test protocols and acceptance criteria was due to their use of lane exceedances as a measure of test participant performance. Lane exceedances have the advantage of being a measure of driving performance that appears to generally relate directly to safety.[83] However, lane exceedances are low frequency events, particularly during straight line driving. Secondary tasks can be performed with no lane exceedances. The relative rarity of lane exceedances means that a large amount of testing has to be performed to obtain a statistically stable number of these events.

One possible alternative to using lane exceedances as a measure of test participant performance is to use the mean standard deviation of lane position during task performance as a substitute measure of test participant performance. This approach was used by the Dynamic Following and Detection Test Protocol to increase the statistical power of that test procedure.

The remaining two test protocols and acceptance criteria that NHTSA considered, *Option DFD–BM: Dynamic Following and Detection Protocol with Benchmark* and *Option DFD–FC: Dynamic Following and Detection Protocol with Fixed Acceptance Criteria,* were both based on the Dynamic Following and Detection (DFD) Test Protocol. This is a test protocol that has been developed by NHTSA[84] over the last few years in an attempt to combine the Alliance Guidelines' test protocols and acceptance criteria with the Peripheral Detection Task (PDT). This test protocol is a driving simulator based test protocol. Unlike the other test protocols evaluated, DFD results are based on a test participant performing

[82] Ranney, T.A., Baldwin, G.H.S., Parmer, E., Domeyer, J., Martin, J., and Mazzae, E.N., ''Developing a Test to Measure Distraction Potential of In-Vehicle Information System Tasks in Production Vehicles,'' DOT HS 811 463, November 2011.

[83] Research has indicated that one type of lane exceedance, specifically those due to ''curve cutting,'' have no relationship to safety.

[84] Ranney, T.A., Baldwin, G.H.S., Parmer, E., Domeyer, J., Martin, J., and Mazzae, E.N., ''Developing a Test to Measure Distraction Potential of In-Vehicle Information System Tasks in Production Vehicles,'' DOT HS 811 463, November 2011.

the same task repeatedly for a 2.5-minute interval. The DFD also uses a complex lead vehicle speed profile that the test participant is supposed to follow as well as they can with a fixed headway. It has acceptance criteria based upon eye glance characteristics, measures of test participant driving performance, and test participant performance in performing the PDT concurrently with other secondary tasks.

Testing performed by NHTSA[85] has demonstrated that the DFD test protocol generally works well for determining whether a task is overly distracting and should be locked out while driving. Unfortunately, adding additional measures of test participant performance and additional acceptance criteria increase test procedure and data analysis complexity. While this increased analysis complexity may well be necessary when evaluating a device's auditory-vocal task interactions, it appears to be unnecessary when evaluating visual-manual device interfaces. A test protocol and acceptance criteria based only on eye glance characteristics appears to be adequate for visual-manual secondary tasks.

In summary, all of the candidate test protocols and acceptance criteria that NHTSA evaluated have both advantages and drawbacks. Therefore, NHTSA is not, at this time, removing any of the test protocols and acceptance criteria from consideration for being the test protocol(s) finally selected. However, NHTSA has concluded that the following two test protocols and associated criteria might be best suited for the visual-manual NHTSA Guidelines:

- *Option EGDS: Eye Glance Testing Using a Driving Simulator,* and
- *Option OCC: Occlusion Testing.*

Therefore, a detailed discussion of the basis for the proposed acceptance criteria will be given only for these two testing options.

M. Eye Glance Acceptance Criteria

The proposed acceptance criteria for *Option EGDS: Eye Glance Testing Using a Driving Simulator* are:

- For at least 21 of the 24 test participants, no more than 15 percent (rounded up) of the total number of eye glances away from the forward road scene should have durations of greater than 2.0 seconds while performing the secondary task, and
- For at least 21 of the 24 test participants, the mean duration of all eye glances away from the forward road scene should be less than 2.0 seconds while performing the secondary task, and
- For at least 21 of the 24 test participants, the sum of the durations of each individual participant's eye glances away from the forward road scene should be less than, or equal to, 12.0 seconds while performing the secondary task one time.

The rationale for the above acceptance criteria is discussed in the remainder of this subsection. First, NHTSA's reasons for choosing manual radio tuning as its reference task are explained. It is from the manual radio tuning reference task that NHTSA's acceptance criteria were developed. Next, this document will discuss the Alliance Guidelines' task acceptance criteria. Then, recent NHTSA research on driver distraction and performance during manual radio tuning is presented. Finally, results from the recent NHTSA research on manual radio tuning are used to develop acceptance criteria.

i. Selection of Manual Radio Tuning as the Reference Task

The above proposed acceptance criteria were developed based on the idea of a ''reference'' task. A reference task strategy is used because no general consensus exists as to the threshold at which an absolute level of distraction due to a driver performing a task becomes unacceptably high. However, methods for measuring distraction while performing a secondary task have been developed. Since there is no agreed upon absolute level at which distraction becomes unacceptably high, a relative limit can be developed by comparing the distraction level associated with a driver performing an ''acceptable'' reference task with the distraction level associated with a driver performing new tasks.

A reference task should be a commonly performed task that is societally acceptable for drivers to perform while driving. The idea is that any task that is more distracting than the selected reference task should be locked out while driving. Tasks that create less distraction than the selected reference task are suitable for the driver to perform while the vehicle is in motion.

NHTSA has chosen traditional, manual radio tuning as its recommended reference task. Manual radio tuning consists of first[86] toggling betweens frequency bands (AM to FM or vice versa) and then using the tuning controls (*e.g.,* rotary knob or continuously-held push button) to select a station at a specified frequency. The prescribed manual radio tuning task does not use a preset button to tune to a desired radio station, which would be considered ''automatic'' radio tuning.

The Alliance Guidelines also use manual radio tuning as their reference task. The Alliance's rationale[87] for radio tuning as the reference task is that traditional, manual radio tuning:

- Is a distraction source that exists in the crash record[88] [89] and so has established safety-relevance;
- Is a typical in-vehicle task that average drivers perform;
- Involves use of an in-vehicle device that has been present in motor vehicles for more than 80 years;
- Is an in-vehicle device task that is typical in terms of technological complexity, as well as in terms of impacts on driver performance; and
- Represents a plausible benchmark for driver distraction potential beyond which new devices, functions, and features should not go.

Vehicle radios/stereos have long been the most common original equipment system with functionality not directly related to driving. Driving a car with the radio on is an extremely common and widely accepted scenario for Americans. Given this fact, it seems reasonable to allow other tasks to be performed that require a similar degree of driver interaction and to discourage tasks that are more distracting than that level.

The specific reference task of manual radio tuning as defined by the Alliance involves a defined traditional radio design and two input steps: a single button press followed by a longer knob turn or button hold. Many of the most basic and common in-vehicle control inputs a driver may make require only a single, short duration input (*e.g.,* turn on headlights, activate turn signal, adjust temperature). Considering this, manual radio tuning could be considered a worst case traditional task.

In recent years, multi-function in-vehicle information systems such as BMW's iDrive, Ford's SYNC, and several others have come available.

[85] *Ibid.*

[86] In some cases, the first step is to switch to the radio function, or powering on the device.

[87] P. 40, Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

[88] Wang, J.S., Knipling, R.R., and Goodman, M.J., ''The Role of Driver Inattention in Crashes: New Statistics from the 1995 Crashworthiness Data System,'' 40th Annual proceedings, Association for the Advancement of Automotive Medicine, Vancouver, British Columbia, Canada, October 1996.

[89] Singh, S., ''Distracted Driving and Driver, Roadway, and Environmental Factors,'' DOT HS 811 380, September 2010.

These multi-function systems provide the driver with more than just music and can involve more complex inputs and/or more steps for the driver to accomplish tasks. Comparing newer, more complex tasks to the historical standard of worst-case non-driving tasks allows a perspective on relative safety to be ascertained.

Past research efforts have identified crashes that are believed to be caused by driver distraction due to vehicle radio use. A 1996 study by Wang, Knipling, and Goodman [90] analyzed data collected during 1995 by NASS–CDS. This analysis found that distraction due to driver radio, cassette player, or CD player usage was present in 2.1 percent of all crashes. There were also 2.6 percent of crashes for which the source of distraction was unknown. Distributing crashes with an unknown source of distraction proportionately among the other identified sources of distraction, the percentage of crashes with distraction due to driver radio, cassette player, or CD player usage increases to 2.6 percent.

A more recent study by Singh [91] analyzed data from NHTSA's National Motor Vehicle Crash Causation Survey (NMVCCS) to estimate the incidence of crashes due to radios and CD players (cassette players in vehicles are a disappearing technology). This analysis found that distraction due to driver radio or CD player usage was present in 1.2 percent of all crashes.

NMVCCS is NHTSA's most recent, nationally representative, detailed survey of the causes of light motor vehicle crashes (essentially an updated version of the Indiana Tri-Level Study of the Causes of Traffic Accidents [92] that was conducted in the 1970s). For NMVCCS driver (including distraction- and inattention-related information), vehicle, and environment data were collected during a three-year period (January 2005 to December 2007). A total of 6,949 crashes met the specified criteria for inclusion in NMVCCS. Due to specific requirements that must be met by crashes for inclusion in NMVCCS, the NMVCCS data differs from other crash databases such as NASS–CDS or NASS–GES.

Unfortunately, there is no way to determine with the data currently available to NHTSA (*i.e.,* Singh, [93] Wang, Knipling, and Goodman [94]) the fraction of the observed crashes due solely to radio usage (or due to radio tuning specifically).

Making the further assumption that fatality, injury, and property damage only crashes all have the same percentage of distraction due to driver radio, cassette player, or CD player usage gives the estimates shown in Table 4.

TABLE 4—ESTIMATED NUMBER OF FATALITIES, INJURIES, AND PROPERTY DAMAGE ONLY CRASHES IN 2009 DUE TO RADIO, CASSETTE, OR CD PLAYER USE

	Singh estimate	Wang, Knipling, and Goodman estimate
Percentage	1.2%	2.6%
Fatalities	406	869
Injuries	27,000	57,000
Property Damage Only	66,000	142,000

As stated above, NHTSA accepts the use of manual radio tuning as a reference task for indicating a driver distraction magnitude beyond which new devices, functions, features, and tasks should not exceed. NHTSA agrees with the Alliance rationale for using manual radio tuning as the reference task and considers it suitable for use as a standard to which new in-vehicle tasks may be compared.

ii. The Alliance Guidelines Acceptance Criteria

The Alliance Guidelines include three verification options for their Alternative A: *Eye Tracker Measurement, Video Recording of Test Participant's Eyes/Face,* and *Testing using Occlusion.* Two of these verification options, *Eye Tracker Measurement* and *Video Recording of Test Participant's Eyes/Face,* require the determination of test participant eye glances. Both of these verification options are covered by NHTSA *Option EGDS: Eye Glance Testing Using a Driving Simulator.* The third Alliance Guidelines verification option, *Testing using Occlusion,* is covered by NHTSA *Option OCC: Occlusion Testing.* The development of acceptance criteria for *Option OCC* is discussed in a subsequent subsection.

As discussed above, the Alliance Guidelines use manual radio tuning as their reference task. The Alliance Guidelines acceptance criteria were developed based on this reference task.

The Alliance Guidelines acceptance criteria were based upon the 85th percentile of driver eye glance performance during manual radio tuning. As the Alliance points out, the 85th percentile response characteristics or capability are a common design standard in traffic engineering. For example, according to the Federal Highway Administration, all states and most localities use the 85th percentile speed of free flowing traffic as a basic factor in establishing speed limits.[95]

The eye glance acceptance criteria times that are in the Alliance Guidelines are based on a 1987 study by Dingus [96] and a 1988 study by Rockwell.[97] However, neither of these studies actually measured the total eyes-off-road time associated with manual radio tuning. The Rockwell study determined that approximately 85 percent of driver eye glances away from the forward road scene had durations of 1.90 seconds or less. This value of 1.90 seconds was rounded up by the Alliance to get their 2.0-second criterion. The Dingus study determined that the 85th percentile for the number of driver eye glances away from the forward road scene was 9.4 glances. The 9.4 glances value was rounded up by the Alliance to get 10 glances. The Alliance then multiplied the 10 glances by 2.0 seconds per glance to determine their acceptance criteria of 20.0 seconds of total glance time.[98]

Based on these studies, the Alliance Guideline's Alternative A have two acceptance criteria:

A1. Single glance durations generally should not exceed 2 seconds; and

[90] Wang, J.S., Knipling, R.R., and Goodman, M.J., ''The Role of Driver Inattention in Crashes: New Statistics from the 1995 Crashworthiness Data System,'' 40th Annual proceedings, Association for the Advancement of Automotive Medicine, Vancouver, British Columbia, Canada, October 1996.

[91] P. 5, Singh, S., ''Distracted Driving and Driver, Roadway, and Environmental Factors,'' DOT HS 811 380, September 2010.

[92] Treat, J.R., Tumbas, N.S., McDonald, S.T., Shinar, D., Hume, R.D., Mayer, R.E., Stansifer, T.L., and Castellan, N.J., ''Tri-Level Study of the Causes of Traffic Accidents: Final Report. Executive Summary,'' DOT HS 805 099, May 1979.

[93] Singh, S., ''Distracted Driving and Driver, Roadway, and Environmental Factors,'' DOT HS 811 380, September 2010.

[94] Wang, J.S., Knipling, R.R., and Goodman, M.J., ''The Role of Driver Inattention in Crashes: New Statistics from the 1995 Crashworthiness Data System,'' 40th Annual proceedings, Association for the Advancement of Automotive Medicine, Vancouver, British Columbia, Canada, October 1996.

[95] Institute of Transportation Engineers, ''Speed Zoning Information,'' March 2004, retrieved in August 2011.

[96] Dingus, T.A., *Attentional Demand Evaluation for an Automobile Moving-Map Navigation System,* unpublished doctoral dissertation, Virginia Polytechnic Institute and State University, Blacksburg, VA, 1987.

[97] Rockwell, T.H., ''Spare Visual Capacity in Driving Revisited: New Empirical Results for an Old Idea,'' in A. G. Gale et al (editors), *Vision in Vehicles II* (pp. 317–324, Amsterdam: Elsevier, 1988.

[98] When performing this determination, the Alliance is treating total glance time to the task as being the same as total eyes-off-road time.

A2. Task completion should require no more than 20 seconds of total glance time to display(s) and controls.[99]

For both of the eye glance verification options, the Alliance Guidelines operationalize the A1 and A2 acceptance criteria as follows:

A task will be considered to meet criterion A1 if the mean of the average glance durations to perform a task is ≤ 2.0 sec for 85% of the test sample. A task will be considered to meet criterion A2 if the mean total glance time to perform a task is ≤ 20 sec for 85% of the sample of test participants.[100]

NHTSA has a concern with these Alliance-developed acceptance criteria because neither of the studies used as a basis for the criteria actually measured the total eyes-off-road time associated with manual radio tuning. Rather, the Alliance estimated it from the data available in the Dingus and Rockwell studies. NHTSA's concern is with the way in which the estimate was developed. If 85 percent of driver eye glances away from the road last for less than 2.0 seconds, the probability of 10 glances away from the road each having an average length of 2.0 seconds or greater is very small. As a result, due to rounding up of both the guideline-recommended length of driver eye glances and the number of driver eye glances during manual radio tuning, the Alliance total glance time criterion of 20.0 seconds is not the 85th percentile value that the Alliance advocates, but instead a value that approximates the 100th percentile value for manual radio tuning.

iii. Recent NHTSA Research on Manual Radio Tuning

To obtain data about driver performance during manual radio tuning, NHTSA has recently sponsored two experimental studies, one with testing performed by NHTSA [101] and one with testing performed by VTTI.

The NHTSA study [102] tested 90 test participants performing 541 instances of manual radio tuning in a 2010 Toyota Prius (trim level V) connected to a personal computer-based driving simulator. Driving the simulator required the test participant to follow a lead vehicle moving at a varying rate of speed. Table 5 presents summary data from the first (of, typically, 6) manual radio tuning trial for all 90 test participants. The last two columns represent the respective percentile values from distributions of each subject's proportion of glances longer than 1.5 and 2.0 seconds, respectively. The glance data were computed from eye tracker data. (Comparable data reduced manually from video footage was also collected for these trials; this found similar glance durations.)

TABLE 5—SUMMARY OF EYE GLANCE MEASURES DURING THE FIRST MANUAL RADIO TUNING PERFORMED BY TEST PARTICIPANTS IN A 2010 TOYOTA PRIUS ON THE NHTSA DRIVING SIMULATOR (N = 90)

Measure or percentile	Total eyes-off-road time (seconds)	Number of glances from road	Mean glance duration (seconds)	Percent of glances > 1.5 seconds	Percent of glances > 2.0 seconds
Mean	7.11	8.04	0.89	20	3
Median	7.25	8	0.85	0	0
85th	10.50	12	1.14	25	0
95th	12.70	15	1.39	40	29
100th	16.86	16	2.11	80	50

Items of relevance from Table 5 for NHTSA's determination of its acceptance criteria include:

- The 85th percentile total eyes-off-road time (TEORT) based on the first radio tuning trial by each test participant was 10.50 seconds.
- None of the first radio tuning trials by test participants had a TEORT that exceeded 20.00 seconds. The longest initial radio tuning trial took 16.86 seconds.
- The 85th percentile mean glance duration (MGD) was 1.14 seconds. For only 1 out of 90 test participants was the mean glance duration greater than 2.00 seconds during their first trial.
- The 85th percentile proportion of glances longer than 2.00 seconds was zero percent. This means that 85 percent of test participants performed their first radio tuning trial with no glances away from the forward roadway of duration longer than 2.0 seconds.

The NHTSA data collection protocol had test participants perform the manual radio tuning task multiple times. Table 6 presents the same data as Table 5 except that Table 6 is based on data from all of each test participants' radio tuning trials. The first trial data were analyzed separately, as presented above, since repeatedly performing the same task was expected to speed up test participant performance of the task.

TABLE 6—SUMMARY OF EYE GLANCE MEASURES DURING ALL MANUAL RADIO TUNING PERFORMED BY TEST PARTICIPANTS IN A 2010 TOYOTA PRIUS ON THE NHTSA DRIVING SIMULATOR (N = 541)

Measure or percentile	Total eyes-off-road time (seconds)	Number of glances from road	Mean glance duration (seconds)	Percent of glances > 1.5 seconds	Percent of glances > 2.0 seconds
Mean	6.49	7.54	0.87	10	3
Median	6.38	7	0.84	0	0
85th	9.61	11	1.15	25	0
95th	11.97	14	1.39	40	22
100th	20.50	21	2.11	80	50

[99] P. 39, Driver Focus-Telematics Working Group, ''Statement of Principles, Criteria and Verification Procedures on Driver-Interactions with Advanced In-Vehicle Information and Communication Systems,'' June 26, 2006 version, Alliance of Automobile Manufacturers, Washington, DC.

[100] *Ibid,* P. 53.

[101] This study had multiple objectives; a better understanding of manual radio tuning was just one of the objectives.

[102] Ranney, T. A., Baldwin, G. H. S., Parmer, E., Martin, J., and Mazzae, E. N., ''Distraction Effects of Number and Text Entry Using the Alliance of Automotive Manufacturers' Principle 2.1B Verification Procedure,'' NHTSA Technical Report number TBD, November 2011.

Differences between the first trial and all trial data are minor. What differences do exist suggest that radio tuning performance improves slightly with repeated performance. However, it is important to note that, while the large number of trials included in Table 6 provides more precision in the estimation of the various metrics, the construction of this distribution is not formally suitable for use with inferential statistics, which require independence among all of the individual data items. In this collection, the use of multiple data points from each subject is not consistent with the independence requirement. Items of relevance from Table 6 for NHTSA's determination of its acceptance criteria include:

- The 85th percentile TEORT value for repeatedly performing radio tuning was 9.61 seconds. (Reduced from the 10.50 seconds found for the first trial data.)
- Only 1 out of 541 total radio tuning trials had a TEORT value greater than 20.00 seconds. The second longest TEORT value was 17.28 seconds.
- The 85th percentile mean glance duration was 1.15 seconds. For only 1 out of 541 trials was the mean glance duration greater than 2.00 seconds. The second longest mean glance duration was 1.85 seconds.
- The 85th percentile proportion of glances longer than 2.00 seconds was zero percent. Although not shown in Table 6, the 90th percentile value for this metric was 14 percent. This means that 90 percent of 541 radio tuning trials were accomplished with no more than 14 percent of the glances away from the forward roadway being longer than 2.00 seconds.

The VTTI radio tuning study had two testing phases. During Phase I, test participants drove each of four vehicles on the VTTI Smart Road while following a lead vehicle traveling at a constant speed of 45 mph. One vehicle was tested using both of its two available methods for tuning the radio, resulting in a total of five test conditions. The five vehicles/configuration conditions tested were:

1. 2005 Mercedes R350
2. 2006 Cadillac STS
3. 2006 Infiniti M35
4. 2010 Chevrolet Impala with rotary knob tuning
5. 2010 Chevrolet Impala with push button tuning

During Phase II, test participants drove each of two vehicles on the VTTI Smart Road while following a lead vehicle traveling during one lap at a constant speed of 45 mph and during another lap at a variable speed.[103] One vehicle was again tested using both of its two available methods for manually tuning the radio resulting in a total of three test conditions. The three vehicles/configuration conditions tested were:

1. 2010 Chevrolet Impala with rotary knob tuning
2. 2010 Chevrolet Impala with knob/button tuning
3. 2010 Toyota Prius (exact same vehicle as tested by NHTSA)

A total of 43 participants between the ages of 45 and 65 took part in this study. This participant sample was comprised of two separate participant groups, as data collection occurred in phases listed above. Invalid data points were removed, yielding at least 20 participants with complete data for each phase as well as some participants with missing data.

Data were analyzed for the longest duration manual radio tuning trial for each test participant for each vehicle/configuration. Data for a total of 228 manual radio tuning trials were obtained and analyzed.

Table 7 summarizes the eye glance measures that were calculated by VTTI for the manual radio tuning trial of longest duration performed by each test participant in each of the vehicles/tuning methods/lead vehicle speed profile conditions. The values shown for Total Glance Time to Task, Total Eyes-Off-Road Time, and Average Duration of Individual Glances to Device are all 85th percentile values. The Duration of Longest Glance to Device values are the longest glances to the device that were made for that vehicle/tuning method/lead vehicle speed profile for any of the radio tuning trials that were analyzed.

TABLE 7—85TH PERCENTILES OF EYE GLANCE MEASURES DURING MANUAL RADIO TUNING TRIALS PERFORMED BY IN VARIOUS VEHICLES TEST PARTICIPANTS ON THE VTTI SMART ROAD (N = 228)

[Duration of Longest Glance to Device and Total Number of Data Points are not 85th percentiles]

Vehicle, tuning method, and lead vehicle speed profile	Total glance time to task (sec.)	Total eyes-off-road time (sec.)	Mean glance duration (sec.)	Duration of longest glance to device (sec.)	Total number of data points (—)
Cadillac STS—Knob Tuning—Constant Speed	15.9	16.3	1.7	2.9	21
Chevrolet Impala—Button Tuning—Constant Speed	13.2	13.9	1.3	2.4	41
Chevrolet Impala—Knob Tuning—Constant Speed	7.8	8.1	1.4	2.2	41
Chevrolet Impala—Button Tuning—Varied Speed	11.5	12.3	1.2	2.3	20
Chevrolet Impala—Knob Tuning—Varied Speed	8.4	8.5	1.4	2.4	20
Infiniti M35—Button Tuning—Constant Speed	17.6	17.6	1.7	4.5	21
Mercedes R350—Button Tuning—Constant Speed	15.4	16.6	1.4	2.6	22
Toyota Prius—Knob Tuning—Constant Speed	10.3	11.1	1.4	2.4	21
Toyota Prius—Knob Tuning—Varied Speed	11.3	11.3	1.6	2.7	21
All VTTI Data	11.6	11.8	1.5	2.5	228

[103] The variable speed profile of the lead vehicle for this second lap was similar to the one used by NHTSA during testing on their driving simulator. There were two differences. First, slowing down the lead vehicle on the NHTSA driving simulator was accomplished by having the driver remove his/her foot from the throttle pedal and allowing the vehicle to coast. However, due to the vertical profile of the VTTI Smart Road, when going downhill, the lead vehicle driver had to brake to produce the desired speed variation. The resulting brake lights are likely to have impacted the test participants' following behavior/performance. Second, the speed reduction profile was more step-wise than the one used in the simulator, since the lead vehicle speed was controlled by a trained driver, not by automated means.

Items of relevance from Table 7 for NHTSA's determination of its acceptance criteria include:

- The 85th percentile Total Glance Time to Task (TGT) for performing manual radio tuning varied from 7.8 to 17.6 seconds depending upon the vehicle, tuning method, and lead vehicle speed profile. The 85th percentile TGT for all of the VTTI radio tuning data was 11.6 seconds.
- The 85th percentile Total Eyes-Off-Road Time (TEORT) for performing manual radio tuning varied from 8.1 to 17.6 seconds depending upon the vehicle, tuning method, and lead vehicle speed profile. The 85th percentile TEORT for all of the VTTI radio tuning data was 11.8 seconds.
- The 85th percentile TEORT exceeded the 85th percentile TGT times by 0.0 to 1.2 seconds with an average increase of 0.2 seconds.
- The 85th percentile mean glance durations ranged from 1.2 to 1.7 seconds depending upon the vehicle, tuning method, and lead vehicle speed profile.

iv. Development of NHTSA's Eye Glance Acceptance Criteria

NHTSA proposes to base the acceptance criteria in these Guidelines on test participants' Eyes-Off-Road Time (EORT) during task performance. This differs from existing Alliance and JAMA Guidelines which assess task-related eye glance behavior based upon just those eye glances to the device upon which the task is being performed.[104]

NHTSA proposes to use EORT because we would like to use eye tracker data to determine whether a task meets the eye glance criteria. However, based upon the experiences of NHTSA, eye tracker data do not have quite enough accuracy to reliably characterize whether eye glances are focused toward the device upon which the task is being performed or toward some other in-vehicle location.[105] Eye tracker data do have sufficient accuracy to accurately characterize test participant eye glances focused away from the forward roadway.

Total EORT, or the cumulative duration of eye glances away from the roadway during task performance, will always equal or exceed the Total Glance Time to Task (TGT). For the VTTI testing, the 85th percentile of this difference ranged from 0.0 to 1.2 seconds with an average increase of 0.2 seconds. Therefore, basing the test acceptance criteria on TEORT instead of TGT gives a slight increase in test stringency. However, this is partially compensated for by NHTSA's use of a reference task to determine overall test stringency.

NHTSA finds reasonable the Alliance's technique of using the 85th percentile of driver eye glance measures while performing manual radio tuning as a way to set acceptance criteria for testing to determine if a task is unreasonably distracting. As the Alliance points out, the 85th percentile response characteristics or capability are a common design standard in traffic engineering. Other existing guidelines do not appear to use this reference task technique for determining acceptance criteria.

Occlusion testing (discussed in greater detail in a subsequent subsection) involves unoccluded vision durations of 1.5 seconds. Using the previously discussed 75 percent field factor for occlusion testing versus driving simulator eyes-off-road time, each 1.5-second unoccluded period corresponds to 2.0 seconds of driving simulator eyes-off-road time. Therefore, specified acceptance criteria involving eyes-off-road time should be a multiple of 2.0 seconds.

The NHTSA and VTTI manual radio tuning testing summarized in Tables 5 through 7 found 85th percentile Mean Glance Durations (MGD) that ranged from 1.1 to 1.7 seconds depending upon the vehicle, tuning method, test venue, and lead vehicle speed profile. All of these values round to 2.0 seconds (equivalent to a shutter open time of 1.5 seconds during occlusion testing). Therefore one proposed NHTSA acceptance criterion is that, for 85 percent of test participants, the mean duration of all individual eye glances away from the forward road scene should be less than 2.0 seconds while performing the secondary task. Since NHTSA is proposing to test a sample of 24 subjects, for at least 21 of the 24 test participants (85 percent rounded up to the next whole number of test participants), the mean of all eye glances away from the forward road scene should be less than 2.0 seconds while performing the secondary task. The proposed NHTSA mean eye glance duration criterion then is:

- For at least 21 of the 24 test participants, the mean duration of all individual eye glances away from the forward road scene should be less than 2.0 seconds while performing the secondary task.

The above acceptance criterion only constrains the mean of the eye glance distribution. This is necessary but, NHTSA believes, not sufficient. As pointed out by Horrey and Wickens:

> In general, the unsafe conditions that are likely to produce a motor vehicle crash reside not at the mean of a given distribution (in other words, under typical conditions), but rather in the tails of the distribution.[106]

To ensure safety, it is also necessary to have another acceptance criterion that minimizes the above 2.0-seconds tail of the eye glance distribution.

The acceptance criterion that NHTSA is proposing is designed to directly limit the tail of the eye glance distribution. The proposed eye glance distribution tail-limiting criterion, for 85 percent of test participants, limits the percentage of their long (more than 2.0 seconds) eye glances away from the forward road scene while performing the secondary task to no more than 15 percent of their total number of eye glances away from the road.

Typically, the number of eye glances away the forward road scene will be fairly low for any task, function, or feature that passes all of the eye glance criteria. For example, if the average eye glance duration is 1.5 seconds, a task can have a maximum of eight eye glances away the forward road scene and meet the TEORT acceptance criterion (discussed below). Therefore, the method used for rounding when calculating the 15 percent of eye glances value is important.

NHTSA has tentatively decided that, for any task that requires at least two[107]

[104] However, the Alliance Guidelines do not consistently distinguish between test participant glances to the device being tested and test participant eye glances away from the forward roadway and, in places, appear to treat the two as interchangeable. For example, in the discussion on p. 42 of the Alliance Guidelines on the basis for the Alliances A2 acceptance criterion of 20 seconds, the phrase ''mean number of glances away from the road scene'' is used. However, this is equated to test participant glances to the device being tested to develop the 20 seconds acceptance criterion.

[105] Ranney, T.A., Baldwin, G.H.S., Vasko, S.M., and Mazzae, E.N., ''Measuring Distraction Potential of Operating In-Vehicle Devices,'' DOT HS 811 231, December 2009. NHTSA's eye glance measurement technology has been upgraded since this report was written but the specific eye position limitation noted in that report continues to be a problem. The report ''Developing a Test to Measure Distraction Potential of In-Vehicle Information System Tasks in Production Vehicles'' by Ranney, T.A., Baldwin, G.H.S., Parmer, E., Domeyer, J., Martin, J., and Mazzae, E. N., DOT HS 811 463, November 2011, discusses NHTSA's most recent work to upgrade its eye glance measurement technology.

[106] Horrey, W.J., and Wickens, C.D., ''In-Vehicle Glance Duration: Distributions, Tails, and Model of Crash Risk,'' *Transportation Research Record, Journal of the Transportation Research Board,* No. 2018, Transportation Research Board of the National Academies, pp. 22–28, Washington, DC, 2007.

[107] For a task that only requires one glance away from the forward roadway, the mean glance duration criterion cannot be met unless that glance is less than 2.0 seconds long. Therefore, the proposed NHTSA eye glance distribution tail limiting criterion does not need to have a special case for one glance tasks.

eye glances away from the forward road scene, it should be acceptable for at least one of these eye glances to exceed 2.0 seconds in duration (of course, the other two acceptance criteria would also have to be met). This can be accomplished by always rounding up when calculating the guideline-recommended number of eye glances exceeding 2.0 seconds in duration. The proposed NHTSA eye glance distribution tail limiting criterion then is:

- For at least 21 of the 24 test participants, no more than 15 percent (rounded up) of the total number of eye glances away from the forward road scene should have durations of greater than 2.0 seconds while performing the secondary task.

The NHTSA and VTTI manual radio tuning testing summarized in Tables 5 through 7 found 85th percentile Total Eyes-Off-Road Times (TEORT) values that ranged from 8.1 to 17.6 seconds depending upon the vehicle, tuning method, test venue, trial, and lead vehicle speed profile.

NHTSA is proposing to perform driver eye glance measurement in conjunction with a driving simulator protocol. For test participants driving a 2010 Toyota Prius, NHTSA measured a 85th percentile TEORT value of 10.5 seconds for the first manual radio tuning trial performed and 9.6 seconds using data from all trials. It is not clear which of these values best typifies normal driving since drivers are generally familiar with their own vehicle's radio, and have tuned it many times but generally not consecutively.

The VTTI data collected under conditions that most closely match the NHTSA experimental conditions for testing are those collected on VTTI's Smart Road using a 2010 Toyota Prius (VTTI tested the exact same vehicle) following a lead vehicle with varying speed. The VTTI measured 85th percentile TEORT for this condition is 11.3 seconds (versus NHTSA's 10.5 seconds). From this data, it appears that driving simulator measured TEORT values may be slightly shorter than ones measured while driving on the Smart Road. However, the two studies' results are similar enough (considering the variability present in testing of this sort) that it is reasonable to analyze both sets of results together and determine an overall TEORT.

The 85th percentile from the consolidated NHTSA and VTTI manual radio tuning data is 11.3 seconds. For compatibility with occlusion testing, the maximum TEORT needs to be a multiple of 2.0 seconds. The nearest multiple of 2.0 seconds to 11.3 seconds is 12.0 seconds. Therefore NHTSA is proposing that the acceptance limit for TEORT for *Option EGDS: Eye Glance Testing Using a Driving Simulator* be 12.0 seconds. In other words, tasks with an 85th percentile TEORT greater than 12.0 seconds should not be accessible by the driver while driving.[108]

As has been mentioned, the Alliance Guidelines include a TEORT acceptance limit of 20.0 seconds for Principle 2.1, Alternative A. The JAMA Guidelines include a TEORT acceptance limit of 8.0 seconds. NHTSA's value of 12.0 seconds is between these two values. NHTSA prefers the 12.0 second limit to either of the other two guidelines' values because the NHTSA value is based on more recent, more thorough, research.

Since NHTSA is proposing to test a sample of 24 test participants, for at least 21 of the 24 test participants (85 percent rounded up to the next whole number of test participants), the TEORT should be less than 12.0 seconds while performing the secondary task. The proposed NHTSA total eye glance duration criterion then is:

- For at least 21 of the 24 test participants, the sum of the durations of each individual participant's eye glances away from the forward road scene should be less than, or equal to, 12.0 seconds while performing the secondary task one time.

N. Human Subject Selection for Guideline Testing

The NHTSA Guidelines suggest that the following test participant sample composition criteria be used for testing performed to determine whether a device should be locked out under the NHTSA Guidelines:

1. To ensure that in-vehicle device secondary tasks can be performed by virtually the entire range of drivers without being unreasonably distracting, the recommended age range for test participants is 18 years and older. NHTSA research has shown that restricting test participant age range can improve test repeatability.[109] The lower limit, 18 years of age, is due to concerns about testing with minors. There is no upper limit, however, organizations may set an upper age limit (such as 65 years old) for their testing if they can easily find the needed test participants and they have health concerns about testing with elderly test participants.

2. Continuing with NHTSA's goal of ensuring that in-vehicle device tasks can be performed by the entire age range of drivers without being unreasonably distracting, the NHTSA Guidelines recommend that out of each group of 24 test participants used for testing, there should be

- Six test participants 18 through 24 years old, inclusive, and
- Six test participants 25 through 39 years old, inclusive, and
- Six test participants 40 through 54 years old, inclusive, and
- Six test participants 55 or more years old.

This should ensure adequate representation by a broad age range of test participants in each sample of subjects.

The above age ranges are partially based on the age distribution of drivers in the United States. NHTSA is focusing on the age distribution of drivers rather than the age distribution of drivers involved in fatal crashes because:

- The age distribution of drivers involved in fatal crashes due to electronic device distraction is not necessarily the same as the age distribution of drivers involved in all fatal crashes. NHTSA currently does not know the age distribution of drivers involved in fatal crashes due to electronic device distraction.
- The age distribution of drivers involved in fatal crashes due to electronic device distraction may change in the future as new electronic devices are introduced into service.

Table 8 shows the percentage of United States drivers 18 years of age and older in each of the four test participant age ranges.

TABLE 8—PERCENT OF UNITED STATES DRIVERS 18 YEARS OF AGE AND OLDER IN EACH AGE RANGE [110]

Age range	Percent of United States drivers in age range
18–24	11.4%
25–39	26.8%
40–54	29.7%
55 and older	32.1%

The 18 through 24 years old, inclusive, age range is overrepresented in test samples relative to their numbers in the general driving population. There are two reasons for this. First, drivers in

[108] For the purposes of these NHTSA Guidelines, ''while driving'' is defined as any time the vehicle's engine is turned on and its transmission is not in ''Park'' (for automatic transmission vehicles; for manual transmission vehicles change this to the transmission is not in ''Neutral'' with the parking brake engaged).

[109] Ranney, T. A., Baldwin, G. H. S., Parmer, E., Martin, J., and Mazzae, E. N., ''Distraction Effects of Number and Text Entry Using the Alliance of Automotive Manufacturers' Principle 2.1B Verification Procedure,'' NHTSA Technical Report number TBD, November 2011.

[110] *http://www.fhwa.dot.gov/policyinformation/statistics/2009/dl20.cfm.*

the 18 through 24 age range have a higher rate of fatalities (per 100,000 drivers in that age range [111] or per 100 million vehicle miles traveled [112]) than do drivers that are 25 years of age or older. Second, at least anecdotally, younger drivers are more frequent user of electronic technology than are older drivers. Therefore, NHTSA believes that this age range should be overrepresented in each test participant sample.

The 55 years and older age range is underrepresented in test samples relative to their numbers in the general driving population. While NHTSA considers it important that advanced electronic device tasks be tested using drivers in this age range, as mentioned above, older drivers are less frequent users of electronic technology than are younger drivers. Therefore, NHTSA is proposing to underweight this age range with six test participants rather than the eight called for by their numbers in the general driving population.

NHTSA solicits comments on the age range and distribution of test participants that are recommended to be in each test participant sample. We could use the age distribution of drivers involved in fatal crashes as the primary factor in determining the age range and distribution of test participants. This would result in somewhat different age ranges and distributions than are listed above. Would this be better for ensuring safety while driving and using electronic devices?

3. NHTSA also wishes to ensure that drivers of both genders be able to safely utilize in-vehicle devices. The United States driver population is 49.7 percent male and 50.3 percent female. For the relatively small test participant samples used for distraction testing, this implies that test participant samples should be evenly divided between men and women (*i.e.,* each sample of 24 test participants should be balanced in gender overall and within each age range).

4. Another of NHTSA's concerns relates to ensuring that test participants are impartial with regard to the testing. To ensure fairness, test participants should not have any direct interest, financial or otherwise, in whether or not any of the devices being tested meets or does not meet the acceptance criteria. Therefore, NHTSA has added test participant impartiality criteria to its NHTSA Guidelines.

While auto manufacturers may have multiple categories of employees that are not involved in vehicle systems or component development, NHTSA believes that automaker employees will tend to be generally more knowledgeable about vehicles and their current features than the average member of the public. With this additional knowledge of vehicles and their latest features, the employees may perform better in testing due to this exposure to the automotive industry. Therefore we feel that this impartiality criterion is essential to ensure that test results represent the performance of average U.S. drivers. We welcome comments on any available strategies that automakers may implement to ensure impartial test participation by employees.

O. Occlusion Test Protocol

NHTSA is proposing that its *Option OCC: Occlusion Testing* test protocol be the same as that specified in ISO 16673:2007.[113] ISO 16673:2007 specifies a viewing interval (shutter open time) of 1.5 seconds followed by an occlusion interval (shutter closed time) of 1.5 seconds. NHTSA has selected the use of the ISO test protocol for its occlusion test protocol in the interests of promoting international regulatory harmonization.

NHTSA's past occlusion testing was performed with a viewing interval (shutter open time) of 1.5 seconds followed by an occlusion interval (shutter closed time) of 1.0 second. NHTSA is performing a study during the summer of 2011 to examine what effects, if any, this change to the length of the occlusion interval has on the results of occlusion testing. This study will also ensure that there are no unforeseen difficulties in performing occlusion testing using the ISO 16673:2007 test protocol.

ISO 16673:2007 states that occlusion testing results need to be corrected for system response delays that are greater than 1.5 seconds.[114] However, since the NHTSA Guidelines specify that the maximum device response time for a device input should not exceed 0.25 second, no correction is needed for occlusion testing performed under the NHTSA Guidelines.

NHTSA is proposing to set the maximum recommended total viewing interval (total shutter open time) for a task to be accessible to the driver while driving at 9.0 seconds. As was previously discussed, NHTSA is proposing to set the maximum recommended total glance time (time during which the driver's eyes are looking at the device upon which the task is being performed) for a task to be accessible to the driver while driving for *Option EGDS: Eye Glance Testing Using a Driving Simulator* at 12.0 seconds of total eyes-off-road time. The acceptance criteria for *Option OCC: Occlusion Testing* should be consistent with the *Option EGDS* acceptance criteria. Applying the earlier explained field factor of 75 percent to the 12.0 seconds of total eyes-off-road time criteria that NHTSA is proposing for *Option EGDS: Eye Glance Testing Using a Driving Simulator* gives a maximum permitted total shutter open time for the NHTSA Guidelines *Option OCC: Occlusion Testing* of 9.0 seconds.

P. Task Performance Errors During Testing

Reaching the desired end state of a secondary task is generally only possible if the driver follows the correct steps to complete the task and makes no mistakes. If the driver presses the wrong button or inputs an incorrect character, a correction typically must be made in order to reach the desired end state. An interface associated with frequent input errors by the driver could reasonably be considered a greater source of distraction than one for which task performance is performed without errors. Therefore, for the purposes of these NHTSA Guidelines only data from ''error-free'' test trials performed by test participants should be used for determining whether a task is suitable for performance while driving. Using only data from error-free test trials improves testing repeatability.

The precise definition of an error during device testing is difficult to develop. NHTSA proposes that an error would be considered to have occurred during a test trial if the test participant has to backtrack or delete already entered inputs. If the device can accommodate an incorrect entry without requiring backtracking and extra inputs beyond those necessary to reach the desired end state of the task, then no error would be deemed to have occurred. For example, suppose that a task on a device could be accomplished either by pressing Button ''A'' or by pressing first Button ''B'' and then Button ''C.'' If a test participant were asked to perform this task, either

[111] National Highway Traffic Safety Administration, ''Traffic Safety Facts 2008,'' NHTSA Technical Report DOT HS 811 170, 2010.

[112] United States Government Accountability Office, ''Older Driver Safety, Knowledge Sharing Should Help States Prepare for Increase in Older Driver Population,'' Report to the Special Committee on Aging of the United States Senate, GAO–07–413, April 2007.

[113] International Standard 16673:2007, ''Road Vehicles—Ergonomic Aspects of Transport Information and Control Systems—Occlusion Method to Assess Visual Demand due to the use of In-Vehicle Systems.''

[114] *Ibid,* P. 13.

pressing Button ''A'' or pressing first Button ''B'' and then Button ''C'' would result in a valid trial. If however, the test participant first pressed Button ''B,'' then reset the device, and then pressed Button ''A'' an error would have occurred.

A record should be kept during testing as to whether one or more errors occurred during each test trial. If errors occur during more than 50 percent of test trials while testing a sample of test participants, then that task is deemed an ''unreasonably difficult task.'' Unreasonably difficult tasks are not recommended for performance while driving and should be locked out. (Note that in order to check NHTSA's acceptance criteria; it is necessary for 24 test participants to successfully complete each task. This may require testing more than 24 subjects.)

Q. Limited NHTSA Guidelines for Passenger Operated Equipment

The NHTSA Guidelines are appropriate primarily for devices that are intended to be operated by the vehicle driver. For the sake of clarity, NHTSA believes it necessary to make a few general statements about passenger operated equipment.

The NHTSA Guidelines should be appropriate for any devices that the driver can easily see and/or reach. For any in-vehicle device that is within sight and reach of the driver (even if it is intended for use solely by passengers), any task that has associated with its performance an unacceptable level of distraction should be locked out whenever the vehicle's engine is on and its transmission is not in ''Park'' (the vehicle's transmission in ''Neutral'' and parking brake engaged for manual transmission vehicles).

The NHTSA Guidelines are not appropriate for any device that is located fully behind the front seat of the vehicle. Similarly, the NHTSA Guidelines are not appropriate for any front-seat device that cannot reasonably be reached or seen by the driver.

VII. Implementation Considerations for the NHTSA Guidelines

A. Current Vehicles That Meet the NHTSA Guidelines

All members of the Alliance of Automobile Manufacturers have committed themselves to producing vehicles that meet the Alliance Guidelines. Five years have passed since the current version of the Alliance Guidelines was issued and NHTSA expects that most current vehicle models produced by Alliance members meet the Alliance Guidelines. However, this is an expectation based on statements by the Alliance's members and is not based on any NHTSA testing of recently designed vehicle models.

Some automobile manufacturers that are not members of the Alliance (*e.g.,* Honda) have also committed to producing vehicles that meet the Alliance Guidelines. However, this commitment was made in 2010; therefore, most of their vehicles may not yet meet the Alliance Guidelines' recommendations.

Given the many common elements and details between the NHTSA Guidelines and the Alliance Guidelines, NHTSA believes that many in-vehicle device tasks will either meet the recommendations of these proposed NHTSA Guidelines or be close to doing so. The changes to existing devices and/or vehicles that already meet the Alliance Guidelines so as to make them meet the NHTSA Guidelines are expected to be minor.

There is no time frame in which vehicle manufacturers are expected to produce vehicles that meet these guidelines; meeting them is strictly voluntary. However, NHTSA believes that manufacturers will take the initiative to implement these guidelines in an effort to improve safety. Manufacturers choosing to implement these guidelines for existing vehicle models would likely make any necessary changes to meet the guidelines when a vehicle model undergoes a major revision. Typically, major revisions occur on about a five-year cycle for passenger cars and less frequently for light trucks. NHTSA believes that it would be feasible for manufacturers to make the necessary changes implementing these guidelines for existing vehicle models that undergo major revisions two or more years after the final issuance of these guidelines. Likewise, NHTSA believes it would be feasible for new vehicle models that come onto the market two or more years after the final issuance of these guidelines to meet them.

B. Expected Effects of the NHTSA Guidelines

The main effects that NHTSA hopes to achieve through its NHTSA Guidelines are better designed vehicles and integrated electronic device interfaces, neither of which exceeds a reasonable level of complexity for visual-manual secondary tasks. This will be accomplished through multiple recommendations that will discourage device interfaces that lack evidence of sound human factors principles in their designs. One important recommendation recommends a limit for allowable total eyes-off-road time for any one task. The NHTSA Guidelines would discourage the introduction of egregiously distracting integrated devices and non-driving tasks.

The NHTSA Guidelines recommend against designing in-vehicle electronic systems that allow drivers to perform the following activities while the vehicle is ''moving'': [115]

- Visual-manual text messaging,
- Visual-manual internet browsing,
- Visual-manual social media browsing,
- Visual-manual navigation system destination entry by address, and
- Visual-manual 10-digit phone dialing.

The NHTSA Guidelines are expected to have little impact on current vehicle designs. For many current vehicles, the only integrated electronic device that is not required for driving is the stereo system (radio and CD player). Based on the research that was performed in support of the development these NHTSA Guidelines, integrated stereo systems would either already meet, or be easily modifiable to meet, these NHTSA Guidelines. For integrated electronic devices other than the stereo system, if such devices are incorporated into vehicles built by Alliance member companies (as well as some non-Alliance vehicle manufacturers), then they are already covered by that organization's guidelines. Since the NHTSA Guidelines share many common elements with the Alliance Guidelines, NHTSA believes that many devices/vehicles would either meet the recommendations of its NHTSA Guidelines or be close to doing so.

The NHTSA Guidelines are expected to have a larger impact on future devices that are integrated into vehicles. For future integrated original equipment devices, these NHTSA Guidelines are expected to encourage simple visual-manual driver interfaces. They should also help encourage the introduction of visual-manual non-driving tasks into the vehicle that are not unreasonably distracting. Research by Ford Motor Company [116] and VTTI [117] has shown

[115] More specifically, the NHTSA Driver Distraction Guidelines recommend disabling unreasonably distracting tasks/device unless either (1) the vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles).

[116] Shutko, J., Mayer, K., Laansoo, E., and Tijerina, L., ''Driver Workload Effects of Cell Phone, Music Player, and Text Messaging Tasks with the Ford SYNC Voice Interface versus Handheld Visual-Manual Interfaces,'' Ford Motor Company, SAE Paper 2009–01–0786, 2009.

[117] Owens, J. M., McLaughlin, S. B., and Sudweeks, J., ''On-Road Comparison of Driving

reductions in Total Eyes-Off-Road Time through the use of an auditory-vocal driver-vehicle interface. As a result, NHTSA anticipates that manufacturers may consider relying more on auditory-vocal interactions for task performance in future device designs.

The goal of the NHTSA Guidelines is not to prevent drivers from performing activities that they wish to perform while driving; instead, the goal is to improve vehicle safety. These NHTSA Guidelines identify only a few, clearly safety-detrimental tasks as ones that should not be accessible to a driver while operating a vehicle. NHTSA believes that, with thoughtful interface engineering and appropriate application of well designed auditory-vocal interfaces, drivers can continue to perform most of the activities that they wish to perform while driving and also have improved vehicle safety.

As previously stated, for many current vehicles, the only integrated electronic device that is not required for driving is the stereo system (radio and CD player). Based on the research that was performed in support of the development the NHTSA Guidelines, many current integrated stereo systems already meet the recommendations of the NHTSA Guidelines. Other stereos would need to be modified so as to reduce their Total Eyes-Off-Road Time (TEORT) to perform a manual radio tuning to meet these NHTSA Guidelines. NHTSA does not know what percentage of existing integrated stereo systems would need to be redesigned. Nor do we know by how much the recommended stereo system modifications should improve safety. However, the recommended changes to existing integrated electronic devices would be expected to have a small but positive impact on vehicle safety.

For integrated electronic devices other than the stereo system (when they exist), if such devices are installed into vehicles built by Alliance member companies (as well as some non-Alliance vehicle manufacturers), then they are already covered by that organization's guidelines. Since the NHTSA Guidelines share many common elements with the Alliance Guidelines, many existing in-vehicle devices already either meet the recommendations of the NHTSA Guidelines or would be close to doing so. As a result, the NHTSA Guidelines are expected to encourage only minimal revisions to existing, integrated, original equipment devices. Therefore, the NHTSA Guidelines are expected to have only small benefits for many current, integrated, in-vehicle advanced electronic devices.

The NHTSA Guidelines could have a larger impact on future devices that are integrated into vehicles. For future integrated original equipment devices, these NHTSA Guidelines encourage simpler visual-manual driver interfaces and task performance. They should also help encourage the introduction of visual-manual non-driving tasks into the vehicle that are not unreasonably distracting. As a result, NHTSA anticipates that future device designs may rely more on auditory-vocal interactions for task performance.

NHTSA does not know the safety effects of the NHTSA Guidelines expected impact on future devices that are integrated into vehicles. The problem is one of trying to estimate the safety benefits of unknown future systems that meet the NHTSA Guidelines versus unknown future systems that do not meet the NHTSA Guidelines and which will, due to the influence of the NHTSA Guidelines, never be developed. For these future systems, we do not know what they will do, their market share, how often drivers will want to use them, or how much of a reduction in TEORT would result from the NHTSA Guidelines. The numerous unknown factors make it impossible to calculate meaningful estimates of benefits. However, the resulting impact is expected to have a positive impact on vehicle safety.

There are certain non-driving tasks that are obviously inappropriate to perform while driving, such as the driver watching television. Many other in-vehicle device tasks are more reasonable to perform while driving but, when equipped with a visual-manual driver-vehicle interface, would be considered unreasonably distracting by the NHTSA Guidelines (and, therefore, a manufacturer choosing to apply the NHTSA Guidelines would lock out those tasks. However, research by Ford Motor Company [118] and VTTI [119] has shown that through the use of an auditory-vocal driver-vehicle interface reductions in Total Eyes-Off-Road Time can be attained. As a result, NHTSA believes that many of these in-vehicle device tasks may be suitable for performance by the driver while driving if performed via an auditory-vocal interface.

Since most in-vehicle device tasks that are reasonable to perform while driving will still be performable while meeting the NHTSA Guidelines, NHTSA does not expect to affect the overall size of the in-vehicle device market with its NHTSA Guidelines. The goal of the NHTSA Guidelines is not to prevent drivers from performing reasonable tasks while driving but to enable them to perform such tasks in a minimally-distracting and safe manner.

C. NHTSA Monitoring To Determine Whether Vehicles Meet Guideline Recommendations

Since our voluntary NHTSA Guidelines are not a Federal Motor Vehicle Safety Standard, the degree to which in-vehicle devices meet the specified criteria would not be assessed in the context of a formal compliance program. However, NHTSA does intend to monitor whether vehicles meet these NHTSA Guidelines to help determine their effectiveness and sufficiency. NHTSA has not determined the nature of the monitoring it might adopt. At a minimum, some spot checking of vehicles is likely.

NHTSA seeks comment as to how best to monitor manufacturers' voluntary implementation of the recommendations contained in the NHTSA Guidelines. In particular, NHTSA requests input from commenters in response to the following questions:

- Are these NHTSA Guidelines reasonable and applicable for meeting their intended goals?
- How likely are vehicle manufacturers to adopt these NHTSA Guidelines?
- How likely are equipment suppliers to adopt these NHTSA Guidelines?
- How should NHTSA monitor adoption of these NHTSA Guidelines in order to evaluate their effectiveness? How should it make public the results of that monitoring?

NHTSA will announce its plan for monitoring the adoption of these guidelines as part of the final notice for Phase 1 of the NHTSA Guidelines.

VIII. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your

Performance Measures When Using Handheld and Voice-Control Interfaces for Mobile Phones and Portable Music Players,'' Virginia Tech Transportation Institute, SAE Paper 2010–0101036, April 2010.

[118] Shutko, J., Mayer, K., Laansoo, E., and Tijerina, L., ''Driver Workload Effects of Cell Phone, Music Player, and Text Messaging Tasks with the Ford SYNC Voice Interface versus Handheld Visual-Manual Interfaces,'' Ford Motor Company, SAE Paper 2009–01–0786, 2009.

[119] Owens, J. M., McLaughlin, S. B., and Sudweeks, J., ''On-Road Comparison of Driving Performance Measures When Using Handheld and Voice-Control Interfaces for Mobile Phones and Portable Music Players,'' Virginia Tech Transportation Institute, SAE Paper 2010–0101036, April 2010.

comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (See 49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the Office of Management and Budget (OMB) and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dms.dot.gov.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (See 49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that are received after that date. If a comment is received too late for us to consider in developing any final guidelines, we will consider that comment as an informal suggestion for future guidelines.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

IX. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The agency is not aware of any applicable voluntary consensus standards that are appropriate for driver distraction stemming from driver interactions with in-vehicle electronic devices. However, industry-developed standards do exist. These standards were reviewed and formed the basis for the NHTSA Guidelines outlined herein.

In view of all of the research and analysis discussed above, NHTSA proposes the following voluntary NHTSA Guidelines for in-vehicle devices.

X. Guidelines for Reducing Visual-Manual Driver Distraction During Interactions With In-Vehicle Devices

I. Purpose. The purpose of these guidelines is to reduce the number of motor vehicle crashes and the resulting deaths and injuries that occur due to a driver being distracted from the primary driving task while performing non-driving activities with an integrated-into-the-vehicle electronic device. The guidelines are presented as an aid to manufacturers in designing in-vehicle devices so as to avoid unsafe driver distraction resulting from use of the devices. Manufacturers that choose to adhere to these guidelines do so voluntarily and compliance with them is not required.

I.1 Protection Against Unreasonable Risks to Safety. Due to the rapid rate of development of electronic in-vehicle devices, the National Highway Traffic Safety Administration (NHTSA) cannot possibly evaluate the safety implications of every new device before it is introduced into vehicles. However, because they have obligations to recall and remedy vehicles or motor vehicle equipment they manufacture that present an unreasonable risk to safety (45 U.S.C. 30118–20), manufacturers bear such obligations with regard to integrated-into-the-vehicle electronic devices that create unreasonable risks to the driving public.

I.2 Driver Responsibilities. Drivers are still responsible for the safety of people and property while driving and interacting with integrated-into-the-vehicle electronic devices. Drivers retain the primary responsibility for ensuring the safe operation of the vehicle under all operating conditions.

II. Scope. These guidelines are appropriate for driver interfaces of original equipment electronic devices for performing non-driving activities that are built into a vehicle when it is manufactured. They are not appropriate for driving controls, driver safety warning systems, any other electronic device that is necessary to drive a motor vehicle, or any other electronic device that has a driver interface that is specified by a Federal Motor Vehicle Safety Standard. Table 1 contains a non-exhaustive list of the types of devices for which these guidelines are appropriate.

TABLE 9—TYPES OF DEVICES AND TASKS FOR WHICH THESE GUIDELINES ARE APPROPRIATE

Vehicle Information	Vehicle Information Center.
	Emissions Controls.
	Fuel Economy Information.
Navigation	Destination Entry.
	Route Following.
	Real-Time Traffic Advisory.
	Trip Computer Information.
Communications	Caller Identification.
	Incoming Call Management.
	Initiating and Terminating Telephone Calls.
	Conference Telephoning.
	Walkie-Talkie-Like Services.
	Paging.
	E-mail.
	Reminders.
	Instant Messaging.
	Text Messaging.
Entertainment	AM Radio.
	FM Radio.
	Satellite Radio.
	Pre-recorded Music Players, All Formats.
	Television.
	Video Displays.
	Advertising.
	Address Book.
	Internet Searching.
	Internet Content.
	News.
	Directory Services.

II.1 Guidelines Intended for Driver Interfaces. These guidelines are appropriate primarily for driver interfaces of devices. They are appropriate to a limited extent (see Section VII) for devices intended for use by front seat passengers. They are not appropriate for devices that are located solely rearwards of the front seat of a vehicle.

II.2 Only Driver Interfaces Covered. These guidelines are not appropriate for any aspect of covered devices other than their driver interfaces. Specifically, they do not cover a device's electrical characteristics, material properties, or performance.

II.3 Aftermarket and Portable Devices Not Covered. These guidelines are only appropriate for devices that are installed in a vehicle by the original manufacturer of the vehicle.

II.4 Auditory-Vocal Interfaces Not Covered. These guidelines are not appropriate for devices having solely auditory-vocal interfaces or to the auditory-vocal portions of device's interfaces that contain both auditory-vocal and visual-manual elements.

II.5 Intended Vehicle Types. These guidelines are appropriate for all passenger cars, multipurpose passenger vehicles, and trucks and buses with a GVWR of not more than 10,000 pounds.

III. Standards Included by Reference.

III.1 International Standards Organization Standards.

III.1.a ISO International Standard 16673:2007(E), ''Road Vehicles—Ergonomic Aspects of Transport Information and Control Systems—Occlusion Method to Assess Visual Demand due to the use of In-Vehicle Systems.''

III.2 SAE Standards.

III.2.a SAE Surface Vehicle Recommended Practice J941 MAR 2010, ''Motor Vehicle Drivers' Eye Locations.''

IV. Definitions.

IV.1 General Definitions.

IV.1.a *Active Display Area* means the portion of a display that is being used. It excludes unused display surface and any area containing physically manipulatable controls.

IV.1.b *Device* means all components that a driver uses to perform secondary tasks (*i.e.,* tasks other than their primary task of driving); whether stand-alone or integrated into another device.

IV.1.c *Distraction* means the diversion of a driver's attention from activities critical for safe driving to a competing activity. This diversion of attention may be due to non-driving related tasks or to driving related tasks involving information presented in an inefficient manner or demanding unnecessarily complex inputs by a driver. Driver distraction is accompanied by an approximately proportional decrease in driving performance that can vary based on driver characteristics and roadway environment.

IV.1.d *Downward Viewing Angle* means the angle by which a driver has to look down from the horizontal to directly look at a device's visual display. Both three-dimensional downward viewing angle and a two-dimensional approximation are used in these guidelines.

IV.1.e *Driver's Field of View* means the forward view directly through the windshield, rear and side views through the other vehicle windows, as well as the indirect side and rear view provided by the vehicle mirror system.

IV.1.f *Driving* means any condition in which the vehicle's engine is running unless the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles).

IV.1.g *Driving-Related Task* means an activity performed by a driver that is essential to the operation and safe control of the vehicle.

IV.1.h *Function* means an individual action that a device can perform. A device may have one or more functions.

IV.1.j *Glance* means a single ocular fixation by a driver. When using eye tracker equipment that cannot distinguish different nearby locations of individual fixations, glance may also be used to refer to multiple fixations to a single area that the eye tracker treats as one ocular fixation.

IV.1.k *Glance Duration* means the time from the moment at which the direction of gaze moves towards a target to the moment it moves away from that target. It should be noted that glance duration includes the transition time to a target and the dwell time on the target.

IV.1.l *Interaction* means a transaction between a driver and a device. Interactions include control inputs (defined later) and data inputs (information that a driver sends or receives from the device that is not intended to control the device). Depending on the type of task and the goal, interactions may be elementary or more complex. For the visual-manual interfaces covered by this version of the NHTSA Driver Distraction Guidelines (NHTSA Guidelines), interactions are restricted to physical (manual or visual) actions.

IV.1.m *Lock Out* means the disabling of one or more functions or features of a device unless either (1) the vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles).

IV.1.n *Nominal Driver Eye Point* means the X_C and Z_C coordinates of the Cyclopean eye point as given by Equations (2) and (5), respectively, of SAE Surface Vehicle Recommended Practice J941 MAR 2010, Motor Vehicle Drivers' Eye Locations.

IV.1.o *Subtend* means, in a geometrical sense, to be opposite to and delimit (an angle or side).

IV.2 Task-Related Definitions.

IV.2.a *Control Input* means a transaction between a driver and a device that is intended to affect the state of a device. Control inputs may be initiated either by a driver or as a response to displayed information initiated by a device itself. For the visual-manual interfaces covered by this version of the NHTSA Guidelines, control inputs are restricted to manual control actions.

IV.2.b *Dependent Task* means a task that cannot be initiated until another task (referred to as the antecedent task) is first completed. Their start state is thus dependent upon the end state of another, antecedent, task.

An antecedent task that is followed by a dependent task can be distinguished from a task that contains two subtasks by examining the end states of both the antecedent task and the dependent task. For the antecedent task-dependent task case, both tasks will end with the achievement of a driver goal (*i.e.,* two driver goals will be achieved, one for the antecedent task and one for the dependent task). In contrast, for a task composed of two subtasks, only one driver goal will be achieved.

For example, after choosing a restaurant from a navigation system's point-of-interest list (antecedent task), a driver is offered an Internet function option of making a reservation at the restaurant (dependent task). The dependent task of making a reservation can only be initiated following the task of selecting a restaurant from within the navigation system.

IV.2.c *End of Data Collection* means the time at which a test participant tells the experimenter ''done'' (or, by some means, indicates non-verbally the same thing). Test participant eye glances and vehicle driving performance are not examined after the end of data collection. If a test participant eye glance was in progress at the end of data collection, only the portion of it before the end of data collection is used. If the end of data collection occurs when the device is at the desired end state for a testable task, then a test participant has successfully completed the testable task.

IV.2.d *End State for a Testable Task* means the pre-defined device state sought by a test participant to achieve the goal of that testable task.

IV.2.e *Error* means that a test participant has made an incorrect input when performing a requested task during a test trial. An error has occurred if the test participant has to backtrack during performance of the task or delete already entered inputs. If the device can accommodate an incorrect entry without requiring backtracking and extra inputs beyond those necessary to reach the desired end state of the task, then no error is deemed to have occurred.

IV.2.f *Error-Free Trial* means a test trial in which no errors are made by the test participant while completing the task.

IV.2.g *Goal* means a device state sought by a driver. Goal achievement is defined as achieving a device state that meets the driver's intended state, independent of the particular device being executed or method of execution.

IV.2.h *Secondary Task* means, in these guidelines, any interaction a driver has with an in-vehicle device that is not directly related to the primary task of driving. These tasks may relate to driver comfort, convenience, communications, entertainment, information gain, or navigation.

IV.2.i *Start of Data Collection* means the time at which the experimenter tells a test participant ''begin'' (or, by some means, issues a non-verbal command indicating the same thing). Test participant eye glances and vehicle driving performance are examined only after the start of data collection. If a test participant eye glance was in progress at the start of data collection, only the portion of it after the start of data collection is used. The start of data collection should occur when the device is at the start state for a testable task.

IV.2.j *Start State for a Testable Task* means the pre-defined device state from which testing of a testable task always begins. This is frequently the ''home'' screen, default visual display state, or other default driver interface state from which a driver initiates performance of the testable task. For dependent tasks, the start state would be the end state of the previous testable task.

For a testable task for which there is only one point (*e.g.,* screen, visual prompt, step) screen from which the task can be initiated, that point would correspond to the start state. For a testable task which can be initiated from more than one point, one of these options is selected as the start state. (The desire here is to reduce the amount of testing needed to ensure adherence with these guidelines. It is generally not necessary to test all possible transitions into a testable task.)

IV.2.k *Sub-goal* means an intermediate state on the path to the goal toward which a driver is working. It is often distinguishable from a goal in two ways: (1) It is usually *not* a state at which a driver would be satisfied stopping; and (2) it may vary in its characteristics and/or ordering with other sub-goals across hardware/interface functions, and thus is system dependent.

IV.2.l *Subtask* means a sub-sequence of control operations that is part of a larger testable task sequence—and which leads to a sub-goal that represents an intermediate state in the path to the larger goal toward which a driver is working.

Subtasks should *not* be treated as separate dependent tasks. For example, entering the street name as part of navigation destination entry is not a separate task from entering the street number; rather, these are subtasks of the same task.

IV.2.m *Successful Task Completion* means that a test participant has performed a testable task without substantial deviations from the correct sequence(s) of control inputs and achieved the desired end state for a testable task.

IV.2.n *Testable Task* means a sequence of control operations performed using a specific method leading to a goal toward which a driver will normally persist until the goal is reached. A testable task begins with the device at a previously defined start state and proceeds, if the testable task is successfully completed, until the device attains a previously defined end state.

A testable task is a secondary task that is performed using an electronic device with a specified sequence of control operations leading to a goal and a defined start state and end state. It is called a testable task because it is a secondary task that can be tested for adherence with these guidelines. While performing a testable task during testing to determine if a task causes an unacceptable level of distraction, data collection begins at start of data collection and continues until end of data collection.

IV.3 Task-Related Explanatory Material.

IV.3.a Testable tasks should be completely defined prior to any testing to determine whether they are suitable to perform while driving under these guidelines.

IV.3.b For testable tasks that have a variety of possible inputs of different lengths (*e.g.,* city names for navigation systems), a typical or average length input should be used. Precise averages need not be used and there may be some variation in length from input-to-input. For example, for the input of city names into a navigation system, a length restriction of 9 through 12 letters might be used.

V. Device Interface Recommendations. Each device's driver interface should meet the recommendations specified in Section V under the test procedures specified in Section VI of these guidelines.

V.1 No Obstruction of View.

V.1.a No part of the physical device should, when mounted in the manner intended by the manufacturer, obstruct a driver's field of view.

V.1.b No part of the physical device should, when mounted in the manner intended by the manufacturer, obstruct a driver's view of any vehicle controls or displays required for the driving task.

V.2 Easy to See and Reach. The mounting location for a device should not be in a location that is difficult to see and/or reach (as appropriate) while driving.

V.3 Maximum Display Downward Angle. Each device's display(s) should be mounted in a position where the downward viewing angle, measured at the geometric center of each active display area and determined as explained in Subsection VI.1, is less than at least one of the following two angles:

- The 2D Maximum Downward Angle, or
- The 3D Maximum Downward Angle.

When the 2D Maximum Downward Angle is used, the downward viewing angle is determined as explained in Subsection VI.1.a. When the 3D Maximum Downward Angle is used, the downward viewing angle is determined as discussed in Subsection VI.1.b.

V.3.a The 2D Maximum Downward Angle is equal to 30.00 degrees for a vehicle with the height above the ground of the nominal driver eye point less than or equal to 1700 millimeters above the ground.

V.3.b The 2D Maximum Downward Angle is given by the following equation for nominal driver eye point heights greater than 1700 millimeters above the ground:

$$\theta_{2DMax} = 0.01303\, h_{Eye} + 15.07$$

Where

θ_{2DMax} is the 2D Maximum Downward Angle, and

h_{Eye} is the height above the ground of the nominal driver eye point.

V.3.c The 3D Maximum Downward Angle is equal to 28.16 degrees for a vehicle with the height above the ground of the nominal driver eye point less than or equal to 1146.2 millimeters above the ground.

V.4.d The 3D Maximum Downward Angle is given by the following equation for nominal driver eye point heights greater than 1146.2 millimeters above the ground:

$$\theta_{3DMax} = 57.2958\, \tan^{-1}\left[0.829722 \tan\left(0.263021 + 0.000227416\, h_{Eye}\right)\right]$$

where

θ_{3DMax} is the 3D Maximum Downward Angle, and

h_{Eye} is the height above the ground of the nominal driver eye point.

V.3.e Visual displays that present information highly relevant to the driving task and/or visually-intensive information should have downward viewing angles that are as close as practicable to a driver's forward line of sight. Visual displays that present information less relevant to the driving task should have lower priority, when it comes to locating them to minimize their downward viewing angles, than displays that present information highly relevant to the driving task.

V.4 Lateral Display Position. Visual displays that present information relevant to the driving task and/or visually-intensive information should be laterally positioned as close as practicable to a driver's forward line of sight.

V.5 Per se Lock Outs. The following in-vehicle device tasks should always be locked out unless either (1) the vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles):

V.5.a Displaying dynamic or static visual photographic or graphical images not related to driving including, but not limited to:

V.5.a.i Video-based entertainment in view of the driver; and

V.5.a.ii Video-based communications including video phone calls and other forms of video communication.

V.5.b Dynamic map displays. The display of either static or quasi-static

maps (quasi-static maps are static maps that are updated frequently, perhaps as often as every few seconds, but are not continuously moving) for the purpose of providing driving directions is acceptable. Dynamic, continuously-moving maps are not recommended.

V.5.c The display of rearview images for the purposes of aiding a driver in performing a backing maneuver should not be locked out when presented in accordance with the allowable circumstances specified in FMVSS No. 111.

V.5.d Displaying static photographic or graphical images not related to driving. However, displaying driving-related images including icons, line drawings, and either static or quasi-static maps is acceptable.

V.5.e Automatically scrolling text. The display of continuously moving text is not recommended. The visual presentation of limited amounts of static or quasi-static text is acceptable

V.5.f Manual text entry. A driver should not enter more than six button or key presses during a single task. This would include drafting text messages and keyboard-based text entry.

V.5.g Reading more than 30 characters (not counting punctuation marks, counting each number, no matter how many digits it contains, as one character, and counting units such as mph as just one character) of visually presented text.

V.5.h The *per se* lock outs listed above are intended to specifically prohibit a driver from performing the following while driving:

- Watching video footage,
- Visual-manual text messaging,
- Visual-manual internet browsing, and
- Visual-manual social media browsing.

V.6 Task Lock Outs. Any secondary task that draws a driver's attention from the primary driving task to the point where safety is reduced, as determined by the test procedure contained in Subsection VI.2, should be locked out unless either (1) the vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles).

V.7 Sound Level. Devices should not produce uncontrollable sound levels liable to mask warnings from within the vehicle or outside or to cause distraction or irritation.

V.8 Single-Handed Operation. Devices should allow a driver to leave at least one hand on the vehicle's steering control. All tasks that require manual control inputs (and can be done with the device while the vehicle is in motion) should be executable by a driver in a way that meets all of the following criteria:

V.8.a When manual device controls are placed in locations other than on the steering control, no more than one hand should be required for manual input to the device at any given time during driving.

V.8.b When device controls are located on the steering wheel and both hands are on the steering wheel, no device tasks should require simultaneous manual inputs from both hands.

V.8.c A driver's reach to the device's controls should allow one hand to remain on the steering control at all times.

V.8.d Reach of the whole hand through steering wheel openings should not be required for operation of any device controls.

V.9 Interruptability. Devices should not require uninterruptible sequences of visual-manual interactions by a driver. A driver should be able to resume an operator-interrupted sequence of visual-manual interactions with a device at the point of interruption or at another logical point in the sequence. This subsection, including all of its following sub-parts, is not appropriate for device output of dynamically changing data.

V.9.a Except as stated in Subsection V.9.e, no device-initiated loss of partial driver input (either data or command inputs) should occur automatically.

V.9.b Drivers may initiate commands that erase driver inputs.

V.9.c A visual display of previously-entered data or current device state should be provided to remind a driver of where the task was left off.

V.9.d If feasible, necessary, and appropriate, the device should offer to aid a driver in finding the point to resume the input sequence or in determining the next action to be taken. Possible aids include, but are not limited to:

- A visually displayed indication of where a driver left off,
- A visually displayed indication of input required to complete the task, or
- An indication to aid a driver in finding where to resume the task.

V.9.e Devices may revert automatically to a previous or default state without the necessity of further driver input after a device defined time-out period, provided:

- It is a low priority device state (one that does not affect safety-related functions or way finding), and
- The state being left can be reached again with low driver effort. In this context, low driver effort is defined as either a single driver input or not more than four presses of one button.

V.10 Response Time. A device's response (*e.g.,* feedback, confirmation) following driver input should be timely and clearly perceptible. The maximum device response time to a device input should not exceed 0.25 second. If device response time exceeds 0.25 second, a clearly perceptible indication should be given indicating that the device is responding.

V.11 Disablement. Devices providing dynamic (*i.e.,* moving) non-safety-related visual information should provide a means by which that information is not seen by a driver. A device visually presenting dynamic non-safety-related information should make the information not seen by a driver through at least one of the following mechanisms:

- Dimming the displayed information,
- Turning off or blanking the displayed information,
- Changing the state of the display so that the dynamic, non-safety-related information cannot be seen by a driver while driving, or
- Positioning or moving the display so that the dynamic, non-safety-related information cannot be seen while driving.

V.12 Lock Out Functions not Intended for Driving Use. Device functions not intended to be used by a driver while driving should be locked out (*i.e.,* made inoperable unless either (1) the vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles).

V.13 Distinguish Devices not Intended for Driving Use. Devices should clearly distinguish between those aspects of a device which are intended for use by a driver while driving, and those aspects (*e.g.,* specific functions, menus, etc.) that are not intended to be used while driving.

V.14 Device Status. Information about current status, and any detected malfunction, within the device that is likely to have an adverse impact on safety should be presented to the driver.

VI. Recommended Test Procedures.

VI.1 Determination of Downward Viewing Angle. The downward viewing angle of each display is determined in two ways, two dimensionally (the 2D Downward Viewing Angle; Subsection VI.1.a explains how to calculate) and three dimensionally (the 3D Downward Viewing Angle; Subsection VI.1.b discusses how to calculate). As

discussed in Subsection V.3, the downward viewing angle of each display should be less than at least one of the following two angles:

- The 2D Maximum Downward Angle, or
- The 3D Maximum Downward Angle.

VI.1.a Determination of 2D Downward Viewing Angle. Create a fore-and-aft plane (Plane FA) through the nominal driver eye point as determined using the March 2010 revision of SAE Surface Vehicle Recommended Practice J941 ''Motor Vehicle Drivers' Eye Locations.'' Project the position of the geometric center of a display for which this angle is being determined laterally (while maintaining the same fore-and aft and vertical coordinates) onto Plane FA. Generate two lines in Plane FA, Line 1 and Line 2. Line 1 is a horizontal line (*i.e.,* maintaining the same vertical coordinate) going through the nominal driver eye point. Line 2 goes through the nominal driver eye point and the projected onto Plane FA geometric center of the display. The downward viewing angle is the angle from Line 1 to Line 2.

VI.1.b Determination of 3D Downward Viewing Angle. Generate two lines, Line 3 and Line 4. Line 3 is a horizontal line (*i.e.,* maintaining the same vertical coordinate) going through the nominal driver eye point, as determined using the March 2010 revision of SAE Surface Vehicle Recommended Practice J941 ''Motor Vehicle Drivers' Eye Locations,'' and a point vertically above or at the geometric center of the display for which the angle is being determined. Line 4 goes through the nominal driver eye point and the geometric center of the display. The downward viewing angle is the angle from Line 3 to Line 4.

VI.2 Driving Simulator Recommendations. A driving simulator is used for most of the proposed test options (*Options C, F, G, H,* and *J,* below) for determining whether driver operation of a device while performing a secondary task produces an unacceptable level of distraction. The driving simulator used for distraction testing should conform to the recommendations in the following subsections.

VI.2.a The driving simulator should be capable of testing using a substantial portion (the entire area that can be reached by a driver) of a full-size production vehicle cab. To set up this portion of a vehicle cab for testing, no modifications should be made to the dashboard or driver interface other than the addition of sensors to determine steering wheel angle, brake pedal position, and throttle pedal position, driver gaze location, headway (distance from the subject vehicle to a lead vehicle if one is present), lane position, and other desired data. The portion of the actual production vehicle cab being used for testing should be easily changeable.

VI.2.b The driving simulator should use information collected by the steering wheel angle, brake pedal position, and throttle pedal position sensors, along with an appropriate vehicle dynamics simulation, to predict vehicle orientation and position, angular and linear velocities, and angular and linear accelerations.

VI.2.c The driving simulator should record the following data channels at a minimum of 30 times per second: Steering wheel angle, brake pedal position, throttle pedal position, vehicle orientation and position, lane position, headway, vehicle speed, and vehicle lateral and longitudinal accelerations. Each of the above listed channels should either be calculated or measured with a sensor having an accuracy of ±2 percent of full scale or better. The simulator should also have a means of determining the exact time of the start and end of each secondary task that is performed.

VI.2.d For test paradigms that require the determination of eye glance location, the driving simulator should determine them in one of two ways: (1) Through the use of an eye tracker or (2) by collecting full motion video of each test participant's face and, subsequent to testing, a human data reducer determines from this video the direction of a test participant's gaze at each instant in time.

VI.2.e The driving simulator should generate and display color (16 bit minimum color depth), computer generated imagery of the forward road scene. This imagery should be projected onto a large area screen in front of the vehicle. The portion of the projection screen on which computer generated imagery is displayed should have an area of at least 2083±25 mm wide by at least 1372±25 mm tall. The projection screen should be placed 4700±125 mm in front of the nominal driver eye point. The computer generated image should contain at least 880 by 500 pixels and should be updated at least 30 times per second. The time lag to calculate the computer generated imagery should not be more than 0.10 second.

VI.2.f For test paradigms that require the performance of a visual detection task, the driving simulator should be capable of displaying the target to be detected.

VI.2.f.i The target to be detected consists of a filled-in, red circle. The target should be sized such that it subtends a visual angle of 1.0±0.2 degrees. It may be displayed in any one of six positions. These positions are: vertically—all approximately at horizon height, and horizontally, with respect to the driver's head position—9±1, 5±5, and 1±1 to the left of straight ahead, and 10±1, 14±5, and 17±1 degrees to the right of straight ahead.

VI.2.f.ii The target is displayed in one position at a time. The target is displayed in a particular, randomly-selected (via a pick from a uniform probability distribution) position for 1.5 seconds or until the participant responds. The target disappears if a test participant responds (via the micro-switch discussed in Subsection VI.2.g) while it is displayed or within 0.5 seconds after the target disappears. After the target disappears, it is not displayed for a period of time that varies randomly (via a pick from a uniform probability distribution) from 3.0 to 5.0 seconds.

VI.2.g For test paradigms that require the performance of a visual detection task, the driving simulator should be capable of recording both the time at which each target begins to be displayed and the time when a test participant responds.

VI.2.g.i Test participant responses are recorded based on the wirelessly-transmitted output of a finger-mounted button micro-switch. The button micro-switch should be mounted, if feasible, on the index finger of a test participant's left hand in such a way that a test participant can easily momentarily depress the micro-switch button when he or she sees a target displayed.

VI.2.g.ii If it is not feasible to mount the button micro-switch on the index finger of a test participant's left hand, mount the button micro-switch in a convenient location such that it can be easily pressed while driving.

VI.2.g.iii If a test participant starts pressing the micro-switch button either while the target is displayed or within 0.5 seconds of the completion of a target display, it is counted as a correct response.

VI.2.g.iv For correct responses only, the Visual Detection Task Response Time is equal to the time from the beginning of the target display to the start of the micro-switch button press. This measure cannot be calculated for incorrect responses.

VI.2.h The driving simulator should display the vehicle's speed to a driver.

VI.2.j The driving simulator should be capable of simulating the driving

scenarios described elsewhere in this document.

VI.3 Recommended Driving Simulator Scenario.

VI.3.a The road being simulated should:

VI.3.a.i Be undivided and four lanes wide,

VI.3.a.ii Have a solid double yellow line down the center,

VI.3.a.iii Have solid white lines on the outside edges,

VI.3.a.iv Have dashed white lines separating the two lanes that go in each direction,

VI.3.a.v Be flat (no grade or road crown), and

VI.3.a.vi Have a speed limit of 55 mph.

VI.3.a.vii All test data collection is performed on straight road segments. However, the road being simulated may, if desired, contain occasional curved segments not in the area used for data collection.

VI.3.b The driving scenario should proceed as follows:

VI.3.b.i The subject vehicle begins motionless in the right lane of the road.

VI.3.b.ii Test participant accelerates vehicle up to approximately the speed limit.

VI.3.b.iii After approximately 360 meters of travel, the lead vehicle, which is initially traveling at the speed limit, appears in the travel lane in front of the subject vehicle at the desired following distance.

VI.3.b.iv The subject vehicle then follows the lead vehicle for the remainder of the test. This is defined as the car following portion of the test.

VI.3.c All testing is performed while driving in the right lane of the simulated road.

VI.3.d A test participant should begin performing secondary tasks as soon as feasible after the start of the car following portion of the test.

VI.3.e The speed of the lead vehicle, as a function of time, will be specified for each test. Each of the test options, below, that use a driving simulator (*Options EGDS, DS–BM, DS–FC, DFD–BM,* and *DFD–FC*) state the lead vehicle speed as a function of time.

VI.3.f Once the subject vehicle is following the lead vehicle, oncoming or adjacent lane traffic may begin to appear. The oncoming or adjacent lane traffic that is present is specified for each of the test options, below, that use a driving simulator (*Options EGDS, DS–BM, DS–FC, DFD–BM,* and *DFD–FC*).

VI.4 Test Participant Recommendations.

VI.4.a General Criteria. Each test participant should meet the following general criteria:

VI.4.a.i Be in good general health,

VI.4.a.ii Be an active driver with a valid driver's license,

VI.4.a.iii Drive a minimum of 7,000 miles per year,

VI.4.a.iv Be in the age range of 18 through 75 years of age, inclusive,

VI.4.a.v Have experience using a wireless phone while driving,

VI.4.a.vi Be comfortable communicating via text messages, and

VI.4.a.vii Be unfamiliar with the device(s) being tested.

VI.4.b Mix of Ages in Each Test Participant Sample. Out of each group of twenty-four test participants used for testing a particular in-vehicle device task, there should be:

VI.4.b.i Six test participants 18 through 24 years old, inclusive,

VI.4.b.ii Six test participants 25 through 39 years old, inclusive,

VI.4.b.iii Six test participants 40 through 54 years old, inclusive, and

VI.4.b.iv Six test participants 55 years old or older.

VI.4.c Even Mix of Genders in Each Test Participant Sample. Each sample of twenty-four test participants used for testing a particular in-vehicle device task, should contain:

VI.4.c.i Twelve men and twelve women overall, and

VI.4.c.ii An equal balance of men and women in each of the age ranges 18 through 24 years old, 25 through 39 years old, 40 through 54 years old, and 55 years old and older.

VI.4.d Test Participant Impartiality. Test participants should be impartial with regard to the testing. To ensure fairness, test participants should not have any direct interest, financial or otherwise, in whether or not any of the devices being tested meets or does not meet the acceptance criteria. (While auto manufacturers may have multiple categories of employees that are not involved in vehicle systems or component development, NHTSA believes that automaker employees will tend to be generally more knowledgeable about vehicles and their current features than the average member of the public. With this additional knowledge of vehicles and their latest features, the employees may perform better in testing due to this exposure to the automotive industry. Therefore, their use as test participants is discouraged.)

VI.5 Test Participant Device Training Recommendations. Each test participant should be given training as to how to operate the driving simulator (if one is being used) and how to perform each of the desired secondary tasks using the devices being evaluated.

VI.5.a Test instruction should be standardized and be presented either orally or in writing. The display and controls of the interface should be visible during instruction. An instruction may be repeated at the request of a test participant.

VI.5.b Each test participant should have the vehicle's controls and displays explained to them, and shown how to adjust the seat. Since the vehicle's mirrors are not used during this testing, there is no need to explain to test participants how to adjust them.

VI.5.c Each test participant should be given instructions on the driving scenario that they are to perform. These should include:

VI.5.c.i That he or she should drive in the right lane, and

VI.5.c.ii That, as a driver, their primary responsibility is to drive safely at all times.

VI.5.d Test participants should be told the speed at which they are to drive prior to the beginning of car following. Test participants should be told that, once in car following mode, they should follow the lead vehicle at as close to a constant following distance as they can manage.

VI.5.e Test participants should be given specific detailed instructions and practice as to how to perform each secondary task of interest on each device being studied before that particular driving trial.

VI.5.f Test participants should practice each secondary task of interest on each device being studied with the driving simulator with the vehicle parked. This practice may also be performed in a separate parked vehicle. A test participant should practice a task as many times as needed until they think that they have become comfortable in performing the task.

VI.6 Eye Glance Measurement. While driving the simulator and performing the secondary task, the length of each test participants eye glances away from the forward roadway should be recorded and determined.

VI.6.a Eye glance durations should be determined in one of two ways: (1) through the use of an eye tracker or (2) by collecting full motion video of each test participant's face and, subsequent to testing, a data reducer determines from this video the direction of a test participant's gaze at each instant in time.

VI.6.b The length of an individual glance is determined as the time associated with any eye glances away from the forward roadway. Due to the driving scenario, eye glances to the side of the roadway or to the vehicle's mirrors are expected to be minimal.

VI.6.c Ensuring eye tracker accuracy and repeatability. If an eye tracker is

used, the testing organization should have a procedure for ensuring the accuracy and repeatability of eye glance locations. This will require collecting full motion video of a small sample of test participant's faces and having data reducer determine from this video the direction of a test participant's gaze at each instant in time. The testing organization should also have a written procedure for setting up and calibrating the eye tracker.

VI.6.d Ensuring Full Motion Video Reduction Accuracy and Repeatability. If full motion video is used, the testing organization should have a procedure for ensuring the accuracy and repeatability of eye glance locations. This will involve having multiple data reducers analyze the same, relatively short segment(s) of full motion video and checking that they obtained the same glance locations. The testing organization should also have a written procedure for instructing and training data reducers as to how to determine eye glance locations. To the extent possible, data reducers should not have an interest as to whether a secondary task/device being tested meets the acceptance criteria. Data reducers should not be closely involved with the development of a device.

VI.7 Task Performance Errors During Testing.

VI.7.a ''Error-Free'' Performance During Testing. During testing, only data from ''error-free'' test trials performed by test participants should be used for determining whether a task is suitable for performance while driving.

VI.7.b Unreasonably Difficult Tasks. A record should be kept during testing as to whether one or more errors occurred during each test trial. If errors occur during more than 50 percent of test trials while testing a sample of 24 test participants, then that task is deemed an ''unreasonably difficult task'' for performance by a driver while driving. Unreasonably difficult tasks are not recommended for performance while driving and should be locked out.

VI.8 Determination That a Task Should Be Locked Out. Any task that draws a driver's attention from the primary driving task to the point where it does not comply with the Subsection VI.8 test procedures, should either be located and oriented so that it cannot be seen by a driver unless either (1) the vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles). The following table summarizes the test procedures that are currently being considered to determine which tasks should be locked out.

TABLE 10—SUMMARY OF DISTRACTION TEST PROTOCOLS AND ACCEPTANCE CRITERIA CONSIDERED BY NHTSA

Option letter	Test name	Performance measures	Acceptance criteria	Testing venue
EGDS	Eye Glance Testing Using a Driving Simulator.	• Duration of individual eye glances away from forward road view. • Sum of individual eye glance durations away from forward road view.	• 85% of individual glance durations less than 2.0 seconds. • Mean of individual glance durations less than 2.0 seconds. • Sum of individual eye glance durations less than or equal to 12.0 seconds.	Driving Simulator.
OCC	Occlusion Testing	• Sum of shutter open times	• Sum of shutter open times less than 9.0 seconds.	Occlusion.
STEP	Step Counting	• Number of steps required for task.	• Less than 6 steps required for task.	Task Analysis.
DS–BM	Driving Test Protocol with Benchmark.	• Standard deviation of headway. • Lane exceedances.	• Performance measures not greater than benchmark values.	Driving Simulator.
DS–FC	Driving Test Protocol with Fixed Acceptance Criteria.	• Same as *Option DS–BM*	• Performance measures not greater than specified values.	Driving Simulator.
DFD–BM	Dynamic Following and Detection Protocol with Benchmark.	• Duration of individual eye glances away from forward road view. • Sum of individual eye glance durations away from forward road view. • Standard deviation of lane position. • Car following delay. • Percent of visual targets detected. • Visual detection response time.	• *Option EGDS* eye glance acceptance criteria *plus*. • Performance measures less than benchmark values.	Driving Simulator.
DFD–FC	Dynamic Following and Detection Protocol with Fixed Acceptance Criteria.	• Same as *Option DFD–FC.*	• *Option EGDS* eye glance acceptance criteria plus. • Performance measures less than specified values.	Driving Simulator.

Note: Manufacturers are free to use any testing protocol that they desire to ensure that their products adhere to the NHTSA Guidelines.

Option EGDS: Eye Glance Testing Using a Driving Simulator

EGDS.1 Test Apparatus. Testing should be performed using a driving simulator that meets the recommendations contained in Subsection VI.2 using the driving scenario described in Subsection VI.3.

EGDS.2 Lead Vehicle Speed. For this testing, the lead vehicle should travel at a constant speed of 50 mph.

EGDS.3 Test Device. The device under investigation should be operational and fitted to a vehicle or simulator buck.

EGDS.4 Test Participants.

EGDS.4.a Twenty-four test participants should be enrolled using the procedures described in Subsection VI.4.

EGDS.4.b Test participants initially should be unfamiliar with the device being tested. As part of the test protocol, they should be trained in the use of the device(s) that are being tested using the procedures described in Subsection VI.5.

EGDS.5 Test Instructions. Test instruction should be standardized and be presented either in oral or written format. The display and controls of the interface should be visible during instruction. An instruction may be repeated at the request of a test participant.

EGDS.6 Number of Trials. Each test participant should drive the driving scenario two times, one time not performing any secondary task (the Familiarization Trial), and a second time performing the secondary task being studied (the Data Trial).

EGDS.7 Eye Glance Determination. Eye glances are determined for each test participant while performing each secondary task using the techniques described in Subsection VI.6.

EGDS.8 Acceptance Criteria. A task should not be allowed to be performed by drivers unless either (1) The vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles), or (3) the following three criteria are all met:

EGDS.8.a For any of the test participants, no more than fifteen percent (rounded up) of the total number of eye glances away from the forward road scene should last for more than 2.0 seconds while performing the secondary task one time.

EGDS.8.b For at least twenty-one of the twenty-four test participants, the mean of all eye glances away from the forward road scene should be less than 2.0 seconds while performing the secondary task one time.

EGDS.8.c For at least twenty-one of the twenty-four test participants, the sum of the durations of each individual participant's eye glances away from the forward road scene should be less than, or equal to, 12.0 seconds while performing the secondary task one time.

EGDS.9 Multiple Trials. To improve testing efficiency, multiple Data Trials should be allowed to be made by the same subject. Only one Familiarization Trial needs to be performed, prior to any desired number of Data Trials. Also, multiple secondary tasks can be tested, one after another, during the same Data Trial.

Option OCC: Occlusion Testing

OCC.1 Test Apparatus. Intermittent viewing of a device interface can be provided by various means such as commercially-available occlusion goggles, a shutter in front of the interface, or some other means.

OCC.1.a Either the occlusion goggles, the shutter in front of the interface, or other means used should be transparent during the viewing interval and opaque during the occlusion interval.

OCC.1.b During the occlusion interval, neither the interface displays nor controls should be visible to a test participant.

OCC.1.c During the occlusion interval, operation of the device controls by a test participant should be permitted.

OCC.1.d The switching process between the viewing interval and the occlusion interval should occur in less than twenty (20) milliseconds and vice versa.

OCC.1.e Either the occlusion goggles, the shutter in front of the interface, or the other means of allowing/blocking a test participant's vision should be electronically controlled.

OCC.1.f The illumination levels during the viewing and occlusion intervals should be comparable so that dark/light adaptation of test participants' eyes is not necessary during the procedure.

OCC.2 Test Device. The device under investigation should be operational and fitted to a vehicle, simulator buck, or vehicle mock-up in a design which duplicates the intended location of the interface in the vehicle (*i.e.,* the viewing angle and control placement relationships should be maintained).

OCC.3 Test Participants.

OCC.3.a Twenty-four test participants should be enrolled using the procedures described in Subsection VI.4.

OCC.3.b Test participants initially should be unfamiliar with the device being tested. As part of the test protocol, they should be trained in the use of the device(s) that are being tested using the procedures described in Subsection VI.5.

OCC.4 Test Instructions. Test instruction should be standardized and be presented either in oral or written format. The display and controls of the interface should be visible during instruction. An instruction may be repeated at the request of a test participant.

OCC.5 Test Procedure. Testing is performed in accordance with ISO International Standard 16673:2007, ''Road Vehicles—Ergonomic Aspects of Transport Information and Control Systems—Occlusion Method to Assess Visual Demand due to the use of In-Vehicle Systems'' with the exception that where the ISO Standard states that at least ten participants are to be tested, the current guidelines have fixed this number at twenty-four participants to be tested.

OCC.5.a The viewing interval (shutter open time) should be 1.5 seconds. This should be followed by a 1.5-second occlusion interval (shutter closed time). The sequence of viewing interval followed by occlusion interval should occur automatically without interruption until the task is completed or the trial is terminated.

OCC.5.b The initial condition for testing is occlusion in which a test participant cannot see the device interface.

OCC.5.c Task stimuli (*e.g.,* addresses, phone numbers, etc.) are provided to a test participant prior to the start of testing. When the task stimuli are given to a test participant, the device should be occluded (*i.e.,* a test participant cannot see the device interface) and it should remain occluded until after testing has begun.

OCC.5.d Testing starts when a test participant tells the experimenter that he or she is ready to begin. The experimenter then triggers the alternating sequence of viewing intervals followed by occlusion intervals. A test participant starts performing the task at the beginning of the first viewing interval.

OCC.5.e When a test participant has completed the task, he or she tells the experimenter that the task has been completed. The experimenter stops the shutter operation.

OCC.5.f There should be an automatic means of recording the number of shutter open intervals required to complete the task.

OCC.6 Acceptance Criterion. A task should not be allowed to be performed by drivers unless either (1) The vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles), or (3) the following criterion is met:

OCC.6.a For at least twenty-one of the twenty-four test participants, the task was successfully completed during six or fewer viewing intervals (*i.e.,* a maximum of 9.0 seconds of shutter open time).

OCC.7 Multiple Trials. To improve testing efficiency, multiple Data Trials should be allowed to be made by the same subject. Only one Familiarization Trial needs to be performed, prior to any desired number of Data Trials. Also, multiple secondary tasks can be tested, one after another, during the same Data Trial.

Option STEP: Step Counting

STEP.1 Task analysis. A task analysis is performed to decompose the secondary task being performed into an ordered sequence of its elemental components that a driver would perform in order to successfully complete a task. The elemental components of a task would include such driver actions as:

- Pressing a single button,
- Glancing at a device display,
- Choosing an entry from a list,
- Picking up an object, or
- Putting down an object.

STEP.2 Step Assignment. Each elemental component that constitutes a secondary task is assigned a number of steps as follows:

STEP.2.a Each time that a driver presses a single button, one step is assigned except that if a driver is pressing the same button multiple times in rapid succession (*e.g.,* pressing the ''3'' button on a telephone three times to indicate an ''f''), all of the multiple button presses are assigned one step.

STEP.2.b Each time that a driver looks at the device display, one step is assigned.

STEP.2.c Each time that a driver chooses from an entry in a list, a variable number of steps are assigned. The number of steps assigned depends upon the length of the list as follows:

STEP.2.c.i If there are one through five entries in the list, then five steps are assigned.

STEP.2.c.ii If there are six through nine entries in the list, then seven steps are assigned.

STEP.2.c.iii If there are ten or more entries in the list, then nine steps are assigned.

STEP.2.d Each time a driver picks up an object, three steps are assigned.

STEP.2.e Each time a driver puts down an object, one step is assigned.

STEP.3 Add Steps Together. All of the steps that have been assigned from all of the elemental components that constitute a secondary task are added together. The resulting number is the number of steps to perform that secondary task.

STEP.4 Acceptance Criterion. A task should not be allowed to be performed by drivers unless either (1) The vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles), or (3) the following criterion is met:

STEP.4.a The number of steps to successfully complete the task is six or less.

Option DS–BM: Driving Test Protocol With Benchmark

DS–BM.1 Test Apparatus. Testing should be performed using a driving simulator that meets the recommendations contained in Subsection VI.2 using the driving scenario described in Subsection VI.3.

DS–BM.2 Lead Vehicle Speed. For this testing, the lead vehicle should travel at a constant speed of 50 mph.

DS–BM.3 Test Device. The device under investigation should be operational and fitted to a vehicle or simulator buck.

DS–BM.4 Test Participants.

DS–BM.4.a Twenty-four test participants should be enrolled using the procedures described in Subsection VI.4.

DS–BM.4.b Test participants initially should be unfamiliar with the device being tested. As part of the test protocol, they should be trained in the use of the device(s) that are being tested using the procedures described in Subsection VI.5.

DS–BM.5 Test Instructions. Test instruction should be standardized and be presented either in oral or written format. The display and controls of the interface should be visible during instruction. An instruction may be repeated at the request of a test participant.

DS–BM.6 Number of Trials. Each test participant should drive the driving scenario six (6) times, one time not performing any secondary task (the Familiarization Trial), and five more times performing the secondary task being studied (the Data Trials).

DS–BM.7 Reference Task. During each Data Trial, in addition to the secondary tasks that are being evaluated, a test participant should perform one additional secondary task, Manual Radio Tuning. This Manual Radio Tuning task serves as a reference task that is used to determine whether the acceptance criteria listed in Subsection DS–BM.9, below, are met.

DS–BM.7.a The Manual Radio Tuning task should be performed as follows:

DS–BM.7.a.i Prior to the commencement of the Manual Radio Tuning task, a test participant is told the frequency of the station to which the radio is to be tuned.

DS–BM.7.a.ii Initially the radio is ''On.'' If the radio controls are part of an integrated vehicle display, the integrated display should be set so that the radio controls are not active.

DS–BM.7.a.iii If the radio controls are part of an integrated vehicle display, a test participant performs the action(s) necessary to make the radio controls active.

DS–BM.7.a.iv A test participant changes the radio band selection from AM to FM (or vice versa). The station that the radio is tuned to immediately after this band selection is made should be referred to as the Initial Station.

DS–BM.7.a.v A test participant uses the radio tuning control to tune the radio to the desired, new, station (referred to as the Final Station) that is approximately one-third of the AM or FM (as appropriate) band away from the Initial Station.

DS–BM.7.a.vi The Manual Radio Tuning has been completed when the radio has been successfully tuned to the Final Station.

DS–BM.8 Metric Computation. Metric values should be determined based on data recorded by the driving simulator from the start of a secondary task to the end of a secondary task.

DS–BM.8.a Based on the recorded lane position data, determine how many lane exceedances occurred during each secondary task. A lane exceedance occurs whenever either:

DS–BM.8.a.i The right front or right rear tire of the vehicle is totally to the right of the right lane edge line, or

DS–BM.8.a.ii The left front or left rear tire of the vehicle is totally to the left of the left lane edge line.

DS–BM.8.a.iii No distinction is made between right and left side lane exceedances. Similarly, no distinction is made as to whether only the front tire, only the rear tire, or both tires have crossed the lane edge line.

DS–BM.8.b Based on the recorded data for headway (distance from the subject vehicle to a lead vehicle), the time headway (headway divided by the nominal travel speed of 50 mph) is calculated as a function of time. The standard deviation of time headway during the secondary task is calculated.

DS–BM.9 Acceptance Criteria. A task should not be allowed to be performed by drivers unless either (1) The vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is

in ''Neutral'' and the parking brake is on (manual transmission vehicles), or (3) both of the following criteria are met:

DS–BM.9.a The number of lane exceedances occurring while the secondary task is being performed is not statistically significantly greater, at the 95 percent confidence level, than the number of lane exceedances occurring while the manual radio tuning task is being performed.

DS–BM.9.b The standard deviation of headway while the secondary task is being performed is not statistically significantly greater, at the 95 percent confidence level, than the standard deviation of headway while the manual radio tuning is being performed.

DS–BM.9.c Data from all five Data Trials is used when making the statistical significance calculations required by DS–BM.9.a and DS–BM.9.b.

Option DS–FC: Driving Test Protocol With Fixed Acceptance Criteria

DS–FC.1 Test Apparatus. Testing should be performed using a driving simulator that meets the recommendations contained in Subsection VI.2 using the driving scenario described in Subsection VI.3.

DS–FC.2 Lead Vehicle Speed. For this testing, the lead vehicle should travel at a constant speed of 50 mph.

DS–FC.3 Test Device. The device under investigation should be operational and fitted to a vehicle or simulator buck.

DS–FC.4 Test Participants.

DS–FC.4.a Twenty-four test participants should be enrolled using the procedures described in Subsection VI.4.

DS–FC.4.b Test participants initially should be unfamiliar with the device being tested. As part of the test protocol, they should be trained in the use of the device(s) that are being tested using the procedures described in Subsection VI.5.

DS–FC.5 Test Instructions. Test instruction should be standardized and be presented either in oral or written format. The display and controls of the interface should be visible during instruction. An instruction may be repeated at the request of a test participant.

DS–FC.6 Number of Trials. Each test participant should drive the driving scenario six (6) times, one time not performing any secondary task (the Familiarization Trial), and five more times performing the secondary task being studied (the Data Trials).

DS–FC.7 Metric Computation. Metric values should be determined based on data recorded by the driving simulator from the start of a secondary task to the end of a secondary task.

DS–FC.7.a Based on the recorded lane position data, determine how many lane exceedances occurred during each secondary task. A lane exceedance occurs whenever either:

DS–FC.7.a.i The right front or right rear tire of the vehicle is totally to the right of the right lane edge line, or

DS–FC.7.a.ii The left front or left rear tire of the vehicle is totally to the left of the left lane edge line.

DS–FC.7.a.iii No distinction is made between right and left side lane exceedances. Similarly, no distinction is made as to whether only the front tire, only the rear tire, or both tires have crossed the lane edge line.

DS–FC.7.b Based on the recorded data for headway (distance from the subject vehicle to a lead vehicle), the time headway (headway divided by the nominal travel speed of 50 mph) is calculated as a function of time. The standard deviation of time headway during the secondary task is calculated.

DS–FC.8 Acceptance Criteria. A task should not be allowed to be performed by drivers unless either (1) The vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles), or (3) both of the following criteria are met:

DS–FC.8.a The number of lane exceedances occurring while the secondary task is being performed is not statistically significantly greater, at the 95 percent confidence level, than 0.06 lane exceedances per secondary task performed.

DS–FC.8.b The standard deviation of headway while the secondary task is being performed is not statistically significantly greater, at the 95 percent confidence level, than 0.35 seconds while a secondary task is being performed.

DS–FC.8.c Data from all five Data Trials is used when making the statistical significance calculations required by DS–FC.8.a and DS–FC.8.b.

Option DFD–BM: Dynamic Following and Detection Protocol With Benchmark

DFD–BM.1 Test Apparatus. Testing should be performed using a driving simulator that meets the recommendations contained in Subsection VI.2 using the driving scenario described in Subsection VI.3.

DFD–BM.1.a For this testing, the vehicle being tested should contain a route navigation system. If the vehicle does not have an integrated route navigation system, a portable one may be used.

DFD–BM.2 Lead Vehicle Speed. For this testing, the lead vehicle should travel at a continually varying speed that is determined by linear interpolation from a table of lead vehicle speed values versus time. Multiple lead vehicle speed tables are used, with a different one being used each time a test participant drives the simulator. Electronic copies of these tables, in the form of Microsoft Excel files, can be obtained from NHTSA.

DFD–BM.3 Test Device. The device under investigation should be operational and fitted to a vehicle or simulator buck.

DFD–BM.4 Test Participants.

DFD–BM.4.a Twenty-four test participants should be enrolled using the procedures described in Subsection VI.4.

DFD–BM.4.b Test participants initially should be unfamiliar with the device being tested. As part of the test protocol, they should be trained in the use of the device(s) that are being tested using the procedures described in Subsection VI.5.

DFD–BM.5 Test Instructions. Test instruction should be standardized and be presented either in oral or written format. The display and controls of the interface should be visible during instruction. An instruction may be repeated at the request of a test participant.

DFD–BM.6 Number of Trials. Each test participant should drive the driving scenario two times, one time not performing any secondary task (the Familiarization Trial), and a second time performing the secondary task being studied (the Data Trial).

DFD–BM.7 Eye Glance Determination. Eye glances are determined for each test participant while performing each secondary task using the techniques described in Subsection VI.6.

DFD–BM.8 Reference Task. During each Data Trial, in addition to the secondary tasks that are being evaluated, a test participant should perform one additional secondary task, route navigation system destination entry. This Destination Entry task serves as a reference task that is used to determine whether the acceptance criteria listed in Subsection DFD–BM.12, below, are met.

DFD–BM.8.a The Destination Entry task should be performed as follows:

DFD–BM.8.a.i Initially the route navigation system is ''On.'' If the route navigation system controls are part of an integrated vehicle display, the integrated display should be set so that

the route navigation system controls are active.

DFD–BM.8.a.ii A test participant enters a complete address (house number, street name, city name, and state abbreviation) into the route navigation system. Choosing from an entry in a list of either previously entered destinations or landmarks is not acceptable.

DFD–BM.8.a.iii The Destination Entry task has been completed when the final button on the route navigation system is pressed to have the system find the route to the address.

DFD–BM.8.b Addresses chosen for testing should have a three or four digit house number, and a nine through twelve character street name (see details in DFD–BM.8.c), have a seven through ten character city name (see details in DFD–BM.8.d), and have a two character state abbreviation.

DFD–BM.8.c The nine through twelve character street name should always be two words with a space between them. The first word will be the actual name, while the second word will be an abbreviation for the type of street (Blvd, Ct, Rd, St, etc.). When determining the number of characters in the street name, all characters of both the actual name and the abbreviation as well as one character for the space in between are counted.

DFD–BM.8.c.i The route navigation system may use an auto-complete feature after a portion of the street name has been entered. Having a test participant choose from a list generated by an auto-complete feature is acceptable.

DFD–BM.8.d The seven through ten character city name should always be one word.

DFD–BM.8.d.i The route navigation system may use an auto-complete feature after a portion of the city name has been entered. Having a test participant choose from a list generated by an auto-complete feature is acceptable. The auto-complete feature may make it unnecessary for a test participant to enter the two character state abbreviation.

DFD–BM.8.e The route navigation system may have a test participant enter a five-digit ZIP code instead of the city name and state abbreviation.

DFD–BM.9 Continuous Task Performance. Each secondary task is continuously performed for 3 minutes during the car following portion of the test (see Subsection VI.3.b.iv).

DFD–BM.10 Visual Detection Task. During the car following portion of the test, simultaneously with performing each secondary task, a test participant also continuously performs the visual detection task that is described below.

DFD–BM.10.a As explained in Subsections VI.2.f and VI.2.g, for the visual detection task, the driving simulator should display a series of targets to be detected. Each target consists of a filled-in, solid, red circle that is displayed in any one of six positions. Target dimensions and positions are described in VI.2.f. When a test participant sees a target appear, he or she should respond as quickly as possible by pressing the micro-switch typically attached to their left index finger.

DFD–BM.10.b Outputs from the visual detection task consist of:

DFD–BM.10.b.i The number of visual targets displayed during the car following portion of the test.

DFD–BM.10.b.ii The number of correctly identified visual targets during the car following portion of the test (see Subsection VI.2.g.iii for details on how to determine).

DFD–BM.10.b.iii The Visual Detection Task Response Time, defined as the time when the test participant pressed the micro-switch minus the time when each visual target begins to display on the projection screen, is calculated for each time that a test participant's response was correct (see Subsection VI.2.g.iv for details on how to determine).

DFD–BM.11 Metric Computation. Glance-by-glance Eyes-Off-Road Times, Standard Deviation of Lane Position, Car Following Delay, Percent Correctly Detected, and Visual Detection Task Response Time metrics should be determined based on data recorded by the driving simulator from the start of the 3 minutes of secondary task performance to the end of the 3 minutes (the Data Interval). The following measures of test participant performance are determined for each Data Interval:

DFD–BM.11.a Glance-by-glance Eyes-Off-Road Times. The lengths of eye glances away from the forward road scene are determined for each test participant for each Data Interval using the techniques described in Subsection VI.6.

DFD–BM.11.b Standard Deviation of Lane Position. Based on the recorded data for lane position, the Standard Deviation of Lane Position during the Data Interval is determined.

DFD–BM.11.c Car Following Delay. The Car Following Delay for each Data Interval is calculated as follows:

DFD-FC.10.c.i The mean value of the subject vehicle speed, s_{SV}, over the Data Interval is calculated and subtracted from each value of s_{SV} during the Data Interval. This generates the zero-mean, adjusted, subject vehicle speed channel, $\bar{s}_{SV}$.

DFD-FC.10.c.ii The mean value of the lead vehicle speed, s_{LV}, over the Data Interval is calculated and subtracted from each value of s_{LV} during the Data Interval. This generates the zero-mean, adjusted, lead vehicle speed channel, $\bar{s}_{LV}$.

DFD-FC.10.c.iii The cross correlation is calculated between the zero-mean, adjusted, subject vehicle speed channel, $\bar{s}_{SV}$, and the zero-mean lead vehicle speed channel, $\bar{s}_{LV}$. Mathematically, this is done using the equation:

$$F(\varphi) = \sum_{j=0}^{n} \bar{s}_{SV}(j)\bar{s}_{LV}(j+\varphi)$$

where:

$F(\varphi)$ is the cross correlation as a function of the delay in samples,

φ is the delay in samples,

j is the sample index, and

n is the number of samples.

DFD-FC.10.c.iv The delay in samples, φ, should be negative (i.e., the subject vehicle response should lag the lead vehicle response). Furthermore, φ multiplied by the time interval between data points should not be less than -15.0 seconds.

DFD-FC.10.c.v Practically, this calculation is made using the Matlab function "xcorr."

DFD-FC.10.c.v1 The value of φ at which $F(\varphi)$ has its largest magnitude multiplied by the time interval between data points is used to calculate the Car Following Delay.

DFD–BM.11.d Percent Correctly Detected. For each Data Interval, the Percent Correctly Detected is equal to the percentage obtained by dividing the number of a test participant's correct responses by the total number of targets displayed during a trial.

DFD–BM.11.e Visual Detection Task Response Time. As explained in Subsection VI.2.g.iii, the Visual Detection Task Response Time is calculated for each target that is displayed during a Data Interval for which a test participant gave a correct response.

DFD–BM.12 Acceptance Criteria. A task should not be allowed to be performed by drivers unless either (1) The vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles), or (3) both of the recommendations DFD–BM.12.a and DFD–BM.12.b are met:

DFD–BM.12.a A secondary task meets the recommendations of DFD–BM.12.a if it satisfies all three of the following criteria:

DFD–BM.12.a.i For at least 21 of the 24 test participants, no more than 15 percent (rounded up) of the total number of eye glances away from the forward road scene should have durations of greater than 2.0 seconds while performing the secondary task.

DFD–BM.12.a.ii For at least 21 of the 24 test participants, the mean of all eye glances away from the forward road scene should be less than 2.0 seconds while performing the secondary task.

DFD–BM.12.a.iii For at least 21 of the 24 test participants, the sum of the durations of each individual participant's eye glances away from the forward road scene should be less than, or equal to, 12.0 seconds while performing the secondary task one time.

DFD–BM.12.b A secondary task meets the recommendations of DFD–BM.12.b if it satisfies at least three of the following four criteria:

DFD–BM.12.b.i The Standard Deviation of Lane Position during the Data Intervals is statistically significantly less, at the 95 percent confidence level, than the Standard Deviation of Lane Position during the Data Intervals for the Destination Entry task.

DFD–BM.12.b.ii The Car Following Delay during the Data Intervals is statistically significantly less, at the 95 percent confidence level, than the Car Following Delay during the Data Intervals for the Destination Entry task.

DFD–BM.12.b.iii The Percent Correctly Detected during the Data Intervals is statistically significantly greater, at the 95 percent confidence level, than the Percent Correctly Detected during the Data Intervals for the Destination Entry task.

DFD–BM.12.b.iv The Visual Detection Task Response Time during the Data Intervals is statistically significantly less, at the 95 percent confidence level, than the Visual Detection Task Response Time during the Data Intervals for the Destination Entry task.

DFD–BM.13 Testing Procedure Items.

DFD–BM.13.a To prevent familiarity with the lead vehicle's speed profile from becoming an issue, a different speed profile should be used for each test participant drive on the driving simulator.

DFD–BM.13.b It is acceptable for each test participant to perform multiple secondary tasks in a single test participation session. However, a test participant should not be tested performing more than six secondary tasks in a single session.

DFD–BM.13.c Each test participant should only be tested for one 3-minute interval while performing the same secondary task.

DFD–BM.14 Multiple Trials. To improve testing efficiency, multiple Data Trials should be allowed to be made by the same subject. Only one Familiarization Trial needs to be performed, prior to any desired number of Data Trials. Also, multiple secondary tasks can be tested, one after another, during the same Data Trial.

Option DFD–FC: Dynamic Following and Detection Protocol With Fixed Acceptance Criteria

DFD–FC.1 Test Apparatus. Testing should be performed using a driving simulator that meets the recommendations contained in Subsection VI.2 using the driving scenario described in Subsection VI.3.

DFD–FC.1.a For this testing, the vehicle being tested should contain a route navigation system. If the vehicle does not have an integrated route navigation system, a portable one may be used.

DFD–FC.2 Lead Vehicle Speed. For this testing, the lead vehicle should travel at a continually varying speed that is determined by linear interpolation from a table of lead vehicle speed values versus time. Multiple lead vehicle speed tables are used, with a different one being used each time a test participant drives the simulator. Electronic copies of these tables, in the form of Microsoft Excel files, can be obtained from NHTSA.

DFD–FC.3 Test Device. The device under investigation should be operational and fitted to a vehicle or simulator buck.

DFD–FC.4 Test Participants.

DFD–FC.4.a Twenty-four test participants should be enrolled using the procedures described in Subsection VI.4.

DFD–FC.4.b Test participants initially should be unfamiliar with the device being tested. As part of the test protocol, they should be trained in the use of the device(s) that are being tested using the procedures described in Subsection VI.5.

DFD–FC.5 Test Instructions. Test instruction should be standardized and be presented either in oral or written format. The display and controls of the interface should be visible during instruction. An instruction may be repeated at the request of a test participant.

DFD–FC.6 Number of Trials. Each test participant should drive the driving scenario two times, one time not performing any secondary task (the Familiarization Trial), and a second time performing the secondary task being studied (the Data Trial).

DFD–FC.7 Eye Glance Determination. Eye glances are determined for each test participant while performing each secondary task using the techniques described in Subsection VI.6.

DFD–FC.8 Continuous Task Performance. Each secondary task is continuously performed for 3 minutes during the car following portion of the test (see Subsection VI.3.b.iv).

DFD–FC.9 Visual Detection Task. During the car following portion of the test, simultaneously with performing each secondary task, a test participant also continuously performs the visual detection task that is described below.

DFD–FC.9.a As explained in Subsections VI.2.f and VI.2.g, for the visual detection task, the driving simulator should display a series of targets to be detected. Each target consists of a filled-in, solid, red circle that is displayed in any one of six positions. Target dimensions and positions are described in VI.2.f. When a test participant sees a target appear, he or she should respond as quickly as possible by pressing the micro-switch typically attached to their left index finger.

DFD–FC.9.b Outputs from the visual detection task consist of:

DFD–FC.9.b.i The number of visual targets displayed during the car following portion of the test.

DFD–FC.9.b.ii The number of correctly identified visual targets during the car following portion of the test (see Subsection VI.2.g.iii for details on how to determine).

DFD–FC.9.b.iii The Visual Detection Task Response Time, defined as the time when the test participant pressed the micro-switch minus the time when each target begins to display on the projection screen, is calculated for each time that a test participant's response was correct (see Subsection VI.2.g.iv for details on how to determine).

DFD–FC.10 Metric Computation. Glance-by-glance Eyes-Off-Road Times,

Standard Deviation of Lane Position, Car Following Delay, Percent Correctly Detected, and Visual Detection Task Response Time metrics should be determined based on data recorded by the driving simulator from the start of the 3 minutes of secondary task performance to the end of the 3 minutes (the Data Interval). The following measures of test participant performance are determined for each Data Interval:

DFD–FC.10.a Glance-by-glance Eyes-Off-Road Times. The lengths of eye glances away from the forward road scene are determined for each test participant for each Data Interval using the techniques described in Subsection VI.6.

DFD–FC.10.b Standard Deviation of Lane Position. Based on the recorded data for lane position, the Standard Deviation of Lane Position during the Data Interval is determined.

DFD–FC.10.c Car Following Delay. The Car Following Delay for each Data Interval is calculated as follows:

DFD-FC.10.c.i The mean value of the subject vehicle speed, s_{SV}, over the Data Interval is calculated and subtracted from each value of s_{SV} during the Data Interval. This generates the zero-mean, adjusted, subject vehicle speed channel, $\bar{s}_{SV}$.

DFD-FC.10.c.ii The mean value of the lead vehicle speed, s_{LV}, over the Data Interval is calculated and subtracted from each value of s_{LV} during the Data Interval. This generates the zero-mean, adjusted, lead vehicle speed channel, $\bar{s}_{LV}$.

DFD-FC.10.c.iii The cross correlation is calculated between the zero-mean, adjusted, subject vehicle speed channel, $\bar{s}_{SV}$, and the zero-mean lead vehicle speed channel, $\bar{s}_{LV}$. Mathematically, this is done using the equation:

$$F(\varphi) = \sum_{j=0}^{n} s_{SV}(j) s_{LV}(j + \varphi)$$

where:

$F(\varphi)$ is the cross correlation as a function of the delay in samples,

φ is the delay in samples,

j is the sample index, and

n is the number of samples.

DFD-FC.10.c.iv The delay in samples, φ, should be negative (i.e., the subject vehicle response should lag the lead vehicle response). Furthermore, φ multiplied by the time interval between data points should not be less than -15.0 seconds.

DFD-FC.10.c.v Practically, this calculation is made using the Matlab function "xcorr."

DFD-FC.10.c.v1 The value of φ at which $F(\varphi)$ has its largest magnitude multiplied by the time interval between data points is used to calculate the Car Following Delay.

DFD–FC.10.d Percent Correctly Detected. For each Data Interval, the Percent Correctly Detected is equal to the percentage obtained by dividing the number of a test participant's correct responses by the total number of targets displayed on the screen during the trial.

DFD–FC.10.e Visual Detection Task Response Time. As explained in Subsection VI.2.g.iii, the Visual Detection Task Response Time is calculated for each target that is displayed during a Data Interval for

which a test participant gave a correct response.

DFD–FC.11 Acceptance Criteria. A task should not be allowed to be performed by drivers unless either (1) The vehicle's engine is not running, or (2) the vehicle's transmission is in ''Park'' (automatic transmission vehicles) or the vehicle's transmission is in ''Neutral'' and the parking brake is on (manual transmission vehicles), or (3) both of the recommendations DFD–FC.11.a and DFD–FC.11.b are met:

DFD–FC.11.a A secondary task meets the recommendations of DFD–FC.11.a if it satisfies all three of the following criteria:

DFD–FC.11.a.i For at least 21 of the 24 test participants, no more than 15 percent (rounded up) of the total number of eye glances away from the forward road scene should have durations of greater than 2.0 seconds while performing the secondary task.

DFD–FC.11.a.ii For at least 21 of the 24 test participants, the mean of all eye glances away from the forward road scene should be less than 2.0 seconds while performing the secondary task.

DFD–FC.11.a.iii For at least 21 of the 24 test participants, the sum of the durations of each individual participant's eye glances away from the forward road scene should be less than, or equal to, 12.0 seconds while performing the secondary task one time.

DFD–FC.11.b A secondary task meets the recommendations of DFD–FC.11.b if it satisfies at least three of the following four criteria:

DFD–FC.11.b.i The Standard Deviation of Lane Position during the Data Intervals is not statistically significantly greater, at the 95 percent confidence level, than 1.0 feet.

DFD–FC.11.b.ii The mean Car Following Delay during the Data Intervals is not statistically significantly greater, at the 95 percent confidence level, than 4.6 seconds.

DFD–FC.11.b.iii The mean Percent Detected during the Data Intervals is statistically significantly greater, at the 95 percent confidence level, than 80 percent.

J11.b.iv The mean Visual Detection Task Response Time during the Data Intervals is not statistically significantly greater, at the 95 percent confidence level, than 1.0 second.

DFD–FC.12 Testing Procedure Items.

DFD–FC.12.a To prevent familiarity with the lead vehicle's speed profile from becoming an issue, a different speed profile should be used for each test participant drive on the driving simulator.

DFD–FC.12.b It is acceptable for each test participant to perform multiple secondary tasks in a single test participation session. However, a test participant should not be tested performing more than six secondary tasks in a single session.

DFD–FC.12.c Each test participant should only be tested for one 3-minute interval while performing the same secondary task.

DFD–FC.13 Multiple Trials. To improve testing efficiency, multiple Data Trials should be allowed to be made by the same subject. Only one Familiarization Trial needs to be performed, prior to any desired number of Data Trials. Also, multiple secondary tasks can be tested, one after another, during the same Data Trial.

VII. Recommendations for Passenger Operated Devices. These guidelines primarily are appropriate for driver interfaces of devices intended for use by a driver. They are appropriate to a limited extent for devices intended for use by front seat passengers.

VII.1 Apply if Within Reach or View of Driver. These guidelines are appropriate for devices that can reasonably be reached and seen by a driver even if they are intended for use solely by front seat passengers.

VII.2 Not for Rear Seat Devices. These guidelines are not appropriate for devices that are located solely behind the front seat of the vehicle.

VIII. Recommendations for Aftermarket and Portable Devices.

VIII.1 Aftermarket and Portable Device Guidelines in Future. NHTSA intends, in the future, to extend its NHTSA Guidelines to cover aftermarket and portable devices. At that time, NHTSA may revise the metrics contained in the current guidelines or introduce new metrics.

VIII.2 Unreasonable Risks With Aftermarket and Portable Devices. NHTSA reminds manufacturers that they are responsible for ensuring that aftermarket and portable devices they produce which may reasonably be expected to be used by vehicle drivers do not create unreasonable risks to the driving public.

IX. Recommendations for Voice Interfaces.

IX.1 Auditory-Vocal Interface Guidelines (Future). NHTSA intends, in the future, to extend its NHTSA Guidelines to cover the auditory-vocal aspects of device interfaces. For now, only devices with tasks performed through visual-manual interfaces and/or a combination of visual-manual and auditory-vocal means are covered by the recommendations that are contained in these guidelines.

IX.2 Unreasonable Risks with Auditory-Vocal Interfaces. NHTSA reminds manufacturers that they are responsible for ensuring that devices they produce which have auditory-vocal portions of their interfaces do not create unreasonable risks to the driving public.

Issued on: February 15, 2012.

David L. Strickland,

Administrator.

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Part III

Commodity Futures Trading Commission

17 CFR Parts 4, 145, and 147

Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations; Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators; Final Rule and Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 4, 145, and 147

RIN 3038–AD30

Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission is adopting amendments to its existing part 4 regulations and promulgating one new regulation regarding Commodity Pool Operators and Commodity Trading Advisors. The Commission is also adopting new data collections for CPOs and CTAs that are consistent with a data collection required under the Dodd-Frank Act for entities registered with both the Commission and the Securities and Exchange Commission. The adopted amendments rescind the exemption from registration; rescind relief from the certification requirement for annual reports provided to operators of certain pools offered only to qualified eligible persons (QEPs; modify the criteria for claiming relief); and require the annual filing of notices claiming exemptive relief under several sections of the Commission's regulations. Finally, the adopted amendments include new risk disclosure requirements for CPOs and CTAs regarding swap transactions.

DATES: *Effective dates:* This final rule is effective on April 24, 2012, except for the amendments to § 4.27, which shall become effective on July 2, 2012.

Compliance dates: Compliance with § 4.27 shall be required by not later than September 15, 2012, for a CPO having at least $5 billion in assets under management, and by not later than December 14, 2012, for all other registered CPOs and all CTAs. Compliance with § 4.5 for registration purposes only shall be required not later than the later of December 31, 2012, or 60 days after the effective date of the final rulemaking further defining the term ''swap,'' which the Commission will publish in the **Federal Register** at a future date. Entities required to register due to the amendments to § 4.5 shall be subject to the Commission's recordkeeping, reporting, and disclosure requirements pursuant to part 4 of the Commission's regulations within 60 days following the effectiveness of a final rule implementing the Commission's proposed harmonization effort pursuant to the concurrent proposed rulemaking. CPOs claiming exemption under § 4.13(a)(4) shall be required to comply with the rescission of § 4.13(a)(4) by December 31, 2012; however, compliance shall be required for all other CPOs on April 24, 2012. Compliance with all other amendments, not otherwise specified above, shall be required by December 31, 2012.

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SUPPLEMENTARY INFORMATION:

I. Background on the Proposal To Amend the Registration and Compliance Obligations for CPOs and CTAs

A. Statutory and Regulatory Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, inter alia, enhancing the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

The preamble of the Dodd-Frank Act explicitly states that the purpose of the legislation is:

> To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.[2]

Pursuant to this stated objective, the Dodd-Frank Act has expanded the scope of federal financial regulation to include instruments such as swaps, enhanced the rulemaking authorities of existing federal financial regulatory agencies including the Commission and the Securities and Exchange Commission (''SEC''), and created new financial regulatory entities.

In addition to the expansion of the Commission's jurisdiction to include swaps under Title VII of the Dodd-Frank Act, Title I of the Dodd-Frank Act created the Financial Stability Oversight Council (''FSOC'').[3] The FSOC is composed of the leaders of various state and federal financial regulators and is charged with identifying risks to the financial stability of the United States, promoting market discipline, and responding to emerging threats to the stability of the country's financial system.[4] The Dodd-Frank Act anticipates that the FSOC will be supported in these responsibilities by the federal financial regulatory agencies.[5] The Commission is among those agencies that could be asked to provide information necessary for the FSOC to perform its statutorily mandated duties.[6]

Title IV of the Dodd-Frank Act requires advisers to large private funds[7] to register with the SEC.[8] Through this registration requirement, Congress

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[2] *Id.*

[3] *See* section 111 of the Dodd-Frank Act.

[4] *See* section 112(a)(1)(A) of the Dodd-Frank Act.

[5] *See* sections 112(a)(2)(A) and 112(d)(1) of the Dodd-Frank Act.

[6] *See* section 112(d)(1) of the Dodd-Frank Act.

[7] Section 202(a)(29) of the Investment Advisers Act of 1940 (''Investment Advisers Act'') defines the term ''private fund'' as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.'' 15 U.S.C. 80a–3(c)(1), 80a–3(c)(7). Section 3(c)(1) of the Investment Company Act provides an exclusion from the definition of ''investment company'' for any ''issuer whose outstanding securities (other than short term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities.'' 15 U.S.C. 80a–3(c)(1). Section 3(c)(7) of the Investment Company Act provides an exclusion from the definition of ''investment company'' for any ''issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities.'' 15 U.S.C. 80a–3(c)(7). The term ''qualified purchaser'' is defined in section 2(a)(51) of the Investment Company Act. *See* 15 U.S.C. 80a–2(a)(51).

[8] The Dodd-Frank Act requires private fund adviser registration by amending section 203(b)(3) of the Advisers Act to repeal the exemption from registration for any adviser that during the course of the preceding 12 months had fewer than 15 clients and neither held itself out to the public as an investment adviser nor advised any registered investment company or business development company. *See* section 403 of the Dodd-Frank Act. There are exemptions from this registration requirement for advisers to venture capital funds and advisers to private funds with less than $150 million in assets under management in the United States. There also is an exemption for foreign advisers with less than $25 million in assets under management from the United States and fewer than 15 U.S. clients and private fund investors. *See* sections 402, 407 and 408 of the Dodd-Frank Act.

sought to make available to the SEC ''information regarding [the] size, strategies and positions'' of large private funds, which Congress believed ''could be crucial to regulatory attempts to deal with a future crisis.'' [9] In section 404 of the Dodd-Frank Act, Congress amended section 204(b) of the Investment Advisers Act to direct the SEC to require private fund advisers registered solely with the SEC [10] to file reports containing such information as is deemed necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk. These reports and records must include a description of certain prescribed information, such as the amount of assets under management, use of leverage, counterparty credit risk exposure, and trading and investment positions for each private fund advised by the adviser.[11] Section 406 of the Dodd-Frank Act also requires that the rules establishing the form and content of reports filed by private fund advisers that are dually registered with the SEC and the CFTC be issued jointly by both agencies after consultation with the FSOC.[12]

The Commodity Exchange Act (''CEA'') [13] authorizes the Commission to register Commodity Pool Operators (''CPOs'') and Commodity Trading Advisors (''CTAs''),[14] exclude any entity from registration as a CPO or CTA,[15] and require ''[e]very commodity trading advisor and commodity pool operator registered under [the CEA to] maintain books and records and file such reports in such form and manner as may be prescribed by the Commission.'' [16] The Commission also has the authority to include within or exclude from the definitions of ''commodity pool,'' ''commodity pool operator,'' and ''commodity trading advisor'' any entity ''if the Commission determines that the rule or regulation will effectuate the purposes of the CEA.'' [17] In addition, the Commission has the authority to ''make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate the provisions or to accomplish any of the purposes of [the CEA].'' [18] The Commission's discretionary authority to exclude or exempt persons from registration was intended to be exercised ''to exempt from registration those persons who otherwise meet the criteria for registration * * * if, in the opinion of the Commission, there is no substantial public interest to be served by the registration.'' [19] It is pursuant to this authority that the Commission has promulgated the various exemptions from registration as a CPO that are enumerated in § 4.13 of its regulations as well as the exclusions from the definition of CPO that are delineated in § 4.5.[20]

As stated previously in this release, and in the Proposal, Congress enacted the Dodd-Frank Act in response to the financial crisis of 2007 and 2008.[21] That Act requires the reporting of certain information by investment advisers to private funds related to potential systemic risk including, but not limited to, the amount of assets under management, use of leverage, counterparty credit risk exposure, and trading and investment positions for each private fund under the reporting entity's advisement.[22] This information facilitates oversight of the investment activities of funds within the context of the rest of a discrete market or the economy as a whole.

The sources of risk delineated in the Dodd-Frank Act with respect to private funds are also presented by commodity pools. To provide the Commission with similar information to address these risks, the Commission has determined to require registration of certain previously exempt CPOs and to further require reporting of information comparable to that required in Form PF, which the Commission has previously adopted jointly with the SEC. To implement this enhanced oversight, the Commission proposed, and has now determined to adopt, the revision and rescission of certain discretionary exemptions that it previously granted.

B. The Proposal

Following the recent economic turmoil, and consistent with the tenor of the provisions of the Dodd-Frank Act, the Commission reconsidered the level of regulation that it believes is appropriate with respect to entities participating in the commodity futures and derivatives markets. Therefore, on January 26, 2011, the Commission proposed amendments and additions to its existing regulatory regime for CPOs and CTAs and the creation of two new data collection instruments, Forms CPO–PQR and CTA–PR (''Proposal'').[23] In a concurrent joint proposal with the SEC, the Commission also proposed § 4.27(d) and sections 1 and 2 of Form PF.[24]

In the Proposal, the Commission specifically proposed the following amendments: (A) to require the periodic reporting of data by CPOs and CTAs regarding their direction of commodity pool assets; (B) to identify certain proposed filings with the Commission as being afforded confidential treatment; (C) to revise the requirements for determining which persons should be required to register as a CPO under § 4.5; (D) to require the filing of certified annual reports by all registered CPOs; (E) to rescind the exemptions from registration under §§ 4.13(a)(3) and (a)(4); (F) to require annual affirmation of claimed exemptive relief for both CPOs and CTAs; (G) to require an additional risk disclosure statement from CPOs and CTAs that engage in swaps transactions; and (H) to make certain conforming amendments to the Commission's regulations in light of the proposed amendments.

In describing the rationale for the Proposal, the Commission stated:

> [T]o ensure that necessary data is collected from CPOs and CTAs that are not operators or advisors of private funds, the Commission is proposing a new § 4.27, which would require quarterly reports from all CPOs and CTAs to be electronically filed with NFA. The Commission is promulgating proposed § 4.27 pursuant to the Commission's authority to require the filing of reports by registered CPOs and CTAs under section 4n

[9] *See* S. Conf. Rep. No. 111–176, at 38 (2010).

[10] In this release, the term ''private fund adviser'' means any investment adviser that is (i) registered or required to be registered with the SEC (including any investment adviser that is also registered or required to be registered with the CFTC as a CPO or CTA) and (ii) advises one or more private funds (including any commodity pools that satisfy the definition of ''private fund'').

[11] *See* section 404 of the Dodd-Frank Act.

[12] *See* section 406 of the Dodd-Frank Act.

[13] 7 U.S.C. 1, et seq.

[14] 7 U.S.C. 6m.

[15] 7 U.S.C. 1a(11) and 1a(12).

[16] 7 U.S.C. 6n(3)(A). Under part 4 of the Commission's regulations, entities registered as CPOs have reporting obligations with respect to their operated pools. *See* 17 CFR. 4.22. Although CTAs have recordkeeping obligations under part 4, the Commission has not required reporting by CTAs, *See generally,* 17 CFR. part 4.

[17] 7 U.S.C. 1a(10), 1a(11), 1a(12).

[18] 7 U.S.C. 12a(5).

[19] *See* H.R. Rep. No. 93–975, 93d Cong., 2d Sess. (1974), p. 20.

[20] *See* 68 FR 47231 (Aug. 8, 2003).

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

[22] *See* section 404 of the Dodd-Frank Act.

[23] *See* 76 FR 7976 (Feb. 11, 2011).

[24] *See* 76 FR 8068 (Feb. 11, 2011). Because the Commission did not adopt the remainder of proposed § 4.27 at the same time as it adopted the subsection of § 4.27 implementing Form PF, the Commission modified the designation of § 4.27(d) to be the sole text of that section. Additionally, the Commission made some revisions to the text of § 4.27 to: (1) clarify that the filing of Form PF with the SEC will be considered substitute compliance with certain Commission reporting obligations and (2) allow CPOs and CTAs who are otherwise required to file Form PF the option of submitting on Form PF data regarding commodity pools that are not private funds as substitute compliance with certain CFTC reporting obligations.

of the CEA. In an effort to eliminate duplicative filings, proposed § 4.27(d) would allow certain CPOs and/or CTAs that are also registered as private fund advisers with the SEC pursuant to the securities laws to satisfy certain of the Commission's systemic reporting requirements by completing and filing the appropriate sections of Form PF with the SEC with respect to advised private funds.

In order to ensure that the Commission can adequately oversee the commodities and derivatives markets and assess market risk associated with pooled investment vehicles under its jurisdiction, the Commission is re-evaluating its regulation of CPOs and CTAs. Additionally, the Commission does not want its registration and reporting regime for pooled investment vehicles and their operators and/or advisors to be incongruent with the registration and reporting regimes of other regulators, such as that of the SEC for investment advisers under the Dodd-Frank Act. (Footnotes omitted).[25]

C. Comments on the Proposal

The Commission received 61 comment letters in response to the Proposal. The commenters represented a diversity of market participants. Seven commenters were registered investment companies or registered investment advisers; five commenters were registered or exempt CPOs; and three commenters were registered investment companies or registered investment advisers that also claimed exemption from registration as a CPO under § 4.13. The Commission also received 20 comments from law firms; 14 comments from trade organizations; two comments from individual interested parties; a comment from a compliance service provider; and a comment from a registered futures association.[26] The majority of the comments received opposed the adoption of the proposed amendments to § 4.5 and the rescission of §§ 4.13(a)(3) and (a)(4).

Having considered these comments, the Commission has decided to adopt most of the amendments to part 4 that it proposed, with some modifications. In addition, the Commission has decided not to rescind the exemption in § 4.13(a)(3) for entities engaged in a de minimis amount of derivatives trading. The Commission's amendments to part 4, and the modifications to its Proposal are discussed below.

The scope of this **Federal Register** release generally is restricted to the comments received in response to the Proposal and to the changes to, and the clarifications of, the Proposal that the Commission is making in response thereto. The Commission encourages interested persons to read the Proposal for a fuller discussion of the purpose of each of the amendments contained in the Proposal.

D. Significant Changes From the Proposal

The significant changes from the Proposal that the Commission is making in the rules it is adopting today are as follows: (1) The marketing restriction in § 4.5 no longer contains the clause ''(or otherwise seeking investment exposure to)''; (2) § 4.5 will be amended to include an alternative trading threshold test based on the net notional value of a registered investment company's derivatives positions; (3) annual notices for exemptions and exclusions will be filed on an annual calendar year end basis rather than on the anniversary of the filing date; and (4) changes have been made to the substance of Forms CPO–PQR and CTA–PR and the filing timelines for both forms.

II. Responses to Comments on the Proposal

A. Comments Regarding Proposed Amendments to § 4.5

As part of the Proposal, the Commission proposed amendments to § 4.5(c)(2)(iii), reinstating a trading threshold and marketing restriction for registered investment companies claiming exclusion from the definition of CPO under that section. In support of the Proposal, the Commission stated that it became aware that certain registered investment companies were offering interests in de facto commodity pools while claiming exclusion under § 4.5.[27] The Commission further stated that it believed that registered investment companies should not engage in such activities without Commission oversight and that such oversight was necessary to ensure consistent treatment of CPOs regardless of their status with respect to other regulators.[28] The Commission also recognized that operational issues may exist regarding the ability of registered investment companies to comply with the Commission's compliance regime.[29]

The Commission received numerous comments regarding the proposed amendments to § 4.5. The comments can be broadly categorized into eight categories: (1) General comments as to the advisability of making such a change and the Commission's justification for doing so; (2) the trading threshold; (3) the inclusion of swaps within the trading threshold; (4) the proposed marketing restriction; (5) harmonization of compliance obligations with those of the SEC; (6) the appropriate entity to register as the registered investment company's CPO; (7) the use and permissibility of controlled foreign corporations by registered investment companies; and (8) the timeline for implementation.

1. General Comments on Proposed Amendments to § 4.5

Certain comments argued against the adoption of any change to § 4.5 and questioned the Commission's justification for doing so.[30] Most commenters generally opposed the change because they claimed that requiring registration and compliance with the Commission's regulatory regime would provide no tangible benefit to the Commission or investors because registered investment companies are already subject to comprehensive regulation by the SEC.

The Commission believes that registration with the Commission provides two significant benefits. First, registration allows the Commission to ensure that all entities operating collective investment vehicles participating in the derivatives markets meet minimum standards of fitness and competency.[31] Second, registration provides the Commission and members of the public with a clear means of addressing wrongful conduct by individuals and entities participating in the derivatives markets. The Commission has clear authority to take punitive and/or remedial action against registered entities for violations of the CEA or of the Commission's regulations. Moreover, the Commission has the ability to deny or revoke registration, thereby expelling an individual or entity from serving as an intermediary in the industry. Members of the public also may access the Commission's reparations program or National Futures Association's (''NFA'') arbitration program to seek redress for wrongful conduct by a Commission registrant

[25] 76 FR 7976, 7977–78 (Feb. 11, 2011).

[26] Additionally, the Commission received six comments that were not pertinent to the substance of the Proposal. Three concerned position limits in silver, one consisted of a web address; one was an advertisement; and one simply said ''nice.''

[27] 76 FR 7976, 7983 (Feb. 12, 2011). The Commission determined to propose amendments to § 4.5 following the submission of a petition for rulemaking by the National Futures Association, to which the Commission has delegated much of its direct oversight activities relating to CPOs, CTAs, and commodity pools. *See,* 75 FR 56997 (Sept. 17, 2010).

[28] *Id.* at 7984.

[29] *Id.*

[30] Comment letter from the Investment Company Institute (April 12, 2011) (''ICI Letter''); comment letter from the Mutual Fund Directors Forum (April 12, 2011) (''MFDF Letter'').

[31] *See* H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 48 (1982), S. Rep. No. 384, 97th Cong., 2d Sess. 111 (1982). *See also,* 48 FR 14933 (Apr. 6, 1983).

and/or NFA member. Therefore, the Commission continues to believe that its registration requirements further critical regulatory objectives and serve important public policy goals.

A number of commenters who expressed general opposition also acknowledged that if the Commission determined to proceed with its proposed changes to § 4.5, certain areas of harmonization with SEC requirements should be addressed. To that end, concurrently with the issuance of this rule, the Commission plans to issue a notice of proposed rulemaking detailing its proposed modifications to part 4 of its regulations to harmonize the compliance obligations that apply to dually registered investment companies. Commenters did not question, however, that the Commission has a regulatory interest in overseeing entities engaging in derivatives trading. Rather, they argued that the SEC currently provides adequate oversight of their activities.

The Commission disagrees with the arguments presented by those commenters who argued against the adoption of any change to § 4.5. The Commission continues to believe that entities operating collective investment vehicles that engage in more than a de minimis amount of derivatives trading should be required to register with the Commission. The Commission believes that because Congress empowered the Commission to oversee the derivatives market, the Commission is in the best position to oversee entities engaged in more than a limited amount of non-hedging derivatives trading.

Several commenters also asserted that modifying § 4.5 would result in a significant burden to entities required to register with the Commission without any meaningful benefit to the Commission.[32] The Commission believes, as discussed throughout this release, that entities that are offering services substantially identical to those of a registered CPO should be subject to substantially identical regulatory obligations. The Commission also recognizes that modification to § 4.5 may result in costs for registered investment companies. For that reason, as stated above, in conjunction with finalizing the proposed amendments to § 4.5, the Commission has proposed to adopt a harmonized compliance regime for registered investment companies whose activities require oversight by the Commission. Although the Commission believes the modifications to § 4.5 enhance the Commission's ability to effectively oversee derivatives markets, it is not the Commission's intention to burden registered investment companies beyond what is required to provide the Commission with adequate information it finds necessary to effectively oversee the registered investment company's derivatives trading activities. Through this harmonization, the Commission intends to minimize the burden of the amendments to § 4.5.

Second, the Commission disagrees with the commenters' assertion that the Commission would not receive any meaningful benefit from a modification to § 4.5. As stated above, the Commission disagrees that such registration and oversight is redundant, and emphasizes that it is in the best position to adequately oversee the derivatives trading activities of entities in which the Commission has a regulatory interest. As discussed above, the Commission is charged with administering the Commodity Exchange Act to protect market users and the public from fraud, manipulation, abusive practices and systemic risk related to derivatives that are subject to the Act, and to foster open, competitive, and financially sound markets. The Commission's programs are structured and its resources deployed in service of that mission.

One commenter questioned the Commission's reasoning for choosing to impose additional requirements on registered investment companies but not proposing to impose such requirements on other categories of entities.[33] This commenter also stated that the Commission was required to detail its reasoning under the Administrative Procedure Act.[34] As stated in the Proposal, the Commission remains concerned that registered investment companies are offering managed futures strategies, either in whole or in part, without Commission oversight and without making the disclosures to both the Commission and investors regarding the pertinent facts associated with the investment in the registered investment company. The Commission is focused on registered investment companies because it is aware of increased trading activity in the derivatives area by such entities that may not be appropriately addressed in the existing regulatory protections, including risk management and recordkeeping and reporting requirements. The SEC has also noted this increased trading activity and is reviewing the use of derivatives by investment companies.[35] In its recent concept release regarding the use of derivatives by registered investment companies, the SEC noted that although its staff had addressed issues related to derivatives on a case-by-case basis, it had not developed a ''comprehensive and systematic approach to derivatives related issues.'' [36] As aptly noted by the Chairman of the SEC, ''The controls in place to address fund management in traditional securities can lose their effectiveness when applied to derivatives. This is particularly the case because a relatively small investment in a derivative instrument can expose a fund to potentially substantial gain or loss—or outsized exposure to an individual counterparty.'' [37] Despite the commenter's assertion, the Commission is unaware of other classes of entities that are excluded from the definition of CPO engaging in significant derivatives trading. Of course, if the Commission becomes aware of any other categories of excluded entities engaging in similar levels of derivatives trading, it will consider appropriate action to ensure that such entities and their derivatives

[32] *See* ICI Letter; comment letter from Vanguard (April 12, 2011) (''Vanguard Letter''); comment letter from Reed Smith LLP (April 12, 2011) (''Reed Smith Letter''); comment letter from AllianceBernstein Mutual Funds (April 12, 2011) (''AllianceBernstein Letter''); comment letter from United States Automobile Association (April 12, 2011) (''USAA Letter''); comment letter from Principal Management Corporation (April 12, 2011) (''PMC Letter''); comment letter from Investment Adviser Association (April 12, 2011) (''IAA Letter''); comment letter from Dechert LLP and clients (April 12, 2011) (''Dechert II Letter''); comment letter from Janus Capital Management LLC (April 12, 2011) (''Janus Letter''); comment letter from Security Traders Association (April 12, 2011) (''STA Letter''); comment letter from Invesco Advisers, Inc. (April 12, 2011) (''Invesco Letter''); and comment letter from Equinox Fund Management, LLC (July 28, 2011) (''Equinox Letter'').

[33] *See* ICI Letter.

[34] *Id.*

[35] For example, the SEC recently issued a concept release seeking comment on use of derivatives by investment companies, noting: ''The dramatic growth in the volume and complexity of derivatives investments over the past two decades, and funds' increased use of derivatives, have led the [Securities and Exchange] Commission and its staff to initiate a review of funds' use of derivatives under the Investment Company Act. (footnotes omitted)'' 76 FR 55237, 55238 (Sep. 7, 2011).

[36] 76 FR 55237, 55239 (Sept. 7, 2011). See, Press Release, Securities and Exchange Commission, SEC Seeks Public Comment on Use of Derivatives by Mutual Funds and Other Investment Companies (Aug. 31, 2011), available at *http://www.sec.gov/news/press/2011/2011-175.htm* (''The derivatives markets have undergone significant changes in recent years, and the Commission is taking this opportunity to seek public comment and ensure that our regulatory approach and interpretations under the Investment Company Act remain current, relevant, and consistent with investor protection,'' said SEC Chairman Mary Shapiro.'').

[37] Chairman Mary Shapiro, Opening Statement at SEC Open Meeting Item 1—Use of Derivatives by Funds (Aug. 31, 2011), available at *http://www.sec.gov/news/speech/2011/spch083111mls-item1.htm* (''The current derivatives review gives us the opportunity to re-think our approach to regulating funds' use of derivatives. We are engaging in this review with a holistic perspective, in the wake of the financial crisis, and in light of the new comprehensive regulatory regime for swaps being developed under the Dodd-Frank Act.'').

trading activities are brought under the Commission's regulatory oversight. As stated previously, the Commission continues to believe that entities that are offering services substantially identical to those of a registered CPO should be subject to substantially identical regulatory obligations.

2. Comments on the Proposed Trading Threshold

The Commission also received numerous comments on the proposed addition of a trading threshold to the exclusion under § 4.5.[38] The proposed trading threshold provided that derivatives trading could not exceed five percent of the liquidation value of an entity's portfolio, without registration with the Commission. The Proposal excluded activity conducted for ''bona fide hedging'' purposes.[39] Most commenters stated that a five percent threshold was far too low in light of the Commission's determination to include swaps within the measured activities and the limited scope of the Commission's bona fide hedging definition, but no data was provided to support this assertion. The Commission, in its adoption of the exemption under § 4.13(a)(3),[40] previously determined that five percent is an appropriate threshold to determine whether an entity warrants oversight by the Commission.[41]

Despite the views of some commenters, the Commission believes that the five percent threshold continues to be the appropriate percentage for exemption or exclusion based upon an entity's limited derivatives trading. Five percent remains the average required for futures margins, although the Commission acknowledges that margin levels for securities product futures are significantly higher and the levels for swaps margining may be as well. The Commission believes, however, that trading exceeding five percent of the liquidation value of a portfolio evidences a significant exposure to the derivatives markets. The Commission believes that such exposure should subject an entity to the Commission's oversight. Moreover, the Commission believes that its adoption of an alternative net notional test to determine eligibility for exclusion from the definition of CPO, as discussed infra, provides flexibility to registered investment companies in consideration of the fact that initial margin for certain commodity interest products may not permit compliance with the five percent threshold.

Commenters also recommended that the Commission exclude from the threshold calculation various instruments including broad-based stock index futures, security futures generally, or financial futures contracts as a whole.[42] The Commission does not believe that exempting any of these instruments from the threshold calculation is appropriate. The Commission does not believe that there is a meaningful distinction between those security or financial futures and other categories of futures. The Commission believes that its oversight of the use of security or financial futures is just as essential as its oversight of physical commodity futures. Congress granted the Commission authority over all futures in § 2 of the CEA.[43] The Commission believes that it is in the best position to assess investor and market risks posed by entities trading in derivatives regardless of type. Therefore, the Commission has decided not to modify the scope of the threshold from what was proposed in order to exclude security futures or financial futures from the trading threshold.

Commenters requested that the Commission expand its definition of bona fide hedging as it appears in § 1.3(z) to include risk management as a recognized bona fide hedging activity for purposes of § 4.5.[44] The Proposal excluded activity conducted for ''bona fide hedging'' purposes as that term was defined in § 1.3 as it existed at the time of the proposal.[45] Further, the Proposal noted that the Commission anticipated that the definition of ''bona fide hedging'' would be modified through future rulemakings,[46] which were open for comments from the public.

The Commission recently adopted final rules regarding position limits and, through that rulemaking, implemented a new statutory definition of bona fide hedging transactions for exempt and excluded commodity transactions as part of new § 151.5.[47] This statutory definition limits the scope of bona fide hedging transactions for exempt and agricultural commodities, and does not provide for a risk management exemption for position limits purposes.[48] With regard to position limits and bona fide hedging transactions for excluded commodities, the Commission amended the pre-Dodd-Frank definition of bona fide hedging in § 1.3(z) to only apply to excluded commodities. Further, the Commission allowed DCMs and SEFs that are trading facilities to provide for a risk management exemption from position limits for excluded commodity transactions.

The Commission does not believe that it is appropriate to exclude risk management transactions from the trading threshold. The Commission believes that an important distinction between bona fide hedging transactions and those undertaken for risk management purposes is that bona fide hedging transactions are unlikely to present the same level of market risk as they are offset by exposure in the physical markets. Additionally, the Commission is concerned that in the context of exclusion under § 4.5, a risk management exclusion would permit registered investment companies to engage in a greater volume of derivatives trading than other entities which are engaged in similar activities, but which are otherwise required to register as CPOs. This could result in disparate treatment among similarly situated entities. Moreover, there was no consensus among the commenters as to the appropriate definition of risk management transactions. Thus, the Commission believes that it may be difficult in this context to properly limit the scope of such exclusion as objective criteria are not universally recognized, which would make such exclusion onerous to enforce.[49]

[38] *See* Invesco Letter; ICI Letter; Vanguard Letter; Reed Smith Letter; AllianceBernstein Letter; AII Letter; STA Letter; Janus Letter; PMC Letter; USAA Letter; comment letter from Fidelity Management and Research Co. (April 12, 2011) (''Fidelity Letter''); comment letter from Securities Industry and Financial Markets Association (April 12, 2011) (''SIFMA Letter''); comment letter from Dechert LLP (July 26, 2011) (''Dechert III Letter''); comment letter from Rydex/SGI Morgan, Lewis & Bockius LLP (April 12, 2011) (''Rydex Letter''); comment letter from the United States Chamber of Commerce (April 12, 2011) (''USCC Letter''); comment letter from Sidley Austin LLP (April 12, 2011) (''Sidley Letter''); comment letter from the National Futures Association (April 12, 2011) (''NFA Letter''); comment letter from Campbell & Company, Inc. (April 12, 2011) (''Campbell Letter''); comment letter from AQR Capital Management, LLC (April 12, 2011) (''AQR Letter''); comment letter from Steben & Company, Inc. (April 12, 2011) (''Steben Letter''); comment letter from the Investment Company Institute (July 28, 2011) (''ICI II Letter''); and comment from the Association of Institutional Investors (April 12, 2011) (''AII Letter'').

[39] 76 FR 7976, 7989 (Feb. 11, 2011).

[40] 17 CFR 4.13(a)(3).

[41] 68 FR 47221, 47225 (Aug. 8, 2003).

[42] *See* Rydex Letter; Invesco Letter; ICI Letter.

[43] 7 U.S.C. 2.

[44] *See* Invesco Letter; ICI Letter; Vanguard Letter; Reed Smith Letter; AllianceBernstein Letter; IAA Letter; Janus Letter; and STA Letter.

[45] 76 FR 7976, 7989 (Feb. 11, 2011).

[46] 76 FR 7976, 7984 (Feb. 11, 2011).

[47] 7 U.S.C. 6a(c); 76 FR 71626, 71643 (Nov. 18, 2011).

[48] 76 FR 71626, 71644 (Nov. 18, 2011).

[49] The Commission notes that § 4.5 references the definition of bona fide hedging for exempt and agricultural commodities under § 151.5 as well as the definition of bona fide hedging for excluded commodities under § 1.3(z). Market participants should not construe either § 151.5 or § 1.3(z) as

During numerous meetings with commenters, the commenters noted that most registered investment companies use derivatives for risk management purposes, namely to offset the risk inherent in positions taken in the securities or bond markets, or to equitize cash efficiently. Although the Commission recognizes the importance of the use of derivatives for risk management purposes, it does not believe that transactions that are not within the bona fide hedging definition should be excluded from the determination of whether an entity meets the trading threshold for registration and oversight. Therefore, the Commission has decided not to exclude risk management activities by registered investment companies from the trading threshold for purposes of § 4.5.

Several panelists at the Commission's staff roundtable held on July 6, 2011[50] (''Roundtable'') suggested that, instead of a trading threshold that is based on a percentage of margin, the Commission should focus solely on entities that offer ''actively managed futures'' strategies.[51] The panelist defined ''actively managed futures'' strategies as those in which the entity or its investment adviser made its own decisions as to which derivatives to take positions in, as compared to the ''passive'' use of an index, wherein the entity's investments simply track those held by an index.[52]

The Commission does not believe that it is proper to exclude from the Commission's oversight those entities that are using an index or other so-called ''passive'' means to track the value of other derivatives. Establishing ''active'' versus ''passive'' use of derivatives as a criterion for entitlement to the exclusion would introduce an element of subjectivity to an otherwise objective standard and make the threshold more difficult to interpret, apply, and enforce. It also could have the undesirable effect of encouraging funds to structure their investment activities to avoid regulation. Moreover, the use of an index or other passive investment vehicle by a large number of investment companies can amplify the market assumptions built into an index or other vehicle. Thus, the Commission has decided not to adopt the panelist's suggestion that the Commission focus on whether an entity offers an actively managed futures strategy.

One commenter suggested that the Commission should consider the adoption of an alternative test that would be identical to the aggregate net notional value test that is currently available under § 4.13(a)(3)(ii)(B).[53] Section 4.13(a)(3)(ii)(B) provides that an entity can claim exemption from registration if the net notional value of its fund's derivatives trading does not exceed one hundred percent of the liquidation value of the fund's portfolio.[54]

Conversely, several panelists at the Roundtable opposed such a test, stating that it was not a reliable means to measure an entity's exposure in the market.[55] Specifically, certain panelists asserted that the net notional value of positions may not provide a reliable measure of the risk posed by certain entities in the market.[56]

The Commission first considered the addition of an alternative net notional trading threshold when it proposed to amend § 4.5 in 2002.[57] In support of its proposal, the Commission stated that the alternative test provided otherwise regulated entities that use certain classes of futures with higher initial margin requirements with an opportunity to also receive exclusionary relief from the definition of CPO.[58] The Commission further stated that the inclusion of an alternative test enabled entities seeking exclusion to rely on whichever test was less restrictive based on their futures positions.[59] In 2003, the Commission proposed and adopted final rules amending § 4.5, which eliminated the five percent trading threshold and did not adopt the alternative net notional test.[60] In stating its rationale for rescinding the five percent threshold test and declining to adopt the alternative net notional test, the Commission stated that because it was simultaneously proposing, and ultimately adopting, an exemption from registration in § 4.13(a)(4), which did not impose any trading restriction, the Commission would remove the trading restrictions from § 4.5 as well to provide consistent treatment.[61]

The Commission no longer believes that its prior justification for abandoning the alternative net notional test is persuasive. By the adoption of this final rule, the Commission will reinstate the five percent trading threshold in § 4.5 for registered investment companies and rescind the exemption in § 4.13(a)(4), which reverses the regulatory conditions in existence in 2003. The Commission believes that the appropriate criteria for exclusion through the use of a net notional test is delineated in § 4.13(a)(3)(ii)(B),[62] commonly known as the ''de minimis exemption,'' albeit with the addition of allowing unlimited use of futures, options, or swaps for bona fide hedging purposes, which is not permitted under § 4.13(a)(3).

As stated previously, the net notional test, as set forth under § 4.13(a)(3)(ii)(B), permits entities to claim relief if the aggregate net notional value of the entity's commodity interest positions does not exceed 100 percent of the liquidation value of the pool's portfolio.[63] Notional value is defined by asset class. For example, the notional value of futures contracts is derived by multiplying the number of contracts by the size of the contract, in contract units, and then multiplying by the current market price for the contract.[64] The notional value of a cleared swap, however, will be determined consistent with the provisions of part 45 of the Commission's regulations. The ability to net positions is also determined by asset class, with entities being able to net futures contracts across designated contract markets or foreign boards of trade, whereas swaps may only be netted if cleared by the same designated clearing organization (''DCO'') and it is otherwise appropriate.[65]

The Commission believes that the adoption of an alternative net notional test will provide consistent standards for relief from registration as a CPO for entities whose portfolios only contain a

permitting a risk management exemption for purposes of determining compliance with the trading threshold in § 4.5.

[50] *See* Notice of CFTC Staff Roundtable Discussion on Proposed Changes to Registration and Compliance Regime for Commodity Pool Operators and Commodity Trading Advisors, available at *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff070611*.

[51] *See* Transcript of CFTC Staff Roundtable Discussion on Proposed Changes to Registration and Compliance Regime for Commodity Pool Operators and Commodity Trading Advisors (''Roundtable Transcript''), at 19, 25, 30, 76–77, 87–90, available at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission27_070611-trans.pdf*.

[52] *Id.*

[53] Dechert III Letter.

[54] 17 CFR 4.13(a)(3)(ii)(B).

[55] *See* Roundtable Transcript at 69–71.

[56] *See* Roundtable Transcript at 70.

[57] 67 FR 65743 (Oct. 28, 2002).

[58] 67 FR 65743, 65744–45.

[59] 67 FR 65743, 65745.

[60] 68 FR 12622 (Mar. 17, 2003); 68 FR 47221 (Aug. 8, 2003).

[61] 68 FR 12622, 12625–26 (noting that although entities excluded under § 4.5 could solicit retail participants, as compared to those entities exempt under § 4.13(a)(4), which may only offer to certain high net worth entities and individuals, the Commission stated that the fact that the § 4.5 entities were otherwise regulated supported consistent criteria for relief).

[62] The net notional test as it appears in § 4.13(a)(3) will be amended by this rulemaking to provide guidance regarding the ability to net cleared swaps.

[63] 17 CFR 4.13(a)(3)(ii)(B).

[64] *Id.*

[65] *See* discussion of amendments to § 4.13(a)(3)(ii)(B) infra.

limited amount of derivatives positions and will afford registered investment companies with additional flexibility in determining eligibility for exclusion. Therefore, the Commission will adopt an alternative net notional test, consistent with that set forth in § 4.13(a)(3)(ii)(B) as amended herein, for registered investment companies claiming exclusion from the definition of CPO under § 4.5.

The Commission also received several comments supporting both the imposition of a trading threshold in general and the five percent threshold specifically.[66] At least one commenter suggested, however, that the Commission consider requiring registered investment companies that exceed the threshold to register, but not subjecting them to the Commission's compliance regime beyond requiring them to be subject to the examination of their books and records, and examination by the National Futures Association.[67] In effect, this commenter requested that the Commission subject such registrant to ''notice registration.'' The Commission believes that adopting the commenter's approach would not materially change the information that the Commission would receive regarding the activities of registered investment companies in the derivatives markets, which is one of the Commission's purposes in amending § 4.5. Moreover, a type of notice registration would not provide the Commission with any real means for engaging in consistent ongoing oversight. Notwithstanding such notice registration, the Commission would still be deemed to have regulatory responsibility for the activities of these registrants. In the Commission's view, notice registration does not equate to an appropriate level of oversight. For that reason, the Commission has determined not to adopt the notice registration system proposed by the commenter. The Commission is adopting the amendment to § 4.5 regarding the trading threshold with the addition of an alternative net notional test for the reasons stated herein and those previously discussed in the Proposal.

3. Comments on the Inclusion of Swaps in the Trading Threshold

The Commission also received numerous comments opposing its decision to include swaps within the threshold test discussed above.[68] Several commenters expressed concern that the Commission would require inclusion of swaps within the threshold prior to its adoption of final rules further defining the term ''swap'' and explaining the margining requirements for such instruments. The Commission agrees that it should not implement the inclusion of swaps within the threshold test prior to the effective date of such final rules. Therefore, it is the Commission's intention to establish the compliance date of the inclusion of swaps within the threshold calculation as 60 days after the final rules regarding the definition of ''swap'' and the delineation of the margin requirement for such instruments are effective.[69] The Commission believes that such compliance date will provide entities with sufficient time to assess the impact of such rules on their portfolios and to make the determination as to whether registration with the Commission is required.

The Commission also received a comment asking for additional clarification regarding its decision to include swaps within the threshold.[70] The Dodd-Frank Act amended the statutory definition of the terms ''commodity pool operator'' and ''commodity pool'' to include those entities that trade swaps.[71] If the Commission were to adopt the trading threshold and only include futures and options as the basis for calculating compliance with the threshold, the swaps activities of the registered investment companies would still trigger the registration requirement notwithstanding the exclusion of swaps from the calculus. That is, the purpose of the threshold test is to define a de minimis amount of trading activity that would not trigger the registration requirement. If swaps were excluded, any swaps activities undertaken by a registered investment company would result in that entity being required to register because there would be no de minimis exclusion. As a result, one swap contract would be enough to trigger the registration requirement. For that reason, if the Commission wants to permit some de minimis level of swaps activity by registered investment companies without registration with the Commission, it must do so explicitly in the exclusion.[72] Because the Commission has determined that de minimis activity by registered investment companies does not implicate the Commission's regulatory concerns, the Commission has decided to include swaps as a component of the trading threshold.

4. Comments on the Proposed Marketing Restriction

The marketing restriction, as proposed by the Commission, prohibits the marketing of interests in the registered investment company ''as a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures, commodity options, or swaps markets.''[73] Again, as with the other aspects of the proposed amendments to § 4.5, the Commission received numerous comments on this prohibition.[74]

The vast majority of comments urged the Commission to remove the clause ''or otherwise seeking investment exposure to'' as introducing an unacceptable level of ambiguity into the marketing restriction.[75] The Commission agrees with these comments and believes that the removal of this clause is appropriate as the clause does not meaningfully add to the marketing restriction and only creates uncertainty. Thus, the Commission will adopt the marketing restriction without the clause ''or otherwise seeking investment exposure to * * *''

The Commission also received many comments asking that the Commission provide some clarification regarding the factors that it would consider in making the determination whether an entity violated the marketing restriction.[76] The Commission agrees that providing factors to further explain the plain language of the marketing restriction would be helpful to those who plan to market registered investment companies

[66] *See* NFA Letter, Campbell Letter, AQR Letter, Steben Letter.

[67] *See* AQR Letter.

[68] *See* Janus Letter; Reed Smith Letter; AllianceBernstein Letter; USAA Letter; ICI Letter; PMC Letter; Invesco Letter; IAA Letter; Dechert II Letter; AII Letter; and SIFMA Letter.

[69] Effective Date for Swap Regulation, 76 FR 42508 (issued and made effective by the Commission on July 14, 2011; published in **Federal Register** on July 19, 2011).

[70] *See* Janus Letter; Reed Smith Letter; AllianceBernstein Letter; USAA Letter; ICI Letter; PMC Letter; Invesco Letter; IAA Letter; Dechert II Letter; AII Letter; and SIFMA Letter.

[71] 7 U.S.C. 1a(10); 1a(11).

[72] Any reference to a de minimis level of swaps activities by registered investment companies only applies in the context of CPO registration by registered investment companies.

[73] 76 FR 7976, 7989 (Feb. 12, 2011).

[74] *See* Rydex Letter; Fidelity Letter; SIFMA Letter; AII Letter; ICI Letter; Vanguard Letter; Reed Smith Letter; AllianceBernstein Letter; USAA Letter; PMC Letter; Invesco Letter; Janus Letter; STA Letter; comment letter from the Managed Futures Association regarding proposed amendments to § 4.5 (April 12, 2011) (''MFA II Letter''); Dechert II Letter; NFA Letter; comment letter from Alston & Bird, LLP (April 12, 2011) (''Alston Letter''); Campbell Letter; AQR Letter; Steben Letter; and Dechert III Letter.

[75] *See, e.g.,* ICI Letter; Alston Letter; Rydex Letter; and Vanguard Letter.

[76] *See* ICI Letter; MFA II Letter; Dechert II Letter; Invesco Letter; NFA Letter; Campbell Letter; Steben Letter; and AQR Letter.

to investors. The Commission has determined, however, that such factors should be instructive and that no single factor is dispositive. The Commission will determine whether a violation of the marketing restriction exists on a case by case basis through an examination of the relevant facts. The Commission seeks to discourage entities from designing creative marketing with the intent to avoid the marketing restriction.

To address commenters' requests for guidance, the Commission believes that the following factors are indicative of marketing a registered investment company as a vehicle for investing in commodity futures, commodity options, or swaps:

- The name of the fund;
- Whether the fund's primary investment objective is tied to a commodity index;
- Whether the fund makes use of a controlled foreign corporation for its derivatives trading;
- Whether the fund's marketing materials, including its prospectus or disclosure document, refer to the benefits of the use of derivatives in a portfolio or make comparisons to a derivatives index;
- Whether, during the course of its normal trading activities, the fund or entity on its behalf has a net short speculative exposure to any commodity through a direct or indirect investment in other derivatives;
- Whether the futures/options/swaps transactions engaged in by the fund or on behalf of the fund will directly or indirectly be its primary source of potential gains and losses; and
- Whether the fund is explicitly offering a managed futures strategy.[77]

The Commission will give more weight to the final factor in the list when determining whether a registered investment company is operating as a de facto commodity pool. In contrast, a registered investment company that does not explicitly offer a managed futures strategy could still be found to have violated the marketing restriction based on whether its conduct satisfied any number of the other factors enumerated above. Put differently, if a registered investment company offers a strategy with several indicia of a managed futures strategy, yet avoids explicitly describing the strategy as such in its offering materials, that registered investment company may still be found to have violated the marketing restriction.

The Commission also notes that whether the name of the fund includes the terms ''futures'' or ''derivatives,'' or otherwise indicates a possible focus on futures or derivatives, will not be considered a dispositive factor, but rather one of many that the Commission will consider in making its determination. Moreover, the Commission will not consider the mere disclosure to investors or potential investors that the registered investment company may engage in derivatives trading incidental to its main investment strategy and the risks associated therewith as being violative of the marketing restriction.

At the Roundtable, several panelists questioned the Commission's reasoning for deeming the use of a controlled foreign corporation (''CFC'') to be an appropriate factor in determining whether the registered investment company violates the marketing restriction. Based on comments received at the Roundtable and during the comment period, the Commission believes that registered investment companies use controlled foreign corporations as a mechanism to invest up to 25 percent of the registered investment company's portfolio in derivatives.[78] The Commission, therefore, believes that a registered investment company's use of a CFC may indicate that the company is engaging in derivatives trading in excess of the trading threshold. Again, the Commission will consider this factor in the context of the registered investment company's other conduct and will not view this factor as being dispositive of a violation of the marketing restriction.

For these reasons, and those stated in the Proposal, the Commission adopts the marketing restriction in § 4.5 with the modifications discussed herein.

5. Comments on the Harmonization of Compliance Obligations

Many commenters raised concerns about the potential conflicts between the Commission's regulatory regime and that imposed by the SEC if the Commission were to adopt the proposed amendments as final rules.[79] As noted above, in an effort to obtain further information from interested parties, Commission staff held the Roundtable, and invited staff from the SEC, the IRS, and members of various trade organizations. The roundtable focused predominantly on harmonization of the Commission's compliance regime with that of the SEC. Upon consideration of the comments and the discussions held as a result of the Roundtable relating to registered investment companies that will be required to register under amended § 4.5, the Commission agrees that it is necessary to harmonize the Commission's compliance obligations under part 4 of the Commission's regulations with the requirements of the SEC for registered investment companies. To that end, concurrently with the issuance of this rule, the Commission is issuing a notice of proposed rulemaking detailing its proposed modifications to part 4 of its regulations to harmonize the compliance obligations that apply to dually registered investment companies. The Commission will not require entities that must register due to the amendments to § 4.5 to comply with the Commission's compliance regime until the adoption of final rules governing the compliance framework for registered investment companies subject to the Commission's jurisdiction.

6. Comments Regarding the Entity Required to Register as the CPO

The Commission received a number of comments requesting clarification as to which entity would be required to register as a CPO if a registered investment company would not qualify for exclusion under § 4.5, as amended.[80] The commenters consistently proposed that the registered investment company's investment adviser is the appropriate entity to register in the capacity of the investment company's CPO. The Commission agrees that the investment adviser is the most logical entity to serve as the registered investment company's CPO. To require a member or members of the registered investment company's board of directors to register would raise operational concerns for the registered investment company as it would result in piercing the limitation on liability for actions undertaken in the capacity of director.[81] Thus, the Commission concludes that the investment adviser for the registered investment company is the entity required to register as the CPO.

[77] These factors are derived in substantial part from the Steben Letter and AQR Letter.

[78] *See* Roundtable Transcript at 152–53.

[79] *See* Vanguard Letter; ICI Letter; Dechert III Letter; Reed Smith Letter; AllianceBernstein Letter; USAA Letter; PMC Letter; Invesco Letter; IAA Letter; Dechert II Letter; Fidelity Letter; Janus Letter; SIFMA Letter; STA Letter; AQR Letter; NFA Letter; MFA II Letter; Alston Letter; Rydex Letter; and ICI II Letter.

[80] *See* ICI Letter; Reed Smith Letter; AllianceBernstein Letter; Rydex Letter; Fidelity Letter; USAA Letter; PMC Letter; IAA Letter; Janus Letter; SIFMA Letter; STA Letter; comment letter from AlphaSimplex Group (April 12, 2011) (''ASG Letter''); NFA Letter; MFDF Letter; and Campbell Letter.

[81] *See* MFDF Letter.

7. Comments Regarding the Use of Controlled Foreign Corporations

The Commission received many comments regarding the use of CFCs by registered investment companies for purposes of engaging in commodities trading. As stated previously, it is the Commission's understanding that registered investment companies invest up to 25 percent of their assets in the CFC, which then engages in actively managed derivatives strategies, either on its own or under the direction of one or more CTAs. Operators of CFCs have been exempt from Commission registration by claiming relief under § 4.13(a)(4) of the Commission's regulations because the sole participant in the CFC is the registered investment company. Additionally, at the Roundtable, panelists informed Commission staff that several registered investment companies that operated CFCs did not claim relief under § 4.13(a)(4) because it was their opinion that the CFC was merely a subdivision of the registered investment company and was not a separate commodity pool.[82]

Commenters urged the Commission to continue to permit registered investment companies to use CFCs and to allow such CFCs to be exempt from registration with the Commission under § 4.13 or exclude them under § 4.5 by reason of their sole investor being excluded as well. Commenters proposed various mechanisms by which the Commission could obtain information regarding the activities of CFCs, including requiring disclosure of CFC fees and expenses at the registered investment company level, requiring a representation that the CFC will comply with key provisions of the Investment Company Act of 1940 (''Investment Company Act''),[83] and requiring the registered investment company to make its CFC's books and records available to the Commission and NFA for inspection.

The Commission does not oppose the continued use of CFCs by registered investment companies, but it believes that CFCs that fall within the statutory definition of ''commodity pool'' should be subject to regulation as a commodity pool.[84] The Dodd-Frank Act amended the CEA to define a commodity pool as ''any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any * * * commodity for future delivery, security futures product, or swap.''[85] Based on a plain language reading of the statutory definition, CFCs wholly owned by registered investment companies and used for trading commodity interests are properly considered commodity pools. These entities also satisfy the definition of ''pool'' delineated in § 4.10(d)(1) of the Commission's regulations, which is substantively identical to the statutory definition. There is no meaningful basis for concluding otherwise. Moreover, the Commission believes that each separate legally cognizable entity must be assessed on its own characteristics and that a CFC should not be entitled to exclusion simply because its parent company is a registered investment company that may be entitled to exclusion under § 4.5. Therefore, the Commission does not oppose the use of CFCs for trading in commodity interests by registered investment companies, but such CFCs will be required to have their CPOs register with the Commission unless they may claim exemption or exclusion therefrom on their own merits.

8. Comments Regarding Implementation of Amendments

The Commission received several comments with suggestions regarding implementation of the proposed amendments to § 4.5, if the Commission decided to adopt the proposed provisions as final rules.[86] Several commenters recommended that the Commission provide for an undefined ''substantial transition period for compliance.''[87] Conversely, one commenter suggested that the Commission should only provide a short period of time for compliance.[88] Another commenter suggested that at least 12-months would be required for registered investment companies to come into registration and compliance with Commission requirements.[89] Finally, a commenter suggested that the Commission delay implementation until all mandatory Dodd-Frank Act rules are implemented.[90]

In light of the Commission's proposed harmonization effort with respect to the compliance obligations for dually registered investment companies and the ongoing efforts to further define the term ''swap'' and the margin requirements for swaps positions, the Commission recognizes that a short implementation period is not practicable. The Commission believes that 11 months is an adequate amount of time to enable compliance by existing registered investment companies. Recognizing that the definition of swap is not yet finalized, the Commission has decided that compliance with the amendments to § 4.5 for purposes of registration only will occur on the later of either December 31, 2012 or within 60-days following the adoption of final rules defining the term ''swap,'' and establishing margin requirements for such instruments.[91] Entities required to register due to the amendments to § 4.5 shall be subject to the Commission's recordkeeping, reporting, and disclosure requirements set forth in part 4 of the Commission's regulations within 60 days following the effectiveness of a final rule implementing the Commission's proposed harmonization effort pursuant to the concurrent proposed rulemaking.

Several commenters also suggested that the Commission exempt from compliance those registered investment companies that have already claimed relief under § 4.5.[92] The Commission does not believe that ''grandfathering'' is appropriate in this context. As the Commission stated in its Proposal, and reaffirms in this preamble, part of the purpose of amending § 4.5 is to ensure that entities that are engaged in a certain level of derivatives trading are subject to the registration and compliance obligations and oversight by the Commission.[93] Grandfathering is inconsistent with the goals of the Commission's amendments. The Commission, however, believes that harmonization of the Commission's compliance regime with that of the SEC will minimize the regulatory burden of existing registered investment companies. In addition, the Commission is permitting a sufficient amount of time for existing entities to come into compliance before the compliance dates set forth above. Therefore, the Commission believes that it is addressing the commenters' concerns through harmonization while still ensuring that the Commission has the

[82] *See* Roundtable Transcript at 165.

[83] 15 U.S.C. 80a–1, *et seq.*

[84] 7 U.S.C. 1a(10).

[85] 7 U.S.C. 1a(10).

[86] *See* Steben Letter; ICI Letter; NFA Letter; Reed Smith Letter; AllianceBernstein Letter; USAA Letter; PMC Letter; IAA Letter; Janus Letter; STA Letter; Rydex Letter; Alston Letter; and comment letter from the Association of Institutional Investors (July 1, 2011) (''AII II Letter'').

[87] *See* ICI Letter; NFA Letter; Reed Smith Letter; AllianceBernstein Letter; USAA Letter; PMC Letter; IAA Letter; Janus Letter; and STA Letter.

[88] *See* Steben Letter.

[89] *See* Rydex Letter.

[90] *See* AII II Letter.

[91] Effective Date for Swap Regulation, 76 FR 42508.

[92] *See* ICI Letter; Reed Smith Letter; AllianceBernstein Letter; Invesco Letter; IAA Letter; Janus Letter; AII Letter; SIFMA Letter; and STA Letter.

[93] 76 FR 7976, 7983–84 (Feb. 12, 2011).

information necessary to oversee all participants in the derivatives markets.

B. Comments Regarding Proposed Amendment to § 4.7

The Commission proposed two amendments to § 4.7. The first proposed to amend §§ 4.7(a)(3)(ix) and (a)(3)(x) to incorporate by reference the accredited investor standard from the SEC's Regulation D [94] under the Securities Act of 1933,[95] rather than by direct inclusion of its specific terms. The Commission stated that this amendment would ''permit the Commission's definition of QEP to continue to include the specific terms of the accredited investor standard in the event that it is later modified by the SEC without requiring the Commission to amend § 4.7 each time to maintain parity.'' [96]

The Commission received one comment supporting this proposed amendment. Specifically, the commenter stated its belief that this amendment would ''facilitate consistency amongst federal standards for financial sophistication and reduce investor confusion.'' [97] The Commission agrees and, accordingly, is adopting the amendments to §§ 4.7(a)(3)(ix) and (a)(3)(x) as proposed.

The second proposed amendment to § 4.7 would rescind the relief provided in § 4.7(b)(3) [98] from the certification requirement of § 4.22(c) [99] for financial statements contained in commodity pool annual reports. In support of the Proposal, the Commission noted that approximately 85 percent of all pools operated under § 4.7 in fiscal year 2009 filed financial statements that were certified by certified public accountants, ''despite being eligible to claim relief from certification under § 4.7(b)(3).'' [100] The number of uncertified financial statements has continued to decline and, for fiscal year 2010, approximately 91 percent of all reports filed for pools operated under § 4.7 included financial statements that were certified by certified public accountants.[101] In the Proposal, the Commission stated its belief that ''requiring certification of financial information by an independent accountant in accordance with established accounting standards will ensure the accuracy of the financial information submitted by its registrants,'' and will further the stated purposes of the Dodd-Frank Act.[102]

The Commission received two comments regarding this proposed amendment. One commenter supported the proposed rescission and the Commission's stated justification for doing so.[103] The other commenter recommended that the Commission retain an exemption from certification of financial statements for entities where the pool's participants are limited to the principals of its CPO(s) and CTA(s) and other categories of employees listed in § 4.7(a)(2)(viii).[104] It is unclear how many of the pools operated under § 4.7 would qualify for such relief if adopted. The Commission believes that rather than adopt an exemption for such entities without data regarding the scope of the exemption's applicability, it is more appropriate to rescind the exemption from certification for all pools operated under § 4.7(b)(3) generally and permit entities to write to the Division of Swap Dealer and Intermediary Oversight to request exemptive relief from the certification requirement on a case by case basis under § 140.99.[105] By requiring entities to request relief from the Commission, the Commission can better determine whether such an exemption should be adopted in the future. Therefore, the Commission is adopting the amendments to § 4.7 as proposed.

C. Comments Regarding the Proposed Rescission of §§ 4.13(a)(3) and (a)(4)

As stated previously, the Commission proposed to rescind §§ 4.13(a)(3) and (a)(4). After considering the comments received, which are detailed herein, the Commission has determined to retain the de minimis exemption in § 4.13(a)(3). The Commission concluded that overseeing entities with less than five percent exposure to commodity interests is not the best use of the Commission's limited resources. Moreover, the Commission believes that the retention of the de minimis exemption in § 4.13(a)(3) provides for consistent treatment of entities engaging in de minimis levels of trading due to the addition of a five percent trading threshold in § 4.5 as well. The Commission received several comments requesting that the Commission modify § 4.13(a)(3) in various respects. The Commission has determined, however, that it is appropriate to retain § 4.13(a)(3) in its current form, for the reasons detailed below.

1. General Comments

In addition to the comments that the Commission received regarding the specific parts of the Proposal rescinding §§ 4.13(a)(3) and (a)(4), the Commission received numerous comments regarding the proposed rescissions generally.[106] Broadly, the comments opposed the rescission of both provisions.

Several commenters asserted that rescission was not necessary because the Commission has the means to obtain any needed information from exempt CPOs through its large trader reporting requirements and its special call authority.[107] Although the Commission has the means to obtain certain information through the mechanisms delineated by the commenters, neither of those mechanisms provide the type of data requested on Forms CPO–PQR or CTA–PR with the kind of regularity proposed under § 4.27. For example, large trader reporting may provide detailed trading information for a particular market participant, but it does not provide the Commission with information regarding trends across funds that are not large enough to trigger the reporting obligation, but that may nevertheless impact the market. Also, with respect to the Commission's special call authority under § 21.03, the collection of data under that section is generally reactive in nature. That is, the Commission would be in a position to collect data under § 21.03 after it became aware of an issue. Conversely, it is anticipated that collecting data using Forms CPO–PQR and CTA–PR will enable the Commission to be more proactive in assessing possible threats to market stability and in carrying out its duties in overseeing market participants generally.

Some commenters suggested that the Commission adopt a limited exemption for SEC-registered entities that are not ''primarily engaged'' in trading commodity interests.[108] Pursuant to the

[94] 17 CFR 230.501(a)(5), (a)(6) (2011).

[95] 15 U.S.C. 77a, et seq.

[96] 76 FR 7976, 7985 (Feb. 12, 2011).

[97] *See* MFA II Letter.

[98] 17 CFR 4.7(b)(3) (2011).

[99] *Id.* 4.22(c).

[100] 76 FR 7967, 7984–85 (Feb. 12, 2011).

[101] In 2010, 951 pools were operated pursuant to § 4.7 and 84 of those pools filed uncertified financial statements for fiscal year 2010.

[102] *Id.* at 7985.

[103] *See* NFA Letter.

[104] *See* MFA II Letter.

[105] 17 CFR § 140.99.

[106] *See* comment letter from the New York State Bar Association (April 12, 2011) (''NYSBA Letter''); comment letter from Skadden, Arps, Slate, Meagher & Flom LLP (April 12, 2011) (''Skadden Letter''); MFA Letter; comment letter from Katten, Muchin Rosenman LLP (April 12, 2011) (''Katten Letter''); Fidelity Letter; Dechert Letter; comment letter from the Alternative Investment Management Association, Ltd. (April 12, 2011) (''AIMA Letter''); comment letter from the Alternative Investment Management Association, Ltd. (July 1, 2011) (''AIMA II Letter''); IAA Letter; SIFMA Letter; comment letter from HedgeOp Compliance, LLC (July 28, 2011) (''HedgeOp Letter''); comment letter from the Private Investor Coalition; Inc. (April 12, 2011) (''PIC Letter''); and comment letter Seward & Kissel, LLP (April 12, 2011) (''Seward Letter'').

[107] *See* Skadden Letter; Katten Letter; and MFA Letter.

[108] *See* Dechert Letter; and Katten Letter.

terms of § 4m(3) of the CEA, as amended by the Dodd-Frank Act, CTAs that are registered with the SEC and whose business does not consist primarily of acting as a CTA, and that do not act as a CTA to any pool engaged primarily in the trading of commodity interests, are exempt from registration with the Commission.[109] The Commission believes that that statutory exemption for CTAs is explicit as to Congress's limited intentions regarding exempting entities from registration with the Commission. By the plain language of § 4m(3), this section creates an exemption from the CTA registration requirements of the CEA; commodity pools are discussed in that provision only to the extent that the characteristics of the pool enable the CTA to claim relief. The registration category of CPO is not implicated. Therefore, the Commission concludes that the provisions of § 4m(3) do not mandate any exemption from the registration requirements for CPOs. Moreover, the Commission disagrees with the commenter who asserted that rescission is inconsistent with Congress's asserted intention to avoid dual registration. The Commission does not believe it is accurate to state that Congress intended to avoid oversight by both agencies, and indeed Congress clearly anticipated some overlap when, in the Dodd-Frank Act, it required the Commission to work with the SEC to adopt a data collection instrument for dual registrants. Section 406 of the Dodd-Frank Act explicitly mandated that the Commission and the SEC jointly promulgate a reporting form for dually registered entities.[110] The Commission does not believe that this requirement could be consistent with any asserted Congressional intention to absolutely avoid dual registration with the commissions. Therefore, the Commission concludes that dual registration of certain entities is not irreconcilable with the Congressional intent underlying the Dodd-Frank Act.

Other commenters asserted that the compliance and regulatory obligations under the Commission's rules are burdensome and costly for private businesses and would unnecessarily distract entities from their primary focus of managing client assets.[111] The Commission disagrees with this assertion, which in any event was not fully detailed by any commenter. The Commission believes that regulation is necessary to ensure a well functioning market and to provide investor protection. The Commission further believes that the compliance regime that the Commission has adopted strikes the appropriate balance between limiting the burden placed on registrants and enabling the Commission to carry out its duties under the CEA. Moreover, the compliance and regulatory obligations imposed on these CPO registrants will be no different from those imposed on other registered CPOs. Such compliance and regulatory obligations have not been unduly burdensome for these other registrants.

2. Comments Regarding the Proposed Rescission of § 4.13(a)(3)

In the Proposal, the Commission proposed rescinding the ''de minimis'' exemption in § 4.13(a)(3). The Commission stated its belief that ''it is possible for a commodity pool to have a portfolio that is sizeable enough that even if just five percent of the pool's portfolio were committed to margin for futures, the pool's portfolio could be so significant that the commodity pool would constitute a major participant in the futures market.'' [112] Moreover, the Commission stated that it believed that this rescission was consistent with the purposes of the Dodd-Frank Act, with specific regard to increased transparency and accountability of participants in the financial markets. The Commission did, however, solicit comment as to whether some form of de minimis exemption should be maintained.

The Commission received ten comments specifically on its proposed rescission of the ''de minimis'' exemption in § 4.13(a)(3).[113] The commenters consistently urged the Commission to retain a de minimis exemption. Some commenters cited to the amendment to § 4m(3) of the CEA by the Dodd Frank Act, which provides an exemption from registration for CTAs that are registered with the SEC and whose business does not consist primarily of acting as a CTA and that does not act as a CTA to any pool engaged primarily in the trading of commodity interests.[114] One commenter stated that the effect of § 4m(3) was to exempt such CTAs from registration as a CPO or CTA; [115] whereas another commenter asserted that the amendment of § 4m(3) is evidence that Congress did not intend to have the operator of a commodity pool register as a CPO if its pool is not primarily engaged in trading commodity interests.[116] The Commission notes that under the tenets of statutory interpretation, where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent.[117] By the plain language of § 4m(3), this section creates an exemption from the CTA registration requirements of the CEA; commodity pools are discussed only to the extent that the characteristics of the pool enable the CTA to claim relief. The registration category of CPO is not referenced. Therefore, the Commission concludes that the provisions of § 4m(3) do not mandate any exemptions from registration for CPOs. The Commission notes, however, that it has determined to retain the de minimis exemption set forth in § 4.13(a)(3).

Several commenters suggested adding as a prerequisite for exemptive relief under § 4.13(a)(3), registration with the SEC as an investment adviser.[118] The Commission is declining to add SEC registration as part of the criteria for relief under § 4.13(a)(3) because the basis for providing relief is the limited nature of the pool's trading activity rather than its operator's registration status with the SEC. To require the CPO of an exempt pool to be regulated by the SEC would limit the applicability of § 4.13(a)(3), which is not the Commission's intention at this time.

Most commenters suggesting the additional requirement of SEC registration also proposed an increase in the trading threshold, ranging from 20 percent to 50 percent of the pool's liquidation value due to the inclusion of the pool's swaps activity within the trading threshold.[119] As discussed earlier in this release in the context of § 4.5, the Commission believes that a five percent threshold continues to be the appropriate level for exemption or exclusion due to limited derivatives trading. Moreover, the Commission would again note that the inclusion of an alternative net notional test provides CPOs with another, perhaps less restrictive means, of qualifying for the exemption. The Commission believes

[109] 7 U.S.C. 6m(3).

[110] *See* Section 406 of the Dodd-Frank Act.

[111] *See* MFA Letter; Seward Letter; and Katten Letter.

[112] 76 FR 7976, 7985 (Feb. 12, 2011).

[113] *See* MFA Letter; NYSBA Letter; comment letter from Schulte Roth & Zabel LLP (April 12, 2011) (''Schulte Letter''); Dechert III Letter; Skadden Letter; Seward Letter; IAA Letter; NFA Letter; SIFMA Letter; and comment letter from McGuireWoods LLC (April 12, 2011) (''McGuireWoods Letter'').

[114] 7 U.S.C. 6m(3).

[115] *See* Skadden Letter.

[116] *See* MFA Letter.

[117] *See Andrus* v. *Glover Construction Co.,* 446 U.S. 608 (1980).

[118] *See* MFA Letter; NFA Letter; Skadden Letter; Schulte Letter; NYSBA Letter; Dechert III Letter; IAA Letter; and Seward Letter.

[119] *See* MFA Letter; Skadden Letter; NYSBA Letter; Dechert III Letter.

that trading exceeding five percent of the liquidation value of a portfolio, or a net notional value of commodity interest positions exceeding 100 percent of the liquidation value of a portfolio, evidences a significant exposure to the derivatives markets, and that such exposure should subject an entity to the Commission's oversight.

With respect to the issue of the inclusion of swaps making it more difficult to satisfy the trading threshold, the Commission believes that it would be premature to increase the threshold at this time. Additionally, as stated previously, the inclusion of an alternative net notional test may provides entities with another mechanism for qualifying for the exemption in § 4.13(a)(3). The Commission believes that it may be more appropriate to reassess the trading threshold after collecting data from registered CPOs through Form CPO–PQR. Therefore, the Commission has decided not to increase the trading threshold under § 4.13(a)(3).

Additionally, the Commission believes that it must include swaps within the threshold to enable the most entities to claim relief under § 4.13(a)(3). As stated previously with respect to the amendments to § 4.5, the Dodd-Frank Act amended the statutory definition of the terms ''commodity pool operator'' and ''commodity pool'' to include those entities that trade swaps.[120] If the Commission were to keep the de minimis test in § 4.13(a)(3) and only include futures and options as the basis for calculating compliance with the threshold, the swaps activities of the CPOs would still trigger the registration requirement notwithstanding the exclusion of swaps from the calculus. That is, the purpose of the threshold test is to define a de minimis amount of trading activity that would not trigger the registration requirement. If swaps were excluded, any swaps activities undertaken by a CPO would result in that entity being required to register because there would be no de minimis exclusion for such activity. As a result, one swap contract would be enough to trigger the registration requirement. For that reason, if the Commission wants to permit some de minimis level of swaps activity by CPOs without registration with the Commission, it must do so explicitly in the exemption.[121] Because the Commission has determined that de minimis activity by CPOs does not implicate the Commission's regulatory concerns, the Commission has decided that it is appropriate to include swaps within the trading threshold under § 4.13(a)(3).[122]

Additionally, to enable CPOs to fully exercise the alternative net notional test, the Commission is amending § 4.13(a)(3)(ii)(B) to provide guidance as to the notional value of cleared swaps positions and the ability to net swaps cleared by the same DCO. The Commission believes that this amendment will serve to provide equal ability to claim relief under § 4.13(a)(3) to all CPOs regardless of the types of commodity interests held by their operated pools. Therefore, the Commission is amending § 4.13(a)(3)(ii)(B)(*1*) to provide that the notional value of a cleared swap is determined consistent with the provisions of part 45 of the Commission's regulations and § 4.13(a)(3)(ii)(B)(*2*) to provide that swaps cleared by the same DCO may be netted where appropriate.

After consideration of the comments and the Commission's stated rationale for proposing to rescind the exemption in § 4.13(a)(3), the Commission has determined to retain the de minimis exemption currently set forth in that section without modification.[123]

3. Comments Regarding a Family Offices Exemption

In response to the Commission's proposed rescission of §§ 4.13(a)(3) and (a)(4), the Commission received numerous comments asking that the Commission adopt an exemption from registration for family offices that is akin to the exemption adopted by the SEC.[124] The commenters noted that prior to the adoption of §§ 4.13(a)(3) and (a)(4), the Commission staff granted relief to family offices on an ad hoc basis, but that when §§ 4.13(a)(3) and (a)(4) were adopted, most family offices availed themselves of those exemptions from registration. The commenters argued that the Commission should have less regulatory concern about family offices because their clientele is necessarily limited to family members and the family offices do not solicit outside of the family unit.

Due to the exemptions previously granted by Commission staff, and the resulting lack of information regarding the activities of CPOs claiming relief thereunder, the Commission does not yet have a comprehensive view of the positions taken and interests held by currently exempt entities. The Commission, therefore, believes that it is prudent to withhold consideration of a family offices exemption until the Commission has developed a comprehensive view regarding such firms to enable the Commission to better assess the universe of firms that may be appropriate to include within the exemption, should the Commission decide to adopt one. Therefore, the Commission is directing staff to look into the possibility of adopting a family offices exemption in the future.

The Commission notes that family offices previously relying on the exemption under Regulation § 4.13(a)(3) will not be affected by the rules adopted herein, as the Commission is not rescinding the § 4.13(a)(3) exemption and it will remain available to entities meeting its criteria. The Commission further notes that family offices continue to be permitted to write in on a firm by firm basis to request interpretative relief from the registration and compliance obligations under the Commission's rules and to rely on those interpretative letters already issued to the extent permissible under the Commission's regulations.[125] Therefore, the Commission does not believe an exemption for family offices is necessary at this time.

4. Comments Regarding a Foreign Advisor Exemption

Several commenters suggested that if the Commission determines to adopt the proposed rescissions, it should adopt a foreign advisor exemption similar to that set forth in the Dodd-Frank Act under the Investment Adviser Act of

[120] 7 U.S.C. 1a(10); 1a(11).

[121] Any reference to a de minimis level of swaps activities by registered investment companies only applies in the context of CPO registration by registered investment companies.

[122] The Commission has proposed to amend the definition of ''commodity interest'' as it appears in § 1.3 to include swaps, consistent with the Dodd-Frank Act. *See,* 76 FR 33066 (June 7, 2011).

[123] The Commission does not need to amend the language of § 4.13(a)(3) to include swaps within the trading threshold as this section determines eligibility based on the amount of ''commodity interests'' traded. In a separate rulemaking, the Commission has proposed to amend the definition of the term ''commodity interest'' to include swaps. *See* 76 FR 11701 (March 3, 2011).

[124] *See* 17 CFR 250.202(a)(11)(G)–1.

[125] See 17 CFR 140.99(a)(3) (''An interpretative letter may be relied upon by persons in addition to the Beneficiary.''). The most recent letter (CFTC letter 10–25) issued affirming the Division's interpretation that a ''family office'' is not a pool under § 4.10(d) is available at the Commission's Web site at: *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/10-25.pdf. See,* CFTC Interpretative Letter 00–100 [2000–2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,420 (Nov. 1, 2000); CFTC Interpretative Letter No. 96–24, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,653 (March 4, 1996); CFTC Interpretative Letter No. 97–29, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,039 (March 21, 1997); CFTC Interpretative Letter No. 95–35, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,376 (Nov. 23, 1994).

1940.[126] The commenters expressed concern that the rescission of the exemptions under §§ 4.13(a)(3) and (a)(4) would result in nearly all non-US based CPOs operating a pool with at least one U.S. investor being required to register with the Commission. Commenters also expressed concern that foreign CPOs would have to report the entirety of their derivatives activities to the Commission even if foreign regulators also oversee such activities.

Due to the exemptions previously adopted by the Commission, and the resulting lack of information regarding the activities of CPOs claiming relief thereunder, the Commission does not yet have a comprehensive view of the positions taken and interests held by currently exempt entities. The Commission, therefore, believes that it is prudent to withhold consideration of a foreign advisor exemption until the Commission has received data regarding such firms on Forms CPO–PQR and/or CTA–PR, as applicable, to enable the Commission to better assess the universe of firms that may be appropriate to include within the exemption, should the Commission decide to adopt one. Foreign advisors to pools that meet the criteria of § 4.13(a)(3) will be able to continue to operate pursuant to that exemption, if previously claimed, or file notice of claim of exemption under § 4.13(a)(3). Therefore, the Commission is not providing an exemption for foreign advisors at this time.

5. Comments Regarding the Proposed Rescission of § 4.13(a)(4)

In the Proposal, the Commission proposed to rescind the exemption in § 4.13(a)(4) for operators of pools that are offered only to individuals and entities that satisfy the qualified eligible person standard in § 4.7 or the accredited investor standard under the SEC's Regulation D.[127] In the Proposal, the Commission stated that it

> [S]eeks to eliminate the exemptions under §§ 4.13(a)(3) and (4) for operators of pools that are similarly situated to private funds that previously relied on the exemptions under §§ 3(c)(1) and (7) of the Investment Company Act and § 203(b)(3) of the Investment Advisers Act. It is the Commission's view that the operators of these pools should be subject to similar regulatory obligations, including proposed form CPO–PQR, in order to provide improved transparency and increased accountability with respect to these pools. The Commission has determined that it is appropriate to limit regulatory arbitrage through harmonization of the scope of its data collection with respect to pools that are similarly situated to private funds so that operators of such pools will not be able to avoid oversight by either the Commission or the SEC through claims of exemption under the Commission's regulations.[128]

The Commission received several comments regarding its proposed rescission.[129] Several commenters argued that the Commission should consider retaining the exemption in § 4.13(a)(4) for funds that do not directly invest in commodity interests, but do so through a fund of funds structure, and who are advised by an SEC registered investment adviser. Due to the exemptions previously adopted by the Commission, and the resulting lack of information regarding the activities of CPOs claiming relief thereunder, the Commission does not yet have a comprehensive view of the positions taken and interests held by currently exempt entities. The Commission, therefore, believes that it is prudent to withhold consideration of a fund of fund exemption until the Commission has received data regarding such firms on Forms CPO–PQR and/or CTA–PR, as applicable, to enable the Commission to better assess the universe of firms that may be appropriate to include within the exemption, should the Commission decide to adopt one. Therefore, the Commission is not providing an exemption for funds of funds at this time. The Commission notes, however, that staff will consider requests for exemptive relief for funds of funds on a case by case basis.

The Commission received two comments that argued that the rescission of § 4.13(a)(4) is inconsistent with the private offering framework under the SEC's Regulation D and that the rescission would result in the end of private offerings.[130] The Commission believes that this analysis is flawed and is the result of a mistaken conflation of the private fund structure under the Commission's rules and privately-offered ownership interests under the SEC's rules. The Commission notes that the rescission of § 4.13(a)(4) does not preclude CPOs from utilizing Regulation D with respect to the offering of pool interests because the availability of relief from the registration of an offering under Regulation D does not require that the entity involved be exempt from regulation. Therefore, the Commission continues to believe that rescission of § 4.13(a)(4) is appropriate for the reasons stated in the Proposing Release and that it is consistent with the registration of investment advisers of such exempt funds with the SEC.

One commenter expressed concerns about the fact that the class of eligible participants in a pool operated pursuant to § 4.13(a)(4) is broader than that for a pool qualifying under § 4.7.[131] Specifically, this commenter noted that under § 4.13(a)(4), participants may include non-natural participants that are QEPs under § 4.7 or accredited investors under § 230.501(a)(1)–(3), (a)(7) or (a)(8),[132] whereas § 4.7 does not include such participants as QEPs.[133] The Commission recognizes that this discrepancy may result in certain entities being unable to claim relief under § 4.7; however, due to the exemptions previously adopted by the Commission, and the resulting lack of information regarding the activities of CPOs claiming relief thereunder, the Commission does not yet have a comprehensive view of the positions taken and interests held by currently exempt entities and until the Commission has more information regarding the universe of entities affected, the Commission does not believe that it is appropriate to amend § 4.7 to reflect the nature of participants in funds previously entitled to relief under § 4.13(a)(4). After the Commission has collected data from such entities through Form CPO–PQR, the Commission may reconsider this issue. The Commission also notes that staff will consider requests for exemptive relief from the limitations of § 4.7 on a case-by-case basis.

One commenter argued that rescission is not necessary because any fund that seeks to attract qualified eligible purchasers is already required to maintain oversight and controls that exceed those mandated by part 4 of the Commission's regulations such that any regulation imposed would be duplicative and unnecessarily burdensome.[134] That commenter further stated that:

> We are accustomed to intense scrutiny from potential investors that frequently includes independent background checks of our key employees, onsite visits that include

[126] *See* Section 403 of the Dodd-Frank Act.

[127] *See* 17 CFR 4.13(a)(4).

[128] 76 FR 7976, 7986 (Feb 12, 2011).

[129] *See* comment letter from Sidley Austin LLP (April 12, 2011) (''Sidley Letter''); MFA Letter; NYSBA Letter; comment letter from Cranwood Capital Management (April 12, 20110 (''Cranwood Letter''); Dechert III Letter; and comment letter from Nantucket Multi Managers, LLC (April 12, 2011) (''Nantucket Letter'').

[130] *See* MFA Letter; and NYSBA Letter.

[131] MFA raised this concern during several meetings with Commission staff, although it did not provide any detail regarding the scope of its concerns and the topic was not discussed in the written comments submitted regarding this rulemaking.

[132] 17 CFR § 4.13(a)(4)(ii)(B).

[133] 17 CFR § 4.7(a).

[134] *See* Cranwood Letter.

interviews with our traders and other key personnel, interviews of our third-party administrator and our auditors, interviews of officials of our clearing broker, interviews of officers at our custodial bank, and bulk delivery of transactional data for independent analysis. To say that such information-gathering goes far beyond the contents of a mandated disclosure document is a gross understatement.[135]

The commenter primarily focused on the significant level of controls that the fund operator implements independent of regulation. The Commission believes that, contrary to the commenter's arguments as to the import of that fact, such controls and internal oversight should facilitate compliance with the Commission's regulatory regime. Moreover, the Commission continues to believe that registration serves important regulatory purposes as stated previously in this release in the context of the amendments to § 4.5.

The Commission has determined to eliminate the exemption in § 4.13(a)(4) because, as stated in the proposal, there are no limits on the amount of commodity interest trading in which pools operating under this regulation can engage. That is, it is possible that a commodity pool that is exempted from registration under § 4.13(a)(4) could be invested solely in commodities, which, in the Commission's view, necessitates Commission oversight to ensure adequate customer protection and market oversight. Therefore, the Commission adopts the rescission of § 4.13(a)(4) as proposed.

The Commission received several comments regarding the timing of the implementation of the rescission of § 4.13(a)(4).[136] Two commenters suggested that 18 months is the appropriate time period to permit entities to prepare for compliance with the Commission's registration and compliance regime.[137] One commenter suggested that the Commission provide ''sufficient time,'' but provided no proposed specific period of time.[138] Several commenters asserted that currently exempt entities should be grandfathered.[139]

The Commission recognizes that entities will need time to come into compliance with the Commission's regulations. The Commission does not, however, believe that the process of preparing for Commission oversight necessitates an 18 month time period. Based on the comments received indicating that a certain portion of entities currently claiming relief under § 4.13(a)(4) already have robust controls in place independent of Commission oversight, the Commission believes that entities currently claiming relief under § 4.13(a)(4) should be capable of becoming registered and complying with the Commission's regulations within 12 months following the issuance of the final rule. For entities that are formed after the effective date of the rescission, the Commission expects the CPOs of such entities to comply with the Commission's regulations upon formation and commencement of operations.

The Commission does not believe that ''grandfathering'' is appropriate in this context. As the Commission stated in its Proposal, part of the purpose of rescinding § 4.13(a)(4) is to ensure that entities that are engaged in derivatives trading are subject to substantively identical registration and compliance obligations and oversight by the Commission.[140] Grandfathering is not consistent with the stated goals of the Commission's rescission and would result in disparate treatment of similarly situated entities.

Therefore, the Commission will implement the rescission of § 4.13(a)(4) for all entities currently claiming exemptive relief thereunder on December 31, 2012, but the rescission will be implemented for all other CPOs upon the effective date of this final rulemaking.

D. Comments Regarding the Proposed Annual Notices for Continued Exemptive or Exclusionary Relief

In the Proposal, the Commission proposed to require annual reaffirmance of a claim of exemption or exclusion from registration as a CPO or CTA. In the Proposal, the Commission stated its position that an annual notice requirement would promote improved transparency regarding the number of entities either exempt or excluded from the Commission's registration and compliance programs, which is consistent with one of the primary purposes of the Dodd-Frank Act. Moreover, the Commission stated its belief that an annual notice requirement would enable the Commission to determine whether exemptions and exclusions should be modified, repealed, or maintained as part of the Commission's ongoing assessment of its regulatory scheme.

The Commission received three comments on this provision in the Proposal.[141] One commenter supported the adoption of an annual notice requirement, but suggested that the due date of the notice be changed from the exemption's original filing date to a calendar-year end for all filers.[142] The Commission agrees that moving the due date for the annual notice requirement to the calendar-year end for all filers may be more operationally efficient. Therefore, the Commission will adopt the annual notice requirement mandating that the notice be filed at the calendar year-end rather than the anniversary of the original filing.

Two commenters suggested that the 30-day time period for filing was not adequate to enable firms to comply.[143] One commenter proposed a 60-day time period,[144] whereas the other commenter proposed 90 days as the necessary amount of time.[145] The Commission recognizes that the proposed 30-day filing period may not be adequate due to the ramifications of an entity's failure to file its annual notice in a timely manner, which would result in the exemption or exclusion being deemed withdrawn. This issue is particularly important because of the NFA's Bylaw 1101, which prohibits NFA members from conducting business with non-members. Should an entity fail to file its annual notice within the requisite time frame, its NFA membership could be deemed withdrawn, which could potentially impact numerous other NFA members. The Commission believes that extending the filing period from 30 days to 60 days will provide NFA with adequate time to follow up with filing entities to ensure that a filing is not omitted inadvertently and to limit the adverse consequences for other NFA members. The Commission does not, however, believe that 90 days is necessary as it intends for such notice to be filed electronically with NFA and for NFA's filing system to pre-populate the notice with the names and NFA IDs of all exempt pools operated by the CPO with an option to choose to reaffirm the exemptions for all exempt pools. The Commission believes that this minimizes both the time and expense burdens on the CPO and should enable

[135] *See* Cranwood Letter.

[136] *See* NYSBA Letter; AIMA Letter; Schulte Letter; comment letter from Fulbright & Jaworski L.L.P. (April 12, 2011) (''Fulbright Letter''); SIFMA Letter; Seward Letter; Katten Letter; and comment letter from TIF Fund Management LLC (May 19, 2011) (''TIF Letter''); NFA Letter; IAA Letter; and Dechert Letter.

[137] *See* Schulte Letter; and Fulbright Letter.

[138] *See* NFA Letter. *See also,* IAA Letter.

[139] *See* NYSBA Letter; AIMA Letter; Schulte Letter; Fulbright Letter; SIFMA Letter; Seward Letter; and Katten Letter.

[140] 76 FR 7976, 7986 (Feb. 12, 2011).

[141] *See* NFA Letter; AII Letter; and SIFMA Letter.

[142] *See* NFA Letter.

[143] *See* NFA Letter; and SIFMA Letter.

[144] *See* NFA Letter.

[145] *See* SIFMA Letter.

all entities to comply with the requirement within 60 days.

E. Comments Regarding the Proposed Risk Disclosure Statement for Swaps in § 4.24 and § 4.34

The Commission also proposed adding standard risk disclosure statements for CPOs and CTAs regarding their use of swaps to §§ 4.24(b) and 4.34(b), respectively.[146]

The Commission received three comments with respect to the proposed standard risk disclosure statement for swaps.[147] Two argued that a standard risk disclosure statement is not the appropriate way to disclose the risks inherent in swaps activity to participants or clients.[148] Specifically, those commenters argued that the use of swaps by CPOs and CTAs varies and depending on the reason for using swaps, different risks may be implicated. Furthermore, those commenters also noted that the proposed risk disclosure statement is inconsistent with recent SEC guidance to registered investment companies to avoid generic disclosures. The Commission respectfully disagrees with the assertions of those commenters who believe that a standard risk disclosure statement is not appropriate. The Commission believes that a standardized risk disclosure statement addressing certain risks associated with the use of swaps is necessary due to the revisions to the statutory definitions of CPO, CTA, and commodity pool enacted by the Dodd-Frank Act.[149] Moreover, it is the Commission's position that concerns about ''one-size-fits-all'' disclosure of risks are addressed through additional disclosures required under §§ 4.24(g) and 4.34(g), which govern disclosures regarding the risks associated with participating in the offered commodity pool or program.

With respect to the comments submitted regarding the conflicting requirements imposed on registered investment companies whose advisers are required to register as CPOs pursuant to amended § 4.5,[150] such concerns will be addressed through the proposed modifications to the Commission's compliance regime that will be applicable to registered investment companies overseen by both the SEC and the Commission.

Additionally, the Commission received one comment that supported the adoption of the standard risk disclosure statement for swaps, but suggested that the Commission consider whether the wording needed to be modified depending on whether the swaps were cleared or uncleared.[151] Based on the language proposed, the Commission does not believe that different language must be adopted to account for the differences between cleared and uncleared swaps. In particular, the Commission notes that the proposed risk disclosure statement is not intended to address all risks that may be associated with the use of swaps, but that the CPO or CTA is required to make additional disclosures of any other risks in its disclosure document pursuant to §§ 4.24(g) and 4.34(g) of the Commission's regulations. Moreover, the language of the proposed risk disclosure statement is conditional and does not purport to assert that all of the risks discussed are applicable in all circumstances. For the reasons discussed above and those stated in the Proposal, the Commission adopts the proposed risk disclosure statements for CPOs and CTAs regarding swaps.[152] These additional risk disclosure statements will be required for all new disclosure documents and all updates filed after the effective date of this final rulemaking.

F. Section 4.27 and Forms CPO–PQR and CTA–PR

1. General Comments

The Commission received numerous comments in response to proposed § 4.27, which requires CPOs and CTAs to report certain information to the Commission on Forms CPO–PQR and CTA–PR, respectively. Several commenters questioned whether the data collection was necessary for the Commission's oversight of its registrants.[153] Others asserted that certain groups, such as registered investment companies or family offices, should be exempted from completing the data collection.[154]

The Commission's new reporting requirements supplement SEC reporting requirements for dual registrants that must file Form PF with the SEC by virtue of their dual registration status. Information about CTAs and CPOs that are non-dual registrants is necessary for the Commission to identify significant risk to the stability of the derivatives market and the financial market as a whole. Following the recent economic turmoil, the Commission has reconsidered the level of regulation that it believes is appropriate for entities participating in the commodity futures and derivatives markets. With respect to the assertion that registered investment companies should not be required to file Form CPO–PQR, the Commission believes that it is important to collect the data in Form CPO–PQR from registered investment companies whose activities require CPO registration to assess the risk posed by such investment vehicles to derivatives markets and the broader financial system. Consequently, the Commission intends to require from registered investment companies that are also registered as CPOs the same information that it is requiring from entities solely registered as CPOs. Additionally, the Commission notes that to the extent that the entity registered as the CPO for the registered investment company is registered as an investment adviser and is required to file Form PF with the SEC, the activities of the registered investment company may be reported on Form PF as well.

The Commission further believes that the same reasoning applies with respect to the collection of data from family offices. To enable the Commission to evaluate a potential family offices exemption following the collection and analysis of data regarding their activities, the Commission believes that it is essential that family offices remain subject to the data collection requirements to the extent that such entities are not entitled to claim relief pursuant to the Commission's interpretative guidance regarding family offices.

One commenter recommended that the Commission clarify the filing obligations for CPOs and CTAs that are required to file Form PF with the SEC and to streamline the reporting obligations.[155] Another commenter argued that a very large private fund that has a limited amount of derivatives trading should not be subject to Schedule C of Form CPO–PQR.[156] As

[146] 76 FR 7976, 7986 (Feb. 12, 2011).

[147] *See* SIFMA Letter; Fidelity Letter; and comment letter from Chris Barnard (Feb. 26, 2011) (''Barnard Letter'').

[148] *See* SIFMA Letter; and Fidelity Letter.

[149] *See* 7 U.S.C. 1a(10), 1a(11), and 1a(12).

[150] *See* SIFMA Letter; and Fidelity Letter.

[151] *See* Barnard Letter.

[152] These risk disclosure statements do not affect the swap disclosure requirements mandated in CEA Section 4s(h)(3)(B) and rules relating to that statutory provision. See proposed § 23.431 Disclosure of Material Information, Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties, 75 FR 80638 (Dec. 22, 2010). In addition, managed accounts that do not convey discretionary authority to the CTA will require the pass through of the swap disclosures in any final rule promulgated pursuant to 4s(h)(3)(B).

[153] *See* Fidelity Letter; and AIMA Letter.

[154] *See* ICI Letter; AIMA Letter; and comment letter from K&L Gates LLP (Feb. 12, 2011) (''K&L Letter'').

[155] *See* Fidelity Letter.

[156] *See* AIMA Letter; SIFMA Letter; and Fidelity Letter.

stated in the Proposal, CPOs that are dually registered with the SEC and that file Form PF must still file Schedule A with the Commission, and CTAs must still file Form CTA–PR. The Commission intends to adopt § 4.27 as proposed and permit dual registrants to file Form PF with the SEC in lieu of completing Schedules B and/or C of Form CPO–PQR. The Commission never intended to require very large dual registrants to file anything more than the general identifying information required on Schedule A with the Commission, and neither § 4.27 nor the forms require dual registrants to file Schedules B or C if they are filing Form PF.

The Commission has modified both Schedule A of Form CPO–PQR and Form CTA–PR so that both documents are only soliciting general demographic data. The Commission has moved Question 12, which asked for information regarding position information, from proposed Schedule A to Schedule B of Form CPO–PQR in an effort to avoid collecting redundant information from dual registrants. Additionally, the Commission is not adopting Schedule B from Form CTA–PR, and therefore, will be limiting the information collected from registered CTAs to demographic data and the names of the pools advised by the CTA.

One commenter questioned whether the information collected on Forms CTA–PR and CPO–PQR will provide the Commission with real-time data that will enable it to have an accurate and timely picture of a CTA's activities and operating status.[157] The Commission recognizes the limitations of the data collection instruments with respect to the timeliness of the information requested. The Commission believes, however, that the forms strike the appropriate balance between the time needed to compile complex data and the Commission's need for timely information. Moreover, the Commission believes that the information required on Form CPO–PQR and CTA–PR will be useful because it will allow the Commission to better deploy its enforcement and examination resources.

Another commenter questioned whether the Commission possessed the staffing and financial resources necessary to meaningfully use such data as part of its oversight.[158] The Commission recognizes that the resources available to it are limited. To that end, the Commission, as stated in the Proposal, intends to coordinate with the NFA to accomplish the analysis necessary to make full use of the data collected from Commission registrants.

In addition, the Commission intends for the data to be collected from registrants in an electronic format, which will enable the Commission to leverage its technology and to require less intensive staff time to achieve the desired results. The use of an electronic format will enable the FSOC to conduct additional analysis of the data collected in the event that the FSOC requests such information from the Commission, without significant consumption of Commission resources. For these reasons, the Commission believes that it has the tools necessary to make full use of the data that it intends to collect on Forms CPO–PQR and CTA–PR, notwithstanding the Commission's current staffing and financial resources.

2. Comments Regarding the Reporting Thresholds

The Commission received several comments regarding the appropriate reporting thresholds for the various schedules of Form CPO–PQR.[159] The commenters stated that $150 million in assets under management was too low of a threshold for entities to be categorized as mid-sized and required to file Schedule B. Rather, the commenters urged the Commission to increase the threshold to $500 million in assets under management.[160] The Commission believes that $150 million in assets under management is still the appropriate threshold for mid-sized CPOs. The Commission will retain this threshold because it is consistent with the threshold for advisers filing Section 1 of Form PF, which is substantively similar to Schedule B of Form CPO–PQR, and it will ensure comparable treatment of entities of similar magnitude.

These commenters also suggested that the Commission increase the threshold for large CPOs from $1 billion to $5 billion in assets under management.[161] The Commission has decided not to increase the large CPO threshold to $5 billion. The Commission has decided, however, to increase the threshold from $1 billion to $1.5 billion. The Commission believes that increasing the threshold to $1.5 billion will reduce the number of CPOs required to file Schedule C of Form CPO–PQR, but will still represent a substantial portion of the assets under management by registered CPOs. Moreover, the Commission notes that this modification is consistent with the revised threshold for large hedge fund advisers that it recently adopted with respect to Form PF.[162] The Commission believes that increasing the threshold beyond $1.5 billion could limit the Commission's access to information necessary to oversee entities that could pose a risk to the derivatives markets or the financial system as a whole.

3. Comments Regarding Harmonization With the SEC's Compliance Regime

The Commission received numerous comments on harmonizing Forms CPO–PQR and CTA–PR with Form PF.[163] The Commission has considered comments received on the Form PF proposed jointly with the SEC that address harmonization of the CFTC and SEC forms in addition to the comments received specifically on the Proposal. Two commenters argued that the Commission and the SEC should use the same metrics for measuring assets under management for purposes of determining filing obligations.[164] As noted several times in this preamble, the Commission has sought to harmonize Forms CPO–PQR and CTA–PR to the extent possible; however, it is not appropriate in all circumstances. For example, the SEC and the CFTC use different methods for determining the threshold for reporting assets under management. In order to determine whether a CPO meets the asset threshold for classification as a mid-sized or large CPO, Form CPO–PQR requires the use of the aggregated gross pool assets under management. Conversely, Form PF defines ''regulatory assets under management'' as the gross value of the securities portfolio as reported on the SEC's Form ADV.[165] Additionally, Form CPO–PQR uses net assets under management as the method for determining whether a commodity pool is a large commodity pool for filing purposes, whereas Form PF uses net regulatory assets. In the Commission's view, gross assets under management and net asset value are more appropriate means for determining filing obligations for CPOs and large commodity pools because entities registered with the Commission are familiar with the use of net asset value for other purposes including

[157] *See* Barnard Letter.

[158] *See* Dechert Letter.

[159] *See* AIMA Letter; MFA II Letter; Seward Letter. *See also,* AIMA II Letter.

[160] *See* AIMA Letter.

[161] *See* AIMA Letter; MFA II Letter; Seward Letter.

[162] 76 FR 71128, 71135 (Nov. 16, 2011).

[163] *See* AIMA Letter; MFA II Letter; Dechert Letter; Seward Letter; IAA Letter; Fidelity Letter; AIMA II Letter; K&L Letter; MFA Letter; and SIFMA Letter.

[164] *See* AIMA Letter; and MFA II Letter.

[165] Form PF defines net assets under management as regulatory assets under management less liabilities 76 FR 71128, 71136 (Nov. 16, 2011).

determining the required frequency of reporting to participants.[166] Moreover, the Commission believes that it is inappropriate for it to incorporate the SEC definitions of regulatory assets under management and net regulatory assets under management into Form CPO–PQR as those terms are not consistent with the existing CFTC regulatory framework.[167] The use of net asset value is consistent with the longstanding utilization of net asset value in U.S. GAAP and in the Commission's regulations.[168] Therefore, the Commission does not believe that its use of net asset value requires any additional calculation by dual registrants beyond that required to complete Form PF.

Several commenters argued that the Commission does not need to collect information through Forms CPO–PQR and CTA–PR because it already receives information through the Large Trader Reporting System and Form 40.[169] Large Trader Reporting and Form 40 do not provide the information regarding the relationship between a large position held by a pool and the rest of the pool's other derivatives positions and securities investments. The Commission believes that the scope of information sought through Forms CPO–PQR and CTA–PR will provide it with substantially more detail regarding the activities of entities engaged in derivatives trading and will better enable it to assess the risk posed by a pool or CPO as a whole.

Several commenters also urged the Commission to consider coordinating with the SEC to promulgate a single form.[170] The Commission believes that it is most efficient for Commission-only registrants to use a form that is based upon the format of NFA's Form PQR, with which current registrants are already familiar. Currently registered CPOs have been filing NFA's Form PQR on a quarterly basis for more than one year and have experience using NFA's interface for the collection of data. The Commission recognizes that new registrants will not have any experience with NFA's Form PQR or NFA's filing system; however, the same would be true if the Commission were to implement an altogether new system. Therefore, the Commission believes that by continuing to use the system developed by NFA for collecting data from CPOs and CTAs, it is minimizing the burden on current registrants because they will not be required to learn a new system, without adding any additional burden to new registrants.

Several commenters raised concerns about how affiliated entities will be treated on the forms.[171] The Commission believes that affiliated entities should be permitted, but should not be required, to report on a single form with respect to all affiliates and the pools that they advise. This position is consistent with the treatment of affiliated entities on Form PF. Furthermore, the Commission believes that where a pool is operated by one or more co-CPOs, only one CPO should report on the activities of the jointly operated pool, but that CPO must disclose the identities of the other co-CPOs. The Commission believes that this will eliminate the potential for double counting of pool assets if all co-CPOs were required to report on the jointly operated pool.

4. Comments Regarding Funds of Funds

The Commission also received one comment regarding issues unique to fund of funds and feeder funds.[172] Specifically, this commenter asserted that funds of funds that invest in unaffiliated commodity pools are ''not in the business of trading commodity interests,'' and therefore, should not be subject to reporting obligations on Form CPO–PQR.[173] This commenter further argues that funds of funds reporting is not necessary because either the Commission or the SEC will oversee the investee fund and that funds of funds likely do not have access to information with sufficient detail to respond to the questions in Form CPO–PQR regarding size, strategy, or positions held by the investee fund.[174]

The Commission disagrees with the commenter's assertion that funds investing in unaffiliated commodity pools are not in the business of trading commodity interests. Although it is true that the fund does not directly engage in such trading, it is the position of the Commission that a fund investing in an unaffiliated commodity pool is itself a commodity pool. This interpretation is consistent with the statutory definition of commodity pool, which draws no distinctions between direct and indirect investments in commodity interests.[175] Moreover, the Commission believes that permitting indirect investment in commodity interests to occur without Commission oversight would create an incentive for entities to avoid direct investment in commodity interests and possibly increase the opacity of the market. Therefore, the Commission concludes that a fund that invests in an unaffiliated commodity pool is a commodity pool for purposes of the CEA and the Commission's regulations promulgated thereunder.

With respect to the commenter's assertion that the funds of funds need not report because the investee fund will be subject to the jurisdiction of either the Commission or the SEC, the Commission must again disagree. As the commenter itself noted in its comment, the funds of funds could be invested in a fund whose adviser or operator is not required to report due to exemptive relief granted by either the Commission or the SEC. The Commission acknowledges that a fund of funds may not have access to the kind of information necessary to respond to all of the data elements in Schedules B and C with respect to the investment activities of its investee funds. Nevertheless, the Commission believes that requiring basic information about the investment in the investee funds without requiring that funds of funds complete the additional detail strikes an appropriate balance between recognizing the limitations of the information available to funds of funds and enabling the Commission to analyze and monitor the levels of interconnectedness among a CPO's funds. The Commission believes that a fund of funds should still be required to provide at a minimum the name of the investee fund(s) and the size of its investment(s) in such funds.

Accordingly, the Commission is adding a question to Schedule A of Form CPO–PQR requesting the names of the investee funds and the size of the fund of funds' investment in the investee funds. The Commission is also adding an instruction to Form CPO–PQR permitting the CPO of a fund of funds to exclude any assets invested in the equity of commodity pools or private funds for purposes of determining the CPO's reporting obligations. The CPO must, however, treat these assets consistently for purposes of Form CPO–PQR. For example, an adviser may not include these assets for purposes of certain questions such as those regarding borrowing, but disregard such assets for purposes of determining the reporting thresholds. This new instruction will permit a CPO to disregard investments in commodity pools or private funds,

[166] *Id.*

[167] *Id.* Additionally, the Commission notes that Form PF also asks for net assets under management in question 3 of Section 1.

[168] *See, e.g.,* 17 CFR 4.22.

[169] *See* Fidelity Letter; and K&L Letter.

[170] *See* AIMA II Letter; Seward Letter; MFA Letter; AIMA Letter; and SIFMA Letter.

[171] *See* MFA II Letter; MFA Letter; AIMA Letter; SIFMA Letter; and Seward Letter.

[172] *See* MFA II Letter.

[173] *Id.*

[174] *Id.*

[175] *See* 7 U.S.C. 1a(11).

but would not allow a CPO to disregard the liabilities of the fund, even if incurred due to the investment in the underlying fund. Moreover, if any of the CPO's commodity pools invests substantially all of its assets in the equity of other commodity pools or private funds and, aside from those investments, holds only cash, cash equivalents, and instruments intended to hedge currency risk, the CPO may complete only Schedules A and B with respect to that fund and otherwise disregard such assets for reporting purposes. These instructions are consistent with those instructions adopted as part of the joint Form PF, and the Commission believes that this treatment of funds of funds reduces the burden of reporting for CPOs and improves the quality of the data obtained by the Commission. Therefore, the Commission is adding a general question regarding funds of funds, but is otherwise permitting CPOs to disregard the assets of such funds that are invested in other commodity pools or private funds for reporting purposes.

5. Adopted Modifications to Form CPO–PQR

The Commission has decided to make several additional revisions to Form CPO–PQR in addition to those discussed previously. The Commission believes that these revisions are necessary to provide clarification, decrease the burden imposed on registrants, and further harmonize Form CPO–PQR with Form PF.

a. Instructions

As discussed previously, the Commission has decided to revise certain instructions governing the completion of Form CPO–PQR. Specifically, the Commission has determined that it is appropriate to raise the threshold for large CPOs from $1 billion to $1.5 billion in an effort to reduce the number of CPOs required to report on a quarterly basis and respond to commenters' concerns, but still provide the Commission with the information necessary to effectively oversee such large market participants. The Commission has also determined to modify the frequency of reporting for filers of Form CPO–PQR. As adopted, all CPOs, other than large CPOs, will be required to file Schedule A on an annual basis; mid-size CPOs will be required to file Schedule B on an annual basis; and large CPOs will be required to file Schedules A, B, and C on a quarterly basis.

The Commission received several comments asserting that the 15-day period for reporting was not sufficient to permit reporting CPOs to complete and file the form and all suggested extending the period to 30 or 45 days.[176] The Commission agrees that reporting CPOs will need additional time in which to submit the various schedules of Form CPO–PQR.

Upon further consideration, the Commission believes that it is appropriate to require all CPOs, other than large CPOs, to file Schedule A within 90 days of the end of the calendar year. This time period coincides with the annual questionnaire required by NFA of its entire population of member CPOs and with the vast majority of annual report filings for commodity pools. The revised deadline will enable CPOs, other than large CPOs, to benefit from the availability of the NFA annual questionnaire and the availability of the information in CPO annual report filings. Moreover, because the Commission has transferred the pool position information from Schedule A to Schedule B, the Commission believes that non-large CPOs should be able to comply with filing basic demographic data within 90 days.

With respect to mid-sized CPOs filing Schedule B, the Commission believes that 90 days is an adequate time period for compiling data and completing that schedule. The Commission notes that CPOs are generally required to file annual reports for their pools within 90 days of their fiscal year end, most of which coincide with the calendar year end. The Commission believes that the alignment of pools' fiscal years with the calendar year end should facilitate the preparation of Schedule B and reduce the burden imposed on mid-size CPOs because some of the information required will be similar to that included in a pool's annual financial statements.

With respect to the quarterly reporting by large CPOs on Schedules A, B, and C, the Commission believes that 60 days is a sufficient amount of time to complete those schedules for large CPOs. The Commission notes that the entities required to file on a quarterly basis have a significant amount of assets under management, and as such, the Commission anticipates that such entities routinely generate the type of information requested on Schedules B and C as part of their internal governance. Accordingly, the Commission will require large CPOs to file Schedules B and C within 60 days following the end of the reporting period as defined in Form CPO–PQR.

In October 2011, the Commission adopted Form PF as a joint reporting form with the SEC. The terms of Form PF permit dually registered entities that are filing the form for their private funds under advisement to report on the activities of their other commodity pools as well. Entities that choose to file Form PF for all of their funds under advisement will still be required to file Schedule A on an annual basis, which is consistent with the terms of the Proposal. The instructions of Form CPO–PQR have been modified to reflect this change.

The Commission has also determined to omit the statement that the failure to answer all required questions completely and accurately may severely impact your ability to operate. The Commission does not believe that such language is necessary to inform registered CPOs of their obligations under the CEA and the Commission's regulations to comply with such obligations in good faith.

Additionally, the Commission has concluded that it should clarify the obligations of co-CPOs of a pool with respect to the submission of Form CPO–PQR. The Commission has amended the instructions to the form to clarify that for co-CPOs, the CPO with the greater assets under management overall is required to report for the co-operated pool. Furthermore, if a pool is operated by co-CPOs and one of the CPOs is also a registered investment adviser, the non-investment adviser CPO will still be obligated to file the applicable sections of Form CPO–PQR regardless of whether the investment adviser CPO filed a Form PF. The Commission believes that this will prevent the possibility of double counting and unnecessary duplicative filings regarding co-operated pools.

b. Schedule A

Schedule A seeks basic identifying information about the CPO, each of its pools, and any services providers used. The Commission has decided to adopt Schedule A as proposed with the following revisions. In question 3 of part 2, the Commission has added a question asking whether the pool is operated by co-CPOs and for the name of the other CPO(s). This question will enable the Commission to ensure that only one CPO is filing with respect to each co-operated commodity pool. In addition, question 12 of part 2, which asked for information regarding the pool's trading strategies, has been moved to Schedule B, both in response to a commenter's suggestion[177] and in an effort to ensure that dual registrants are not required to file extensive duplicative information

[176] *See* NFA Letter; Seward Letter; and AIMA Letter.

[177] *See* AIMA Letter.

on Schedule A that they are already providing on Form PF.

The Commission added a question asking for the telephone number and email for the contact person for the reporting CPO as this was inadvertently omitted in the Proposal. Also, the Commission added a subpart h. to question 10 regarding the base currency used by the CPO for the particular pool for which it is reporting. This question was inadvertently omitted but is necessary for the Commission to fully utilize the information reported regarding the changes in the pool's assets under management.

The Commission added subparts to question 12 regarding prospective risks for the imposition of ''gates'' and restrictions on redemption of participant withdrawals. The terms of question 12, as proposed, only seek information on a retrospective basis, which, although useful to the Commission in assessing overall issues regarding the imposition of restrictions on redemption, does not assist the Commission in assessing possible sources of prospective risk to the market and pool participants. Moreover, question 12, as proposed, did not capture information about pools that have procedures in place governing the imposition of restrictions on redemptions, but whose restrictions have not been triggered. The Commission believes that the modifications to this question solicits such information and will provide the Commission with a more complete understanding of the role of restrictions on redemptions in the operation of commodity pools. Moreover, the Commission believes that the request for additional information regarding the potential imposition of restrictions on redemptions is consistent with the tenor and intent of question 12 as proposed.

The Commission also has made numerous non-substantive technical amendments in Schedule A, including formatting corrections, the deletion of the term ''carrying'' from question 5 in part 2, and the addition of two months that were inadvertently omitted from the monthly rate of return table in part 2, question 11.

c. Schedule B

Mid-sized and large CPOs will be required to complete Schedule B, which will solicit data about each pool operated by these CPOs. The Commission has decided to adopt Schedule B with the following revisions.

In question 1, subpart d, the Commission has decided to change the format of the question from a pull-down list of options to a chart, consistent with the format used for substantively identical question 20, section 1c in Form PF. The Commission believes that the chart format change will add clarity to the question and will facilitate the completion by registrants. The Commission also has added a column requesting the percentage of the pool's capital invested in each strategy. This additional information aligns Form CPO–PQR with the information requested in Form PF and also provides the Commission with the means to assess the risk that a pool derives from its borrowing activities.

The Commission has also amended question 1 to add a subpart g asking the reporting CPO to report the percentage of the commodity pool's net asset value that is traded pursuant to a high frequency trading strategy. This subpart previously appeared as part of the chart in question 1 regarding investment strategies. The Commission believes that denoting the issue of high frequency trading as its own subpart of question 1 will enhance the clarity of the question and make the data gained by the Commission more usable in its assessment of risks posed to the derivatives markets.

The Commission is amending question 2 to include the percentage of a pool's borrowings from U.S. and non-U.S. creditors that are not ''financial institutions,'' as that term is defined in Form CPO–PQR, as separate line items. This revision parallels the structure of subparts b and c of that question.

Finally, the Commission has made several non-substantive corrections/alterations, including modifying the format of question 3 to provide a more user-friendly interface for reporting funds and combining several subparts into charts, correcting a typographical error in question 5, adding the question that was formerly question 12 of Schedule A to Schedule B as question 6, and expanding several categories of investments to provide a parallel level of detail among the asset classes.

d. Schedule C

Schedule C requests information about the pools operated by large CPOs on an aggregated and pool by pool basis. The Commission is adopting Schedule C as proposed with the following revisions.

Part 1

The questions in part 1 of Schedule C seek information for all of the pools operated by the large CPO on an aggregate basis.

Question 1 requires a CPO to report a geographical breakdown of investments held by the pools that it operates. The Commission has modified this question to require a less detailed breakdown by focusing on regions as opposed to individual countries and has added a separate disclosure regarding investment in certain countries of interest. The Commission expects that this revision will reduce the burden of responding to this question because the less granular categories should permit more CPOs to rely on classifications that they already use.

The Commission has determined that question 3, which seeks information regarding the duration of the pools' fixed income investments on an aggregate basis, is redundant in light of question 9 in part 2 of Schedule C. Question 9 in part 2 of Schedule C asks for the same information on a pool by pool basis. For that reason, the Commission has deleted question 3 from part 1 of Schedule C.

Part 2

Part 2 of Schedule C seeks information from large CPOs on an individual pool basis for each operated ''large pool'' as that term is defined in Form CPO–PQR. The Commission has revised subpart c of question 3 to be a yes/no response with respect to whether the pool used a central clearing counterparty (''CCP'') during the reporting period. The Commission believes that this is less burdensome and provides it with sufficient information regarding the use of CCPs because the CPO's relationship is with the swap dealer, futures commission merchant, or direct clearing member rather than directly with the CCP.

In subpart b of question 4, the Commission has made several revisions correcting the technical terminology used with respect to ''value at risk'' (''VaR''). These revisions are non-substantive. The Commission also added a new subpart c to question 4, which asks the CPO whether it uses any metrics other than VaR for risk management purposes for the reporting fund. The Commission believes that this information will be useful as it continues to amend Form CPO–PQR as necessary to obtain relevant information from registrants. Because of the addition of a new subpart c to question 4, subpart c of question 4 as proposed has been redesignated as subpart d of question 4. The Commission also added a category of ''relevant/not formally tested'' to subpart d of question 4 in an effort to capture all possible opinions of the reporting CPO with respect to the listed market factors. The Commission believes that this modification will reduce the burden on reporting CPOs

because fewer CPOs will need to provide detailed responses, and because those CPOs without existing quantitative models will not be required to build or acquire them to respond to the question. The Commission continues to believe that this question will provide valuable risk information to the Commission with respect to specific large pools.

The Commission is revising subpart a of question 5 to include the percentage of a pool's borrowings from U.S. and non-U.S. creditors that are not ''financial institutions'' as that term is defined in Form CPO–PQR, as separate line items. This revision parallels the structure of the question as proposed with respect to financial institutions.

The Commission is also amending question 9, regarding the duration of each large pool's fixed income instruments. This question, as amended, requires the CPO to report the duration, weighted average tenor, or 10-year equivalents of fixed income portfolio holdings, including asset-backed securities. This is a difference from the question as proposed, which would have required all large CPOs to report duration. Through this revision, the Commission is giving large CPOs the option of instead reporting weighted average tenor or 10-year bond equivalents because the Commission understands that CPOs may use a wide range of metrics to measure interest rate sensitivity. The Commission expects that this revised approach will reduce the burden on CPOs because they will generally be able to utilize their existing practices when providing this information on the form.

6. Form CTA–PR

The Commission received several comments regarding the content of Form CTA–PR.[178] Most commenters urged the Commission to eliminate the form in its entirety.[179] Although the Commission does not believe that the complete elimination of Form CTA–PR is appropriate, it believes that Schedule B of the form contains redundant information that will already be collected through Form CPO–PQR. To reduce the burden on CTAs, the Commission will eliminate Schedule B. Instead, the Commission has decided to adopt only Schedule A of Form CTA–PR and will add a question asking the reporting CTA to identify the pools under its advisement so that the Commission can analyze the relationships among the various registrants to better assess sources of risk to the market and measure their potential reach. Because Form CTA–PR will be limited to demographic data, the Commission believes that it is appropriate for CTAs to file the form on an annual basis within 45 days of the end of the fiscal year. Therefore, the Commission has amended the text of § 4.27 to reflect this modification of the reporting obligations of CTAs.

7. Implementation

The effective date for § 4.27 and Forms CPO–PQR and CTA–PR is July 2, 2012. The Commission is adopting a two-stage phase-in period for compliance with Form CPO–PQR filing requirements. The compliance date for § 4.27 is September 15, 2012 for any CPO having at least $5 billion in assets under management attributable to commodity pools as of the last day of the fiscal quarter most recently completed prior to September 15, 2012. Therefore, a CPO with $5 billion in commodity pool assets under management as of June 30, 2012, must file its first Form CPO–PQR within 60 days following September 30, 2012. Reporting CPOs must file all schedules of Form CPO–PQR.

For all other registered CPOs and all CTAs, the compliance date for § 4.27 is December 15, 2012. As a result, most advisers must file their first Form CPO–PQR or CTA–PR based on information as of December 31, 2012. This delay in compliance should allow sufficient time for CPOs and CTAs to develop systems for collecting the information required on the forms and prepare for filing. The Commission anticipates that this timeframe will also enable the NFA to have adequate time to program a system to accept the filings. The Commission has determined that the extension of the compliance dates is necessary because the rule and forms are being adopted later than expected.

G. Amendments to §§ 145.5 and 147.3: Confidential Treatment of Data Collected on Forms CPO–PQR and CTA–PR

As the Commission stated in the Proposal, the collection of certain proprietary information through Forms CPO–PQR and CTA–PR raises concerns regarding the protection of such information from public disclosure.[180] The Commission received two comments requesting that the Commission treat the disclosure of a pool's distribution channels as nonpublic information,[181] and numerous other comments urging the Commission to be exceedingly circumspect in ensuring the confidentiality of the information received as a result of the data collections.[182]

The Commission agrees that the distribution and marketing channels used by a CPO for its pools may be sensitive information that implicates other proprietary secrets, which, if revealed to the general public, could put the CPO at a competitive disadvantage. Accordingly, the Commission is amending §§ 145.5 and 147.3 to include question 9 of Schedule A of Form CPO–PQR as a nonpublic document.

Additionally, the Commission is amending §§ 145.5 and 147.3 to remove reference to question 13 in Schedule A of Form CPO–PQR because such question no longer exists due to amendments to that schedule. Similarly, the Commission will be designating question subparts (c) and (d) of question 2 of Form CTA–PR as nonpublic because it identifies the pools advised by the reporting CTA.

Therefore, as adopted, the parts of Form CPO–PQR that are designated nonpublic under parts 145 and 147 of the Commission regulations are:

- Schedule A: Question 2, subparts (b) and (d); Question 3, subparts (g) and (h); Question 9; Question 10, subparts (b), (c), (d), (e), and (g); Question 11; and Question 12.
- Schedule B: All.
- Schedule C: All; and
- Form CTA–PR: question 2, subparts c and d.

H. Conforming Amendments to Part 4

As a result of the amendments adopted herein, the Commission must amend various provisions in part 4 of the Commission's regulations for purposes of making conforming changes. Specifically, the Commission is deleting references to repealed § 4.13(a)(4) in other sections of the Commission's regulations.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[183] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on

[178] *See, e.g.,* IAA Letter; MFA II Letter; AIMA Letter; SIFMA Letter; and Fidelity Letter.

[179] *Id.*

[180] 76 FR 7976, 7982 (Feb. 12, 2011).

[181] *See* MFA II Letter and Seward & Kissel Letter.

[182] *See* Roundtable transcript. Commission staff also had numerous meetings with commenters that addressed this issue of confidentiality of information.

[183] *See* 5 U.S.C. 601, *et seq.*

such entities in accordance with the RFA.[184]

CPOs: The Commission has determined previously that registered CPOs are not small entities for the purpose of the RFA.[185] With respect to CPOs exempt from registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Rule 4.13(a)(2).[186] Such CPOs will continue to qualify for either exemption or exclusion from registration and therefore will not be required to report on proposed Form CPO–PQR; however, they will have an annual notice filing obligation confirming their eligibility for exemption or exclusion from registration and reporting. The Commission estimates that the time required to complete this new requirement will be approximately 0.25 of an hour, which the Commission has concluded will not be a significant time expenditure. The Commission has determined that the proposed regulation will not create a significant economic impact on a substantial number of small entities.

CTAs: The Commission has previously decided to evaluate, within the context of a particular rule proposal, whether all or some CTAs should be considered to be small entities, and if so, to analyze the economic impact on them of any such rule.[187] Form CTA–PR is proposed to be required of all registered CTAs, which necessarily includes entities that would be considered small. The majority of the information requested on Form CTA–PR is information that is readily available to the CTA or readily calculable by the CTA, regardless of size. Therefore, the Commission estimates that the time required to complete the items contained in Form CTA–PR will be approximately 0.5 hours as it is comprised of only two questions, which solicit information that is expected to be readily available. The Commission has determined that Form CTA–PR will not create a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules, will not have a significant impact on a substantial number of small entities.

The Commission did not receive any comments on its analysis of the application of the RFA to the instant part 4 amendments.

B. Paperwork Reduction Act

This rulemaking contains information collection requirements. The Paperwork Reduction Act (''PRA'') imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.[188] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB'').

The Commission is amending Collection 3038–0023 to allow for an increase in response hours for the rulemaking resulting from the rescission of §§ 4.13(a)(4) and the modification of § 4.5. This amendment differs from that in the Proposal due to the Commission's decision to retain the exemption set forth in § 4.13(a)(3). The Commission is amending Collection 3038–0005 to allow for an increase in response hours for the rulemaking associated with new and modified compliance obligations under part 4 of the Commission's regulations resulting from these revisions. The titles for these collections are ''Part 3—Registration'' (OMB Control number 3038–0023) and ''Part 4—Commodity Pool Operators and Commodity Trading Advisors'' (OMB Control number 3038–0005). Responses to this collection of information will be mandatory.

Both amendments differ from those set forth in the Proposal due to comments received asserting that, absent harmonization of the Commission's compliance regime for CPOs with that of the SEC for registered investment companies, entities operating registered investment companies that would be required to register with the Commission would not be able to comply with the Commission's regulations and would have to discontinue its activities involving commodity interests.[189] The Commission acknowledges that there are certain provisions of its compliance regime that conflict with that of the SEC and that it would not be possible to comply with both. For this reason, the Commission is considering issuing a notice of proposed rulemaking regarding the areas of potential harmonization between the Commission's compliance obligations and those of the SEC. Until such time as the harmonized compliance regime is adopted as final rules, the Commission will not be requiring compliance with the provisions of § 4.5 for registered investment companies. Therefore, the Commission is excluding § 4.5 compliance from the PRA burden calculation for these final rules, and is recalculating the information collection requirements associated with § 4.5 in the proposed harmonized compliance rules.

The Commission will protect proprietary information according to the Freedom of Information Act (''FOIA'') and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market position of any person and trade secrets or names of customers.'' [190] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[191]

1. Additional Information Provided by CPOs and CTAs

a. OMB Control Number 3038–0023

Part 3 of the Commission's regulations concern registration requirements. The Commission is amending existing Collection 3038–0023 to reflect the obligations associated with the registration of new entrants, *i.e.,* CPOs that were previously exempt from registration under §§ 4.5 and 4.13(a)(4), that had not previously been required to register. The Commission is omitting those CPOs continuing to claim relief under § 4.13(a)(3), as that section will remain effective, and those CPOs that would be required to register under revised § 4.5, as those entities will not be able to register and comply with the Commission's compliance obligations until such time as the harmonization of its requirements with those of SEC is finalized. Because the registration requirements are in all respects the same as for current registrants, the collection has been amended only insofar as it concerns the increased estimated number of respondents and the corresponding estimated annual burden.

Accordingly, the Commission is amending existing Collection 3038–0023 to provide, in the aggregate:

Estimated number of respondents: 75,425.

[184] 47 FR 18618 (April 30, 1982).

[185] *See* 47 FR 18618, 18619, Apr. 30, 1982.

[186] *See* 47 FR at 18619–20.

[187] *See* 47 FR at 18620.

[188] *See* 44 U.S.C. 3501 *et seq.*

[189] *See, e.g.,* ICI Letter, Fidelity Letter, Dechert III Letter.

[190] *See* 7 U.S.C. 12.

[191] *See* 5 U.S.C. 552a.

Annual responses by each respondent: 75,932.

Estimated average hours per response: 0.09.

Annual reporting burden: 6,833.9.

In addition to the reporting burdens, each CPO or CTA not previously subject to registration will be obligated to submit a $200 registration fee, an $85 registration fee for each associated person, and a $15 fee for fingerprinting services for each associated person. Those entities that do not already provide certified annual reports will now incur public accounting costs as a result of the newly adopted rules requiring certification. Moreover, the Commission anticipates that reporting entities may hire external service providers, such as law firms or accounting firms, to prepare and submit some of the documents required both in Collection 3038–0023 and in Collection 3038–0005, which is accounted for below.

b. OMB Control Number 3038–0005

Part 4 of the Commission's regulations concerns the operations of CTAs and CPOs, and the circumstances under which they may be exempted or excluded from registration. Under existing Collection 3038–0005 the estimated average time spent per response has not been altered; however, adjustments have been made to the collection to account for current information available from NFA concerning CPOs and CTAs registered or claiming exemptive relief under the part 4 regulations, and the new burden expected under proposed § 4.27. The Commission estimates that a total of 300 entities annually will file the Notice of Exemption from CTA Registration under § 4.14(a)(8), with an estimated burden of 0.5 hours per notice filing. An estimated 253 entities will annually file 7,890 Notices of Exclusion from CPO Definition under § 4.5, with an estimated burden of 0.5 hours per notice filing. The rules also require certain reports by each entity registered as a CPO or CTA. These include certain disclosure documents, pool account statements and pool annual reports, and requests for extensions of the annual report deadline. The Commission estimates that 180 entities will prepare an average of 1.5 pool account statements as required under § 4.22(a) an average of 9 times per year, with a per-response burden of 3.85 hours. The Commission estimates that these same 180 entities will prepare and file an average of 1.5 annual reports, with a burden of 9.58 hours per report. In addition, the Commission anticipates that 962 entities will file a request for a deadline extension for the annual report each year, with a burden of 0.5 hours per request.

These burden estimates, together with those associated with the increases necessary to account for the filing of forms CPO–PQR, PF, and CTA–PR discussed below, will result in an amendment to Collection 3038–0005 to provide, in the aggregate:

Estimated number of respondents: 43,168.

Annual responses for all respondents: 61,868.

Estimated average hours per response: 8.77.

Annual reporting burden: 257,635.8.

Proposed § 4.27 is expected to be the main reason for the increased burden under Collection 3038–0005.

The Commission has amended its burden estimates with respect to Form CPO–PQR to reflect the fact that dually registered entities that operate pools that are not private funds may report the activities for such funds on Form PF.[192] The Commission expects that any entity that is eligible to file form PF will file that form and not the form CPO–PQR, and has excluded from the estimates for form CPO–PQR those entities. As most of the burden associated with filing form PF for CPOs newly required to register with the Commission has been accounted for by the Commission in an information collection request associated with a rulemaking adopted jointly with the SEC, the amendment to Collection 3038–0005 accounts only for the burden of filing form PF by dually registered CPOs for pools that are not private funds as defined in the joint rulemaking.

i. Comments on § 4.27 Reporting Requirements

The Commission received numerous comments in response to proposed § 4.27, and in response has adopted a number of cost-mitigating measures. Several commenters questioned whether the data collection was necessary for the Commission's oversight of its registrants.[193] Others asserted that certain groups, such as registered investment companies or family offices, should be exempted from completing the data collection.[194] In the Commission's judgment, in order to fulfill the Commission's systemic-risk mitigation mandate, it is necessary to obtain information from the full universe of registrants to fully assess the activities of CPOs and CTAs in the derivatives markets.

With respect to the assertion that registered investment companies should not be required to file form CPO–PQR, the Commission believes that it is important to collect the data in form CPO–PQR from registered investment companies whose activities require CPO registration to assess the risk posed by such investment vehicles in the derivatives markets and the financial system generally. In this respect, the Commission intends to require the same information from the CPOs of registered investment companies as it is requiring from other registered CPOs. Additionally, the Commission notes that to the extent that the entity registered as the CPO for the registered investment company is registered as an investment adviser and is required to file Form PF with the SEC, the activities of the registered investment company may be reported on Form PF rather than form CPO–PQR.

The Commission further believes that the same reasoning applies with respect to the collection of data from family offices. To enable the Commission to evaluate a potential family offices exemption following the collection and analysis of data regarding their activities, the Commission believes that it is essential that family offices remain subject to the data collection requirements.

One commenter recommended that the Commission clarify the filing obligations for CPOs and CTAs that are required to file form PF with the SEC and streamline the reporting obligations.[195] Another commenter argued that a very large private fund that has a limited amount of derivatives trading should not be subject to schedule C of form CPO–PQR.[196]

As stated in the Proposal, CPOs that are dually registered with the SEC and that file form PF must still file schedule A, containing basic demographic information, with the Commission, and CTAs must still file form CTA–PR. The Commission intends to adopt § 4.27 as proposed and permit dual registrants to

[192] Based on information that the Commission received from registrants on their annual financial report filings, the Commission determined that ⅓ of all pools reporting to the Commission in 2009 reported gains or losses from securities or a combination of securities and futures. Based on the provisions of Form PF, which permits filers of the form to file with respect to commodity pools that are not private funds, the Commission anticipates that all entities entitled to file Form PF for their commodity pools will do so, as it is less burdensome on the filer. Therefore, the Commission has included burden estimates for CPOs to file Form PF for their commodity pools that are not private funds, which is an incremental increase over the burden imposed by the obligation to file Form PF for the entity's private funds.

[193] *See* Fidelity Letter; and AIMA Letter.

[194] *See* ICI Letter; AIMA Letter; and K&L Letter.

[195] *See* Fidelity Letter.

[196] *See* AIMA Letter; see also, SIFMA Letter; and Fidelity Letter.

file form PF with the SEC in lieu of completing schedules B and/or C of form CPO–PQR.

However, the Commission did not intend to require very large dual registrants to file anything more than the general identifying information required on schedule A with the Commission, and neither § 4.27 nor the forms require dual registrants to file schedules B or C if they are filing form PF. Similarly, the Commission is not adopting schedule B from form CTA–PR, and therefore, will be limiting the information collected from registered CTAs to demographic data and the names of the pools advised by the CTA. These measures will mitigate costs to market participants by limiting the number of registrants that must file these forms with the Commission.

One commenter questioned whether the information collected on forms CTA–PR and CPO–PQR will provide the Commission with real-time data that will enable it to have an accurate and timely picture of a CTA's activities and operating status.[197] Another commenter questioned whether the Commission possessed the staffing and financial resources necessary to meaningfully use such data as part of its oversight.[198] The Commission recognizes the limitations of the data collection instruments with respect to the timeliness of the information requested. The Commission believes, however, that the forms strike the appropriate balance between the time needed to compile complex data and the Commission's need for timely information. Information that is less than real-time is nevertheless useful in assisting the Commission in overseeing registrants as it will provide additional information upon which the Commission can base future program adjustments to ensure efficient deployment of the Commission's resources.

As an offset to the costs otherwise associated with additional reporting, the Commission intends for the data to be collected from registrants in an electronic format. The Commission anticipates that electronic data filing will be less time-intensive and should lower compliance costs for participants, as well as processing costs for the Commission. Moreover, the Commission believes that, over time, participants will develop certain efficiencies in the filing of their annual CPO–PQR and CTA–PR forms, allowing costs to continue to decrease over time. Further, the Commission recognizes that the resources available to it are variable. As a further cost-mitigating measure, the Commission will leverage any limits on its resources through its coordination with NFA to accomplish the analysis necessary to make full use of the data collected from Commission registrants.

The Commission received several comments regarding the appropriate reporting thresholds for the various schedules of form CPO–PQR.[199] The commenters stated that $150 million in assets under management was too low of a threshold for entities to be categorized as mid-sized and required to file schedule B. Rather, the commenters urged the Commission to increase the threshold to $500 million in assets under management.[200] These commenters also suggested that the Commission increase the threshold for large CPOs to $5 billion in assets under management.[201]

The Commission believes that $150 million in assets under management is still the appropriate threshold for mid-sized CPOs. The Commission will retain this threshold because it is consistent with the threshold for advisers filing section 1 of form PF, which is substantively similar to schedule B of form CPO–PQR, and it will ensure comparable treatment of entities of similar magnitude. In addition, the Commission has decided not to increase the large CPO threshold to $5 billion. The Commission has decided, however, to increase the threshold for large CPOs from $1 billion to $1.5 billion. The Commission anticipates that increasing the threshold to $1.5 billion will lower costs by reducing the number of CPOs required to file schedule C of form CPO–PQR, while still capturing data concerning a substantial portion of the assets under management by registered CPOs. The Commission believes that increasing the threshold beyond $1.5 billion, however, could limit the Commission's access to information necessary to oversee entities that could pose a risk to the derivatives markets or the financial system as a whole.

In response to comments, the Commission has also determined to mitigate costs and promote efficiency by modifying the frequency of reporting for filers of form CPO–PQR. As adopted, all CPOs other than large CPOs will be required to file schedule A on an annual basis; mid-size CPOs will be required to file schedule B on an annual basis; and large CPOs will be required to file schedules A, B, and C on a quarterly basis.

The Commission received several comments asserting that the 15-day period for reporting was not sufficient to permit reporting CPOs to complete and file the form and all suggested extending the period to 30 or 45 days.[202] The Commission agrees that reporting CPOs will need additional time in which to submit the various schedules of form CPO–PQR. In a further effort to reduce costs to participants, all CPOs other than large CPOs will be required to file schedule A within 90 days of the end of the calendar year. This time period was chosen for efficiency and cost mitigation inasmuch as it coincides with the annual questionnaire required by NFA of its entire population of member CPOs and with the vast majority of annual report filings for commodity pools. Moreover, because the Commission has transferred the pool position information from schedule A to schedule B, the Commission believes that CPOs should be able to comply with filing basic demographic data within 90 days.

For schedule B, mid-sized CPOs are required to submit that schedule within 90 days; the Commission believes this is an adequate time period for compiling and reporting that schedule. The Commission notes that CPOs are generally required to file annual reports for their pools within 90 days of their fiscal year end, most of which coincide with the calendar year end. The Commission believes that the alignment of pools' fiscal years with the calendar year end should facilitate the preparation of schedule B and reduce the burden imposed on mid-size CPOs because some of the information required will be similar to that included in a pool's annual financial statements.

With respect to the quarterly reporting by large CPOs on schedules A, B, and C, the Commission believes that 60 days is a sufficient amount of time to complete those schedules for large CPOs. The Commission notes that the entities required to file on a quarterly basis have a significant amount of assets under management, and as such, the Commission anticipates that such entities routinely generate the type of information requested on schedules B and C as part of their internal governance. Accordingly, the Commission will require large CPOs to file schedules A, B, and C within 60 days following the end of the reporting period as defined in form CPO–PQR.

[197] *See* Barnard Letter.

[198] *See* Dechert Letter.

[199] *See* AIMA Letter; MFA II Letter; Seward Letter. *See also,* AIMA II Letter.

[200] *See* AIMA Letter.

[201] *See* AIMA Letter; MFA II Letter; and Seward Letter.

[202] *See* NFA Letter; Seward Letter; and AIMA Letter.

The Commission received several comments regarding the content of form CTA–PR.[203] Most commenters urged the Commission to eliminate the form in its entirety.[204] The Commission does not believe that the complete elimination of form CTA–PR is appropriate; however, the Commission agrees that schedule B of the form contains redundant information that will already be collected through form CPO–PQR. Accordingly, the Commission has decided to adopt only schedule A of form CTA–PR. In so doing, the Commission believes the burden on CTAs should be significantly reduced. Because form CTA–PR will be limited to demographic data, the Commission believes that it is appropriate for CTAs to file the form on an annual basis within 45 days of the end of the fiscal year.

Finally, because the regulations have been modified to allow dually registered entities to file only form PF (plus the first schedule A of form CPO–PQR) for all of their commodity pools, even those that are not ''private funds,'' the Commission expects that such entities should not be burdened by the costs of dual registration and dual filing.

ii. Information Collection Estimates for Forms CPO–PQR, PF, and CTA–PR

The Commission expects the following burden with respect to the various schedules of Forms CPO–PQR, PF, and CTA–PR:

Form CPO–PQR: Schedule A:

Estimated number of respondents (excluding large CPOs): 3,890.

Annual responses by each respondent: 1.

Estimated average hours per response: 6.

Annual reporting burden: 23,340.

Estimated number of respondents (large CPOs): 170.

Annual responses by each respondent: 4.

Estimated average hours per response: 6.

Annual reporting burden: 4,080.

Form CPO–PQR: Schedule B:

Estimated number of respondents (mid size CPOs): 440.

Annual responses by each respondent: 1.

Estimated average hours per response: 4.

Annual reporting burden: 1,760.

Estimated number of respondents (large CPOs): 170.

Annual responses by each respondent: 4.

Estimated average hours per response: 4.

Annual reporting burden: 2,720.

Form CPO–PQR: Schedule C:

Estimated number of respondents: 170.

Annual responses by each respondent: 4.

Estimated average hours per response: 18.

Annual reporting burden: 12,240.

Form PF (non-large CPOs):

Estimated number of respondents: 220.

Annual responses by each respondent: 1.

Estimated average hours per response: 4.

Annual reporting burden: 880.

Form PF (large CPOs):

Estimated number of respondents: 90.

Annual responses by each respondent: 4.

Estimated average hours per response: 18.

Annual reporting burden: 6,480.

Form CTA–PR:

Estimated number of respondents: 450.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.5.

Annual reporting burden: 225.

C. Considerations of Costs and Benefits

The Commission has historically exercised its authority to exempt certain categories of entity from the CPO and CTA registration requirement set forth in Section 4m(1) of the CEA, which states that it is otherwise ''unlawful for any commodity trading advisor or commodity pool operator, unless registered under this Act'' to conduct business in interstate commerce.[205] Exempted entities have included certain investment companies registered with the SEC pursuant to the Investment Company Act of 1940, and certain entities whose only participants are ''qualified eligible persons.''[206] This system of exemptions was appropriate because such entities engaged in relatively little derivatives trading, and dealt exclusively with qualified eligible persons, who are considered to possess the resources and expertise to manage their risk exposure.

In the Commission's judgment, changed circumstances warrant revisions to these rules. The Commission is aware, for example, of increased derivatives trading activities by entities that have previously been exempted from registration with the Commission, such that entities now offering services substantially identical to those of registered entities are not subject to the same regulatory oversight. Meanwhile, the Dodd-Frank Act has given the Commission a more robust mandate to manage systemic risk and to ensure safe trading practices by entities involved in the derivatives markets, including qualified eligible persons and other participants in commodity pools. Yet, while the Commission must execute this mandate, there currently is no source of reliable information regarding the general use of derivatives by registered investment companies.

The Commission, therefore, is adopting a new registration and data collection regime for CPOs and CTAs that is consistent with the data collection required under the Dodd-Frank Act. In these final rules, the adopted amendments to part 4 of the Commission's regulations will do the following: (A) Rescind the exemption from CPO registration provided in § 4.13(a)(4) of the Commission's regulations; (B) rescind relief from CTA registration for those CTAs who advise pools with relief under § 4.13(a)(4); (C) rescind relief from the certification requirement for annual reports provided to operators of certain pools only offered to qualified eligible persons (''QEPs'') under § 4.7(b)(3); (D) modify the criteria for claiming relief under § 4.5 of the Commission's regulations; (E) require the annual filing of notices claiming exemptive relief under § 4.5, § 4.13, and § 4.14 of the Commission's regulations; and (F) require additional risk disclosures for CPOs and CTAs regarding swap transactions and, certain conforming amendments. By these amendments, the Commission seeks to eliminate informational ''blind spots,'' which will benefit all investors and market participants by enhancing the Commission's ability to form and frame effective policies and procedures.

Section 15(a)[207] of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. To the extent that these new regulations reflect the statutory requirements of the Dodd-

[203] *See e.g.,* IAA Letter; MFA II Letter; AIMA Letter; SIFMA Letter; and Fidelity Letter.

[204] *Id.*

[205] 7 U.S.C. 6m.

[206] 17 CFR §§ 4.5(a)(1), 4.13(a)(4).

[207] 7 U.S.C. 19(a).

Frank Act, they will not create costs and benefits beyond those resulting from Congress's statutory mandates in the Dodd-Frank Act. However, to the extent that the new regulations reflect the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions, such Commission determinations may result in other costs and benefits. It is these other costs and benefits resulting from the Commission's own determinations pursuant to and in accordance with the Dodd-Frank Act that the Commission considers with respect to the Section 15(a) factors.

The Commission has quantified estimated costs and benefits where it is reasonably practicable to do so. The Commission notes that, unless otherwise specified, all costs discussed herein are estimates based on the Commission's knowledge of the operations and registration statuses of CPOs and CTAs. Moreover, the Commission is obligated to estimate the burden of and provide supporting statements for any collections of information it seeks to establish under considerations contained in the PRA, 44 U.S.C. 3501 *et seq.,* and to seek approval of those requirements from the OMB. Therefore, the estimated burden and support for the collections of information in this this rulemaking, as well as the consideration of comments thereto, are discussed in the PRA section of this rulemaking and the information collection requests filed with OMB as required by that statute. All estimates are based on average costs; actual costs may vary depending on the entity's individual business model and compliance procedures.

The Commission is sensitive to costs incurred by market participants and has attempted in a variety of ways to minimize burdens on affected entities. These include the Commission's efforts to harmonize its compliance requirements with those of the SEC, including through specific harmonizing provisions in the joint SEC–CFTC rule for dually registered investment advisers, as well as through tailoring of the current amendments.[208] A number of other cost-mitigation measures are discussed later in this section.

In its Proposal, the Commission invited commenters to ''to submit any data and other information that they may have quantifying or qualifying the costs and benefits of this proposed rule with their comment letters.'' [209] Many comments addressed the costs and benefits of the proposed rule in qualitative terms. These comments are considered below.

In the following discussion, the Commission sets forth its own assessment of the benefits and costs of the amendments; addresses relevant comments on the Proposal and alternatives to the Proposal submitted by commenters; and evaluates the benefits and costs in light of the five broad areas of market and public concern set forth in Section 15(a) of the CEA. The analysis begins by addressing general comments related to cost-benefit analysis in the context of the Proposal as a whole, and then proceeds to examine the specific issues according to the following three categories of regulation contained within the Proposal: (1) registration (including changes to § 4.5, § 4.13(a), and § 4.14); (2) data collection (including the adoption of forms CPO–PQR and CTA–PR); and (3) complementary amending provisions (including changes to § 4.7, § 4.24, § 4.34, and parts 145 and 147).

1. General Comments

Several commenters claimed that the Commission did not provide a sufficient consideration of costs and benefits in the Notice of Proposed Rulemaking.[210] One commenter noted that the cost-benefit considerations focused on benefits that are already provided by other federal securities laws, making the regulations duplicative.[211] Another commenter asserted that until other rules, such as the further definition of ''swaps,'' as well as capital and margin requirements, have been finalized, it is not possible to determine the costs and benefits of these rules.[212] Other commenters suggested there be another roundtable meeting to discuss the proposed rules.[213]

In response to these comments, the Commission has further considered costs and benefits as they relate to the final rules. As explained below in the discussion concerning dual SEC and Commission registrants, the Commission believes that the benefits provided by these rules are supplementary to, and not duplicative or redundant of, benefits provided by the federal securities laws. The Commission does not believe that the adoption of these regulations should be postponed until after other regulations are finalized and believes that the costs and benefits are sufficiently clear at this point and that delay is not justified.[214] In addition, the Commission has no reason to believe that another roundtable meeting would yield information substantially different from that gleaned from prior roundtables, comment letters, and meetings with industry representatives.

The Commission has determined that these amendments will create additional compliance costs for affected participants. These costs include, but may not be limited to, the cost to prepare and file new forms CPO–PQR and CTA–PR; the cost to file an annual notice to claim exemptive relief under §§ 4.5, 4.13, and 4.14; the cost of preparing, certifying, and submitting annual reports as required for registrants; the cost of preparing required disclosure documents; the cost of preparing and distributing account statements on a periodic basis to participants; the cost of keeping certain records as required; and the cost of registering as a CPO or CTA. These costs each relate to collections of information subject to PRA compliance, and therefore have been accounted for in the PRA section of this rulemaking and the information collection requests filed with OMB as required by that statute.

Notably, many of the benefits associated with the requirements adopted or amended in these regulations are recognized not only by the Commission in its mission to protect derivatives markets and the participants in them but also by the industry. Several ''best practices'' manuals highlight the benefits of being registered with the Commission, preparing and disseminating risk disclosure documents, confirming receipt of disclosure documents, and ensuring independent audit of financial statements and annual reports.[215] These benefits include increased consumer

[208] *See* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 FR 71128 (Nov. 16, 2011).

[209] 76 FR 7976, 7989 (Feb. 11, 2011).

[210] *See* SIFMA Letter; USCC Letter; Reed Smith Letter; NFA Letter; Invesco Letter; Dechert II Letter; and ICI Letter.

[211] *See* ICI Letter.

[212] *See* Dechert II Letter.

[213] *See* Vanguard Letter; MFA Letter.

[214] As noted above, however, the Commission agrees that it should not implement the inclusion of swaps within the threshold test prior to the effective date of such relevant final rules. Therefore, it is the Commission's intention to delay the effective date of the inclusion of swaps into the threshold calculation until 60 days after the final rules regarding the definition of ''swap'' and the delineation of the margin requirement for such instruments are effective.

[215] *See,* e.g. ''Sound Practices for Hedge Fund Managers.'' Managed Funds Association (MFA). Washington DC, 2007.; ''Principles and Best Practices for the Hedge Fund Industry.'' Investors Committee Report to the President's Working Group on Financial Markets, Washington DC, 2008.; and ''Best Practices for the Hedge Fund Industry.'' Asset Managers Committee Report to the President's Working Group on Financial Markets, Washington DC, 2009.

confidence in offered pools and funds as well as increased internal risk management structures.

2. Regulations Regarding Registration Requirements for CPOs and CTAs

As discussed above, the amendments to the registration provisions under part 4 include rescissions of the exemptions for entities functioning as commodity pools with only ''qualified eligible persons'' as participants and the exclusion of registered investment companies under the Investment Company Act of 1940, unless those investment companies fall below a certain threshold level of derivatives investment activity. With respect to those entities that will continue to claim exemption or exclusion from registration as CPOs or CTAs under the rules, the amendments will also require annual reaffirmance of those claims of exemption or exclusion.

a. Benefits of Registration Provisions

As discussed above in II.A.1, the Commission believes that registration provides two significant interrelated benefits. First, registration allows the Commission to ensure that entities with greater than a de minimis level of participation in the derivatives markets meet minimum standards of fitness and competency. Second, registration provides the Commission and members of the public with a direct means to address wrongful conduct by participants in the derivatives markets. The Commission has direct authority to take punitive and/or remedial action against registered entities for violations of the CEA or of the Commission's regulations. The Commission also has the ability to deny or revoke registration, thereby prohibiting an unfit individual or entity from serving as an intermediary in the industry. Members of the public also may access the Commission's reparations program to seek redress for wrongful conduct by a Commission registrant.

The Commission believes that the registration procedures enacted as part of its regulatory regime upgrade the overall quality of market participants, which, in turn, strengthens the derivatives industry by minimizing lost business due to customer dissatisfaction and by reducing litigation arising from acts of market participants. Therefore, the Commission believes that its registration requirements further critical regulatory objectives and serve important public policy goals.

By expanding the Commission's regulatory oversight of entities performing the functions of CPOs and CTAs, the Commission believes that the final rules related to registration will help to ensure that such entities meet basic standards of competency and fitness, which in turn will provide a greater level of protection to market participants. Ensuring that CPOs and CTAs are qualified in the first instance—as opposed to relying solely on after-the-fact enforcement actions to deter and remedy misconduct—should reduce such instances of misconduct and resulting litigation, and thereby promote overall market confidence. Therefore, the Commission believes that its registration requirements are integral to its regulatory objectives and are in the public interest.

With specific respect to the annual reaffirmance requirement, this amendment will promote transparency regarding the number of entities either exempt or excluded from the Commission's registration and compliance programs. One primary purpose of the Dodd Frank Act is the promotion of transparency in the financial system, particularly in the derivatives market. This requirement is consistent with and will further that purpose. Finally, the annual notice requirement will enable the Commission to determine whether exemptions and exclusions should be modified, repealed, or maintained as part of the Commission's ongoing assessment of its regulatory scheme.

These benefits—enhancing the quality of entities operating within the market, and the screening of unfit participants from the markets—are substantial, even if unquantifiable. Through registration, the Commission will be better able to protect the public and markets from unfit persons and conduct that may threaten the integrity of the markets subject to its jurisdiction.

b. Costs of Registration Provisions

Because of the amendments to part 4 as adopted here, the Commission recognizes that some participants who previously were excluded or exempted from registering as a CPO or CTA will now be required to register with the Commission through NFA. In addition to costs associated with registration accounted for under the PRA, which one commenter said would ''vary significantly depending on a range of factors, including the number of employees who will need to pass examinations, the number of funds advised, investment strategy and complexity, existing IT systems, and whether or not an adviser is already registered or authorized and subject to a different regulatory regime,'' [216] the commenter estimated ongoing costs to be in the range of $150,000 to $250,000 per year, a substantial part of which would be made up of additional compliance personnel, information technology development and legal/accounting advice that will be required, and again vary significantly depending on the factors mentioned above.[217] The Commission presents these estimates for the consideration of affected entities, reiterating the high variability of costs depending on the factors enumerated by the commenter. This variability is one reason the Commission presented its own estimates of costs on a per-requirement basis; affected entities should be aware that the total cost of registration and compliance will most likely be the sum of any number of the estimates presented in this section and under the PRA. In addition to the information collection costs addressed by the Commission under the PRA, entities that will be required to register with the Commission also will become subject to NFA rules and to NFA audit procedures. NFA assesses annual membership dues on CPOs and CTAs, currently $750, and charges $90 for the National Commodity Futures Examination (NCFE) or Series 3 Examination for each AP. The Commission understands that NFA audits CPOs and CTAs, on average, every two to three years, though the frequency of audit depends greatly on individual risk factors, and NFA generally conducts an audit within the first year following registration of an entity.[218] The cost of such an audit may be incurred by the CPO or CTA through an ''audit fee'' imposed by NFA; however, the audit fee varies greatly by individual entity and individual audit and thus is difficult to quantify on any sort of aggregated basis. Notwithstanding the difficulty of quantifying such a burden, the Commission notes this cost will most likely arise in the first year of registration and on average every few years thereafter, and entities should expect such a fee to be incurred.

c. Comments Regarding Registration Provisions

1. § 4.5 Amendments

Commenters who opposed the changes to § 4.5 claimed that requiring registered investment companies to register and comply with the Commission's regulatory regime would

[216] *See* AIMA II Letter.

[217] *Id.*

[218] For more information on audit procedures, visit the NFA Web site, currently at *http://www.nfa.futures.org/NFA-compliance/NFA-general-compliance-issues/nfa-audits.HTML.*

provide no benefit, because such entities are already subject to comprehensive regulation by the SEC.[219] The Commission disagrees.

While the Commission and the SEC share many of the same regulatory objectives, including protecting market users and the public from fraud and manipulation, the Commission administers the CEA to foster open, competitive, and financially sound commodity and derivatives markets. The Commission's programs are structured and its resources deployed to meet the needs of the markets it regulates. In light of this Congressional mandate, it is the Commission's view that entities engaging in more than a de minimis amount of derivatives trading should be required to register with the Commission. The alternative approaches suggested by commenters would, as discussed above, detract from the benefits of registration.

As also discussed above, the Commission is aware that currently unregistered entities are offering services substantially identical to those of registered CPOs. Several commenters also asserted that modifying § 4.5 would result in a significant burden on entities required to register with the Commission without any meaningful benefit to the Commission.[220] The Commission recognizes that significant burdens may arise from the modifications to § 4.5; however, the Commission believes, as discussed throughout this release, that entities that are offering services substantially identical to those of a registered CPO should be subject to substantially identical regulatory obligations.

Nevertheless, the Commission has not eliminated altogether the exemption available under § 4.5. Where an entity's trading does not exceed five percent of the liquidation value of its portfolio, that entity will remain exempt from registration. In the Commission's judgment, trading exceeding five percent of the liquidation value of a portfolio evidences a significant exposure to the derivatives markets.[221] This threshold was adopted by the Commission in its earlier enactment of § 4.13(a)(3).[222] In promulgating that exemption for de minimis activity, the Commission determined that five percent is an appropriate threshold beyond which oversight by the Commission is warranted.[223] Because current data and information does not allow the Commission to evaluate the difference in market impact at various threshold levels[224] the Commission believes it is prudent to maintain the current threshold level. Further, as discussed above, no facts have been put before the Commission that would warrant deviation from the five-percent threshold, including data respecting the costs and benefits of the same. The Commission also received numerous comments on the proposed addition of a trading threshold to the exclusion under § 4.5.[225] Some commenters stated that a five percent de minimis threshold is too low in light of the Commission's determination to include swaps within the measured activities. Although these commenters presented alternatives to this five percent threshold (some said twenty percent would be more reasonable, for example) the Commission believes, as stated in the Proposal, that trading exceeding five percent of the liquidation value of a portfolio evidences a significant exposure to the derivatives markets.[226] Moreover, in its adoption of the exemption under § 4.13(a)(3),[227] the Commission previously determined that five percent is an appropriate threshold to determine whether an entity warrants oversight by the Commission.[228] Current data and information does not allow the Commission to evaluate the difference in market impact at various threshold levels;[229] thus, the Commission believes it is prudent to maintain the current threshold level. Commenters also recommended that the Commission exclude from the threshold calculation various instruments including broad-based stock index futures, security futures generally, or financial futures contracts as a whole.[230] As discussed above, the Commission does not believe that a meaningful distinction can be drawn between those security or financial futures and other categories of futures for the purposes of registration; thus, the Commission does not believe that exempting any of these instruments from the threshold calculation is appropriate.

Several panelists at the Roundtable suggested that, instead of a trading threshold that is based on a percentage of margin, that the Commission should focus solely on entities that offer ''actively managed futures'' strategies.[231] As discussed in section II.A.2, the Commission does not find it appropriate to establish a differentiation between ''active'' and ''passive'' derivative investments because, in addition to other reasons,[232] establishing such differentiation would introduce an element of subjectivity to an otherwise objective standard and make the threshold more difficult to interpret, apply, and enforce.

One commenter suggested that the Commission should consider the adoption of an alternative test that would be identical to the aggregate net notional value test that is currently available under § 4.13(a)(3)(ii)(B).[233] Section 4.13(a)(3)(ii)(B) provides that an entity can claim exemption from

[219] *See, e.g.,* ICI Letter.

[220] *See* ICI Letter; Vanguard Letter; Reed Smith Letter; AllianceBernstein Letter; USAA Letter; PMC Letter; IAA Letter; Dechert II Letter; Janus Letter; STA Letter; Invesco Letter; and Equinox Letter.

[221] 76 FR 7976, 7985 (Feb. 12, 2011) (stating that ''[the] Commission believes that it is possible for a commodity pool to have a portfolio that is sizeable enough that even if just five percent of the pool's portfolio were committed to margin for futures, the pool's portfolio could be so significant that the commodity pool would constitute a major participant in the futures market'').

[222] 17 CFR 4.13(a)(3).

[223] 68 FR 47221, 47225 (Aug. 8, 2003).

[224] The Commission currently only has information on the positions held by CPOs in futures markets, i.e., those entities already registered as CPOs, as opposed to those excluded from the definition of CPO under § 4.5. The Commission does not have access to information on the total liquidation value of funds operated by registered CPOs or those operated by excluded CPOs, values that are needed to determine the universe of entities affected by one particular percentage threshold versus another. These data limitations are one reason why the Commission is pursuing additional data collection initiatives under these final rules.

[225] *See* Invesco Letter; ICI Letter; Vanguard Letter; Reed Smith Letter; AllianceBernstein Letter; AII Letter; STA Letter; Janus Letter; PMC Letter; USAA Letter; Fidelity Letter; SIFMA Letter; Dechert III Letter; Rydex Letter; USCC Letter; Sidley Letter; NFA Letter; Campbell Letter; AQR Letter; Steben Letter; ICI II Letter; and AII Letter.

[226] 76 FR 7976, 7985 (Feb. 12, 2011) (stating that ''[the] Commission believes that it is possible for a commodity pool to have a portfolio that is sizeable enough that even if just five percent of the pool's portfolio were committed to margin for futures, the pool's portfolio could be so significant that the commodity pool would constitute a major participant in the futures market'').

[227] 17 CFR 4.13(a)(3).

[228] 68 FR 47221, 47225 (Aug. 8, 2003).

[229] The Commission currently only has information on the positions held by CPOs in futures markets, i.e., those entities already registered as CPOs, as opposed to those excluded from the definition of CPO under § 4.5. The Commission does not have access to information on the total liquidation value of funds operated by registered CPOs or those operated by excluded CPOs, values that are needed to determine the universe of entities affected by one particular percentage threshold versus another. These data limitations are one reason why the Commission is pursuing additional data collection initiatives under these final rules.

[230] *See* Rydex Letter; Invesco Letter; and ICI Letter.

[231] *See* Transcript of CFTC Staff Roundtable Discussion on Proposed Changes to Registration and Compliance Regime for Commodity Pool Operators and Commodity Trading Advisors (''Roundtable Transcript''), at 19, 25, 30, 76–77, 87–90, available at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission27_070611-trans.pdf.*

[232] Additional reasons for not accepting this alternative are discussed in section II.A.2 of this release.

[233] *See* Dechert III Letter.

registration if the net notional value of its fund's derivatives trading does not exceed one hundred percent of the liquidation value of the fund's portfolio.[234]

Conversely, several panelists at the Roundtable opposed such a test, stating that it was not a reliable means to measure an entity's exposure in the market.[235] As stated previously herein, the Commission believes that the adoption of an alternative net notional test will provide consistent standards for relief from registration as a CPO for entities whose portfolios only contain a limited amount of derivatives positions and will afford registered investment companies with additional flexibility in determining eligibility for exclusion. Therefore, the Commission will adopt an alternative net notional test, consistent with that set forth in § 4.13(a)(3)(ii)(B) as amended herein, for registered investment companies claiming exclusion from the definition of CPO under § 4.5.

The Commission also received several comments supporting both the imposition of a trading threshold in general and the five percent threshold specifically.[236] At least one commenter suggested, however, that the Commission consider requiring registered investment companies that exceed the threshold to register, but not subjecting them to the Commission's compliance regime beyond requiring them to be subject to the examination of their books and records, and examination by NFA.[237] In effect, this commenter requested that the Commission subject such registrant to ''notice registration.'' The Commission believes that adopting the approach proposed by the commenter would not materially change the information that the Commission would receive regarding the activities of registered investment companies in the derivatives markets, which is one of the Commission's purposes in amending § 4.5. Moreover, a type of notice registration would not provide the Commission with any real means for engaging in consistent ongoing oversight. Notwithstanding such notice registration, the Commission would still be deemed to have regulatory responsibility for the activities of these registrants. In the Commission's view, notice registration does not equate to an appropriate level of oversight. For that reason, the Commission has determined not to adopt the alternative proposed by the commenter. The Commission is adopting the amendment to § 4.5 regarding the trading threshold without modification for the reasons stated herein and those previously discussed in the Proposal.

2. §§ 4.13(a)(3) and (a)(4) Rescissions

In addition to the comments that the Commission received regarding the specific parts of the Proposal rescinding §§ 4.13(a)(3) and (a)(4), the Commission received numerous comments regarding the proposed rescissions generally.[238] Broadly, the comments opposed the rescission of the provisions. In the Proposal, the Commission proposed rescinding the ''de minimis'' exemption in § 4.13(a)(3). The Commission received ten comments specifically on this aspect of the Proposal, which consistently urged the Commission to retain a de minimis exemption. As discussed above in section II.C.2, the Commission, after consideration of the comments and the Commission's stated rationale for proposing to rescind the exemption in § 4.13(a)(3), has determined to retain the ''de minimis'' exemption currently set forth in that section without modification.

Several commenters asserted that rescission was not necessary because the Commission has the means to obtain any needed information from exempt CPOs through its large trader reporting requirements and its special call authority.[239] Although the Commission has those means, neither of those rules were intended to provide the kind of data requested of registered entities on forms CPO–PQR or CTA–PR with the regularity proposed under § 4.27.

Another commenter asserted that the compliance and regulatory obligations under the Commission's rules are burdensome for private businesses and would unnecessarily distract entities from their primary focus of managing client assets.[240] The Commission believes that regulation is necessary to ensure a well functioning market and to provide protection of those clients. The Commission further believes that the compliance regime that the Commission has adopted strikes the appropriate balance between limiting the burden placed on registrants and enabling the Commission to carry out its duties under the Act.

In the Proposal, the Commission also proposed to rescind the exemption in § 4.13(a)(4) for operators of pools that are offered only to individuals and entities that satisfy the qualified eligible person standard in § 4.7 or the accredited investor standard under the SEC's Regulation D.[241] Several commenters argued that the Commission should consider retaining the exemption in § 4.13(a)(4) for funds that do not directly invest in commodity interests, but do so through a fund of funds structure, and who are advised by an SEC registered investment adviser. The Commission has not developed a comprehensive view regarding the role of funds of funds in the derivatives markets, in part, due to a lack of data regarding their investment activities. The Commission, therefore, believes that it is prudent to withhold consideration of a fund of funds exemption until the Commission has received data regarding such firms on forms CPO–PQR and/or CTA–PR, as applicable, to enable the Commission to better assess the universe of firms that may be appropriate to include within the exemption, should the Commission decide to adopt one. Therefore, the Commission declines to adopt the commenter's alternative to provide an exemption for funds of funds at this time.

One commenter argued that rescission is not necessary because any fund that seeks to attract qualified eligible persons is already required to maintain oversight and controls that exceed those mandated by part 4 of the Commission's regulations such that any regulation imposed would be duplicative and unnecessarily burdensome.[242] The commenter primarily focused on the significant level of controls that the fund operator implements independent of regulation. The Commission believes that, contrary to the commenter's arguments as to the import of that fact, such controls and internal oversight should make compliance with the Commission's regulatory regime easier and cheaper rather than more burdensome. If the information required to be disclosed under the Commission's regulations is to a large extent already being disclosed by the firm, the Commission anticipates that this would limit the costs of compliance to those costs directly involved with formatting such information as required by the Commission's disclosure and reporting

[234] 17 CFR 4.13(a)(3)(ii)(B).

[235] *See* Roundtable Transcript at 69–71.

[236] *See* NFA Letter, Campbell Letter, AQR Letter, and Steben Letter.

[237] *See* AQR Letter.

[238] *See* NYSBA Letter; Skadden Letter; MFA Letter; Katten Letter; Fidelity Letter; Dechert Letter; AIMA Letter; AIMA II Letter; IAA Letter; SIFMA Letter; HedgeOp Letter; PIC Letter; and Seward Letter.

[239] *See* Skadden Letter; Katten Letter; and MFA Letter.

[240] *See* MFA Letter; Seward Letter; and Katten Letter.

[242] *See* Cranwood Letter.

rules. The Commission adopts the rescission of § 4.13(a)(4) as proposed.

The Commission has also elected to mitigate costs by phasing in gradually the rescission of § 4.13(a)(4). As discussed in section II.C.5, in response to certain comments, the Commission will implement the rescission of § 4.13(a)(4) for all entities currently claiming exemptive relief thereunder on December 31, 2012, but the rescission will be implemented for all other CPOs upon the effective date of this final rulemaking. This timeline reflects the Commission's belief that entities currently claiming relief under § 4.13(a)(4) should be capable of becoming registered and complying with the Commission's regulations within 11 months following the issuance of the final rule. For entities that are formed after the effective date of the rescission, the Commission expects the CPOs of such entities to comply with the Commission's regulations upon formation and commencement of operations.

3. Annual Notice of Exemption or Exclusion Requirement

The amendments will require annual reaffirmance of any claim of exemption or exclusion from registration as a CPO or CTA.[243] In the Proposal, the Commission stated that an annual notice requirement would promote transparency, a primary purpose of the Dodd Frank Act, regarding the number of entities either exempt or excluded from the Commission's registration and compliance programs. Moreover, the Commission stated that an annual notice requirement would enable the Commission to determine whether exemptions and exclusions should be modified, repealed, or maintained as part of the Commission's ongoing assessment of its regulatory scheme.

Two commenters suggested that the 30-day time period for filing was not adequate to enable firms to comply.[244] One commenter proposed a 60-day time period,[245] whereas the other commenter proposed 90 days as the necessary amount of time.[246] As a further cost-mitigating measure, and for the reasons discussed in section II.D, the Commission has elected to extend the filing period from 30 days to 60 days. Further, the Commission will adopt the annual notice requirement with one significant modification designed, among other things, to mitigate costs—that the notice be filed at the end of the calendar year and not the anniversary of the original filing. The Commission believes this alternative presented by a commenter will be more operationally efficient.[247]

d. Section 15(a)

In this section, the Commission considers the costs and benefits of its actions in light of five broad areas of market and public concern set forth in § 15(a) of the CEA: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

1. Protection of Market Participants and the Public

Registration provides many benefits for both the registrants and their customers. The registration process allows the Commission to ensure that all entities participating in derivative markets meet a minimum standard of fitness and competency. The regulations governing who must register and what registrants must do provide clear direction for CPOs and CTAs. At the same time, clients wishing to invest with registered entities have the knowledge that such entities are held to a high financial standard through periodic account statements, disclosure of risk, audited financial statements, and other measures designed to provide transparency to investors. The Commission believes its regulations protect market participants and the public by requiring certain parties previously excluded or exempt from registration to be held to the same standards as registered operators and advisors, which ensures the fitness of such market participants and professionals.

Additionally furthering the goal of investor protection, NFA provides an on-line, public database with information on the registration status of market participants and their principals as well as certain additional registrant information such as regulatory actions taken by the NFA or Commission.[248] This information is intended to assist the public in making investment decisions regarding the use of derivatives professionals. Although those previously exempt entities may incur costs associated with registering and the compliance obligations arising therefrom, or may incur costs to inform the Commission of their exempt status, the Commission believes the benefits of transparency in the derivatives markets in the long term will outweigh these costs, which should decrease over time as efficiencies develop.

2. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The amendments adopted herein will result in the registration of more CPOs and CTAs, which will enable the Commission to better oversee their activities in the derivatives markets, thereby protecting the integrity of the markets. Indeed, even including those entities still exempt under revised part 4 that are required to file notice with the Commission on an annual basis, the Commission will be able to better understand who is operating in derivatives markets and identify any threats to the efficiency, competitiveness, or integrity of markets. Moreover, because similarly situated entities in the derivatives markets will be subject to the same regulatory regime, the competitiveness of market participants will be enhanced.

3. Price Discovery

The Commission has not identified any impact on price discovery through the registration of additional CPOs and CTAs as a result of these regulations.

4. Sound Risk Management

The information the Commission gains from the registration of entities allows the Commission to better understand the participants in the derivatives markets and the interconnectedness of all market participants. Such an understanding allows the Commission to better assess potential threats to the soundness of derivatives markets and thus the financial system of the United States. The Commission also believes that the information required of registrants, to the extent that producing such information requires entities to examine their internal systems and operations in a manner not previously assessed, provides registrants with an additional method of understanding the risk inherent in their day-to-day businesses.

5. Other Public Interest Considerations

The Commission has not identified any other public interest considerations impacted by the registration of additional CPOs and CTAs as a result of these regulations.

3. Data Collection

In these final rules, the Commission is enacting new § 4.27, which requires CPOs and CTAs to report certain

[243] 76 FR 7976, 7986 (Feb. 12, 2011).

[244] *See* NFA Letter; and SIFMA Letter.

[245] *See* NFA Letter.

[246] *See* SIFMA Letter.

[247] *See* NFA Letter.

[248] The National Futures Association's Background Affiliation Status Information Center (BASIC) is currently available at *http://www.nfa.futures.org/basicnet/*.

information to the Commission on forms CPO–PQR and CTA–PR, respectively. The forms, reporting thresholds, and filing deadlines are further detailed in section II.F of this release.

a. Benefits of Data Collection

The Commission expects that the data collected from forms CPO–PQR and CTA–PR will increase the amount and quality of information available to the Commission regarding a previously opaque area of investment activity. Entities that are required to file all three schedules of the forms are large enough to have, potentially, a great impact on derivatives markets should such entities default, whereas smaller entities are required to file only basic demographic information. Because the data currently available to the Commission regarding CPOs and CTAs is limited in scope, the Commission does not have complete information as to who is transacting in derivatives markets. With the additional information that the Commission will have as a result of the new requirements under § 4.27, the Commission will be able to tailor its regulations to the needs of, and risks posed by, entities in the market, and to protect investors and the general public from potentially negative or overly risky behavior.

The Dodd-Frank Act charged the Commission, as a member of FSOC and as a financial regulatory agency, with mitigating risks that may impact the financial stability of the United States. The Commission is dedicated to assisting FSOC in that goal, and these final regulations are essential for the Commission to be able to fulfill that role effectively because the Commission cannot protect against risks of which it is not aware. By creating a reporting regime that makes the operations of commodity pools more transparent to the Commission, the Commission is better able to identify and address potential threats. The total benefit of risk mitigation as it pertains to the overall financial stability of the United States is not quantifiable, but it is significant insofar as the Commission may be able to use this data to prevent further future shocks to the U.S. financial system.

b. Costs of Data Collection

The Commission has not identified costs of data collection that are not associated with an information collection subject to the PRA. These costs therefore have been accounted for in the PRA section of this rulemaking and the information collection requests filed with OMB, as required by the PRA.

c. Section 15(a) Determination

This section analyzes the data collection rules according to the five factors set forth in section 15(a) of the CEA: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

1. Protection of Market Participants and the Public

The Commission believes that the information to be gathered from forms CPO–PQR and CTA–PR increases the amount and quality of information available regarding a previously opaque area of investment activity and, thereby, enhances the ability of the Commission to protect investors and oversee derivatives markets. This enhanced ability provides a better understanding of the participants in derivatives markets and their operations, and as such, the Commission is better able to protect the public from the potential risk that large, unregulated entities could bring to markets under the Commission's jurisdiction, many of which are essential to society at large. Moreover, to mitigate reporting costs to regulated entities that may be registered both with the Commission and with the SEC, the regulations have been modified to allow dually registered entities to file only form PF (plus the first schedule A of form CPO–PQR) for all of their commodity pools, even those that are not ''private funds.'' The cost mitigation has been accounted for in the PRA section of this rulemaking and the information collection requests filed with OMB, as required by the PRA.

2. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Although the Commission does not believe this rule relates directly to the efficiency or competitiveness of futures markets, the Commission does recognize that the interconnectedness of the participants within derivatives markets can be extensive such that the proper oversight of each category of participants affects proper oversight of derivatives markets and the financial system as a whole. To the extent that the information collected by form CPO–PQR and form CTA–PR and the adopted amendments to the Commission's compliance regime assist the Commission in identifying threats in derivatives markets, the regulations herein protect the integrity of futures markets.

3. Price Discovery

The Commission has not identified any impact on price discovery as a result of this data collection initiative.

4. Sound Risk Management

The Dodd-Frank Act tasks FSOC and its member agencies (including both the SEC and the Commission) with mitigating risks to the financial stability the United States. The Commission believes these regulations are necessary to fulfill that obligation. These regulations improve the ability of the Commission to oversee the derivatives markets. As the Commission's understanding of the regulated entities, their behavior in derivatives markets, and the overall riskiness of their positions increases through the data collection in these rules, the Commission will be able to better understand any risks posed to the financial system as a whole arising from markets under the Commission's jurisdiction. These benefits are shared by market participants, at least indirectly, as a part of the United States financial system. In addition, CPOs and CTAs may benefit from these regulations to the extent that reporting form CPO–PQR and form CTA–PF requires such entities to review their firms' portfolios, trading practices, and risk profiles; thus, the CFTC believes that these regulations may improve the sound risk management practices within their internal risk management systems.

5. Other Public Interest Considerations

The Commission has not identified any other public interest considerations impacted by this data collection initiative.

4. Complementary Provisions

As part of these final regulations, the Commission is also adopting other amending provisions that complement the registration and data collection provisions, including changes to § 4.7, § 4.22, §§ 4.24 and 4.34, and parts 145 and 147. This section sets forth the Commission's consideration of related costs and benefits in general, responds to relevant comments, and then analyzes the complementary provisions in light of the five factors enumerated in § 15(a) of the CEA.

a. Benefits of the Complementary Provisions

The provisions in this category amend additional sections of part 4 in order to improve the Commission's ability to effectively regulate derivatives markets and their participants. Some of these complementary provisions are specifically designed to protect

investors, e.g., requiring certified annual reports and disclosure of swaps risk ensures investors are getting complete and accurate information regarding their investment, which increases consumer confidence in the financial system. As the information available to consumers becomes more accurate and complete, a prospective investor can more easily compare investment vehicles to choose the investment vehicle best suited to the investor's individual financial plan and risk tolerance.

Other provisions protect market participants by amending the Commission's internal procedures to provide for the confidentiality of certain proprietary information. Moreover, the Commission's planned harmonization rules are designed to limit the impact to entities regulated by multiple entities, protecting those participants from overly burdensome regulatory regimes.

b. Costs of the Complementary Provisions

The Commission has identified no costs of the complementary provisions that are not associated with an information collection subject to the PRA. These costs therefore have been accounted for in the PRA section of this rulemaking and the information collection requests filed with OMB, as required by the PRA.

c. Comments on the Complementary Provisions

1. § 4.7 Amendments

As stated previously, the Commission is adopting an amendment to § 4.7 that would rescind the relief provided in § 4.7(b)(3) from the certification requirement of § 4.22(c) for financial statements contained in commodity pool annual reports. The Commission received two comments regarding this proposed amendment. One commenter supported the proposed rescission and the Commission's stated justification for doing so. The other commenter recommended that the Commission retain an exemption from certification of financial statements for entities where the pool's participants are limited to the principals of its CPO(s) and CTA(s) and other categories of employees listed in § 4.7(a)(2)(viii). It is unclear how many of the pools operated under § 4.7 would qualify for such relief if adopted. The Commission is therefore unable to agree that such exclusions would materially reduce costs or increase any benefit achieved by the rule.

2. § 4.24 and § 4.34 Amendments

The Commission also proposed adding standard risk disclosure statements for CPOs and CTAs regarding their use of swaps to §§ 4.24(b) and 4.34(b), respectively. The Commission received three comments with respect to the proposed standard risk disclosure statement for swaps. Two argued that a standard risk disclosure statement does not beneficially disclose the risks inherent in swaps activity to participants or clients. A third recommended that the Commission consider whether the wording of the standard disclosure should be modified depending on whether the swaps were cleared or uncleared.

The Commission respectfully disagrees with the assertions of those commenters who believe that a standard risk disclosure statement is not beneficial. The Commission believes that a standardized risk disclosure statement addressing certain risks associated with the use of swaps is necessary due to the revisions to the statutory definitions of CPO, CTA, and commodity pool enacted by the Dodd-Frank Act. In addition, based on the language proposed, the Commission does not believe that different language must be adopted to account for the differences between cleared and uncleared swaps. In particular, the Commission notes that the proposed risk disclosure statement is not intended to address all risks that may be associated with the use of swaps, but that the CPO or CTA is required to make additional disclosures of any other risks in its disclosure document pursuant to §§ 4.24(g) and 4.34(g) of the Commission's regulations. Moreover, the language of the proposed risk disclosure statement is conditional and does not purport to assert that all of the risks discussed are applicable in all circumstances.

For the reasons discussed above in section II.E and those stated in the Proposal, the Commission adopts the proposed risk disclosure statements for CPOs and CTAs regarding swaps. These additional risk disclosure statements will be required for all new disclosure documents and all updates filed after the effective date of this final rulemaking.

3. Harmonization of Regulations and Fund-of-Fund Investments

The Commission received numerous other comments regarding such subjects as harmonizing CFTC regulations with SEC regulations and fund of fund investments. These comments are discussed in detail in sections II.F.3 and 4 and adopted by reference herein.

4. Confidentiality of Submitted Data

Additionally, as the Commission stated in the Proposal, the collection of certain proprietary information through forms CPO–PQR and CTA–PR raises concerns regarding the protection of such information from public disclosure. The Commission received two comments requesting that the Commission treat the disclosure of a pool's distribution channels as nonpublic information, and numerous other comments urging the Commission to be exceedingly circumspect in ensuring the confidentiality of the information received as a result of the data collections.

The Commission agrees that the distribution and marketing channels used by a CPO for its pools may be sensitive information that implicates other proprietary secrets, which, if revealed to the general public, could put the CPO at a competitive disadvantage. Accordingly, and to mitigate costs and eliminate risks to participants, the Commission is amending §§ 145.5 and 147.3 to include question 9 of schedule A of form CPO–PQR as a nonpublic document. Additionally, the Commission is amending §§ 145.5 and 147.3 to remove reference to question 13 in Schedule A of Form CPO–PQR because that such question no longer exists due to amendments to that schedule. Similarly, the Commission will be designating subparts c. and d. of question 2 of form CTA–PR as nonpublic because it identifies the pools advised by the reporting CTA.

d. Section 15(a) Determination

This section considers these costs and benefits in light of the five broad areas of market and public concern set forth in section 15(a) of the CEA: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

1. Protection of Market Participants and the Public

The complementary provisions discussed in this section protect market participants and the public in a variety of ways. The changes under § 4.7 require entities to have their annual financial statements independently audited; such a requirement protects the investors in pools registered under § 4.7 by ensuring that the financial statements provided to participants are accurate and correct. As most CPOs registered under § 4.7 currently file audited annual reports, the burden to the industry as a whole will be relatively minor whereas the benefits, including increased consumer confidence, are likely to be

large. The dollar value of improvements to overall accuracy of financial reporting is not quantifiable, but is a significant benefit.

Registered entities can remain confident in the confidentiality of their reports to the Commission, as the revised parts 145 and 147 protect proprietary information from being released to the public, while still giving the Commission needed information to protect derivatives markets and their participants.

The amending provisions that require similar information from CPOs transacting in swaps products and markets increase the Commission's awareness of transactions in the previously unregulated over-the-counter markets. That awareness will help to bring transparency to the swaps markets, as well as to the interaction of swaps and futures markets, protecting the participants in both markets from potentially negative behavior.

2. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Although the Commission does not believe this part of these regulations has a direct impact on the efficiency of futures markets, the Commission does recognize that the protection of proprietary information is essential for the competitiveness and integrity of futures markets. The Commission believes that requiring all registered CPOs to provide participants and the Commission with annual financial statements that are certified by independent public accountants will increase the reliability of the information provided, which will serve to enhance the financial integrity of market participants, and by extension, the market as a whole. Moreover, the Commission also believes that requiring such certified statement of all registrants serves to make market participants more competitive as it enables prospective participants to more easily compare various investment vehicles.

3. Price Discovery

The Commission has not identified any impact on price discovery as a result of these regulations.

4. Sound Risk Management

The Commission has not identified any other impacts on sound risk management as a result of the other amending provisions that are different from the impacts of the registration and data collection initiatives described in sections III.A.3 and 4.

5. Other Public Interest Considerations

The Commission has not identified any other public interest considerations impacted by as a result of these regulations.

5. Conclusion

The Commission recognizes that the final regulations will impose some significant costs on the industry, as described above and in the PRA section. Notwithstanding the costs, the Commission has determined to adopt this rule because the Commission believes that proper regulation and oversight of market participants is necessary to promote fair and orderly derivatives markets.

List of Subjects

17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 145

Commission records and information.

17 CFR Part 147

Open commission Meetings.

Accordingly, 17 CFR Chapter I is amended as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. In § 4.5, add paragraphs (c)(2)(iii) and (c)(5) to read as follows:

§ 4.5 Exclusion from the definition of the term ''commodity pool operator.''

* * * * *

(c) * * *

(2) * * *

(iii) Furthermore, if the person claiming the exclusion is an investment company registered as such under the Investment Company Act of 1940, then the notice of eligibility must also contain representations that such person will operate the qualifying entity as described in Rule 4.5(b)(1) in a manner such that the qualifying entity:

(A) Will use commodity futures or commodity options contracts, or swaps solely for bona fide hedging purposes within the meaning and intent of Rules 1.3(z)(1) and 151.5 (17 CFR 1.3(z)(1) and 151.5); Provided however, That in addition, with respect to positions in commodity futures or commodity option contracts, or swaps which do not come within the meaning and intent of Rules 1.3(z)(1) and 151.5, a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; and, Provided further, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in Rule 190.01(x) (17 CFR 190.01(x)) may be excluded in computing such five percent;

(B) The aggregate net notional value of commodity futures, commodity options contracts, or swaps positions not used solely for bona fide hedging purposes within the meaning and intent of Rules 1.3(z)(1) and 151.5 (17 CFR 1.3(z)(1) and 151.5), determined at the time the most recent position was established, does not exceed 100 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. For the purpose of this paragraph:

(*1*) The term ''notional value'' shall be calculated for each futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract, by the current market price per unit, for each such option position by multiplying the number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract, by the strike price per unit, for each such retail forex transaction, by calculating the value in U.S. Dollars for such transaction, at the time the transaction was established, excluding for this purpose the value in U.S. Dollars of offsetting long and short transactions, if any, and for any cleared swap by the value as determined consistent with the terms of 17 CFR part 45; and

(*2*) The person may net futures contracts with the same underlying commodity across designated contract markets and foreign boards of trade; and swaps cleared on the same designated clearing organization where appropriate; and

(C) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures, commodity options, or swaps markets.

* * * * *

(5) *Annual notice.* Each person who has filed a notice of exclusion under

this section must affirm on an annual basis the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 30 days of the calendar year end through National Futures Association's electronic exemption filing system.

* * * * *

■ 3. In § 4.7:

■ a. Revise paragraphs (a)(3)(ix), (a)(3)(x), and (b)(3) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(a) * * *

(3) * * *

(ix) A natural person whose individual net worth, or joint net worth with that person's spouse at the time of either his purchase in the exempt pool or his opening of an exempt account would qualify him as an accredited investor as defined in Sec. 230.501(a)(5) of this title;

(x) A natural person who would qualify as an accredited investor as defined in S§ 203.501(a)(6) of this title;

* * * * *

(b) * * *

(3) *Annual report relief.* (i) Exemption from the specific requirements of § 4.22(c) of this part; *Provided,* that within 90 calendar days after the end of the exempt pool's fiscal year or the permanent cessation of trading, whichever is earlier, the commodity pool operator electronically files with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by that section, an annual report for the exempt pool, affirmed in accordance with § 4.22(h) which contains, at a minimum:

(A) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with § 4.22(g));

(B) A Statement of Operations for that year;

(C) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading. For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income, management and incentive fees associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The income, management and incentive fees associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income, management and incentive fees of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets. If the commodity pool operator is not able to obtain the specific amounts of management and incentive fees charged by an investee fund, the commodity pool operator must disclose the percentage amounts and computational basis for each such fee and include a statement that the CPO is not able to obtain the specific fee amounts for this fund;

(D) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

(ii) *Legend.* If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

* * * * *

■ 4. In § 4.13:

■ a. Revise paragraphs (a)(3)(ii)(B)(*1*) and (*2*);

■ b. Remove and reserve paragraph (a)(4);

■ c. Revise paragraph (b)(1)(ii);

■ d. Redesignate paragraph (b)(4) as paragraph (b)(5) and add new paragraph (b)(4); and

■ e. Revise paragraph (e)(2) introductory text.

The revisions and additions read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(B) * * *

(*1*) The term ''notional value'' shall be calculated for each futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract, by the current market price per unit, for each such option position by multiplying the number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract, by the strike price per unit, for each such retail forex transaction, by calculating the value in U.S. Dollars of such transaction, at the time the transaction was established, excluding for this purpose the value in U.S. Dollars of offsetting long and short transactions, if any, and for any cleared swap by the value as determined consistent with the terms of part 45 of the Commission's regulations; and

(*2*) The person may net futures contracts with the same underlying commodity across designated contract markets and foreign boards of trade; and swaps cleared on the same designated clearing organization where appropriate; and

* * * * *

(b) * * *

(2) * * *

(ii) Contain the section number pursuant to which the operator is filing the notice (*i.e.,* § 4.13(a)(1), (2), or (3)) and represent that the pool will be operated in accordance with the criteria of that paragraph; and

* * * * *

(4) *Annual Notice.* Each person who has filed a notice of exemption from registration under this section must affirm on an annual basis the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 30 days of the calendar year end through National Futures Association's electronic exemption filing system.

* * * * *

(e) * * *

(2) If a person operates one or more commodity pools described in paragraph (a)(3) of this section, and one or more commodity pools for which it must be, and is, registered as a commodity pool operator, the person is exempt from the requirements applicable to a registered commodity pool operator with respect to the pool or pools described in paragraph (a)(3) of this section; *Provided,* That the person:

* * * * *

■ 5. In § 4.14:

■ a. Revise paragraph (a)(8)(i)(D); and

■ b. Redesignate paragraph (a)(8)(iii)(D) as (a)(8)(iii)(E) and add a new paragraph (a)(8)(iii)(D).

The revision and addition read as follows:

§ 4.14 Exemption from registration as a commodity trading adviser.

* * * * *

(a) * * *

(8) * * *

(i) * * *

(D) A commodity pool operator who has claimed an exemption from registration under § 4.13(a)(3), or, if registered as a commodity pool operator, who may treat each pool it operates that meets the criteria of § 4.13(a)(3) as if it were not so registered; and

* * * * *

(iii) * * *

(D) *Annual notice.* Each person who has filed a notice of exemption from registration under this section must affirm on an annual basis the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 30 days of the calendar year end through National Futures Association's electronic exemption filing system.

* * * * *

■ 6. In § 4.24, add paragraph (b)(5) to read as follows:

§ 4.24 General disclosures required.

* * * * *

(b) * * *

(5) If the pool may engage in swaps, the Risk Disclosure Statement must further state:

SWAPS TRANSACTIONS, LIKE OTHER FINANCIAL TRANSACTIONS, INVOLVE A VARIETY OF SIGNIFICANT RISKS. THE SPECIFIC RISKS PRESENTED BY A PARTICULAR SWAP TRANSACTION NECESSARILY DEPEND UPON THE TERMS OF THE TRANSACTION AND YOUR CIRCUMSTANCES. IN GENERAL, HOWEVER, ALL SWAPS TRANSACTIONS INVOLVE SOME COMBINATION OF MARKET RISK, CREDIT RISK, COUNTERPARTY CREDIT RISK, FUNDING RISK, LIQUIDITY RISK, AND OPERATIONAL RISK.

HIGHLY CUSTOMIZED SWAPS TRANSACTIONS IN PARTICULAR MAY INCREASE LIQUIDITY RISK, WHICH MAY RESULT IN A SUSPENSION OF REDEMPTIONS. HIGHLY LEVERAGED TRANSACTIONS MAY EXPERIENCE SUBSTANTIAL GAINS OR LOSSES IN VALUE AS A RESULT OF RELATIVELY SMALL CHANGES IN THE VALUE OR LEVEL OF AN UNDERLYING OR RELATED MARKET FACTOR.

IN EVALUATING THE RISKS AND CONTRACTUAL OBLIGATIONS ASSOCIATED WITH A PARTICULAR SWAP TRANSACTION, IT IS IMPORTANT TO CONSIDER THAT A SWAP TRANSACTION MAY BE MODIFIED OR TERMINATED ONLY BY MUTUAL CONSENT OF THE ORIGINAL PARTIES AND SUBJECT TO AGREEMENT ON INDIVIDUALLY NEGOTIATED TERMS. THEREFORE, IT MAY NOT BE POSSIBLE FOR THE COMMODITY POOL OPERATOR TO MODIFY, TERMINATE, OR OFFSET THE POOL'S OBLIGATIONS OR THE POOL'S EXPOSURE TO THE RISKS ASSOCIATED WITH A TRANSACTION PRIOR TO ITS SCHEDULED TERMINATION DATE.

* * * * *

■ 7. In § 4.34, add paragraph (b)(4) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(b) * * *

(4) If the commodity trading advisor may engage in swaps, the Risk Disclosure Statement must further state:

SWAPS TRANSACTIONS, LIKE OTHER FINANCIAL TRANSACTIONS, INVOLVE A VARIETY OF SIGNIFICANT RISKS. THE SPECIFIC RISKS PRESENTED BY A PARTICULAR SWAP TRANSACTION NECESSARILY DEPEND UPON THE TERMS OF THE TRANSACTION AND YOUR CIRCUMSTANCES. IN GENERAL, HOWEVER, ALL SWAPS TRANSACTIONS INVOLVE SOME COMBINATION OF MARKET RISK, CREDIT RISK, FUNDING RISK, AND OPERATIONAL RISK.

HIGHLY CUSTOMIZED SWAPS TRANSACTIONS IN PARTICULAR MAY INCREASE LIQUIDITY RISK, WHICH MAY RESULT IN YOUR ABILITY TO WITHDRAW YOUR FUNDS BEING LIMITED. HIGHLY LEVERAGED TRANSACTIONS MAY EXPERIENCE SUBSTANTIAL GAINS OR LOSSES IN VALUE AS A RESULT OF RELATIVELY SMALL CHANGES IN THE VALUE OR LEVEL OF AN UNDERLYING OR RELATED MARKET FACTOR.

IN EVALUATING THE RISKS AND CONTRACTUAL OBLIGATIONS ASSOCIATED WITH A PARTICULAR SWAP TRANSACTION, IT IS IMPORTANT TO CONSIDER THAT A SWAP TRANSACTION MAY BE MODIFIED OR TERMINATED ONLY BY MUTUAL CONSENT OF THE ORIGINAL PARTIES AND SUBJECT TO AGREEMENT ON INDIVIDUALLY NEGOTIATED TERMS. THEREFORE, IT MAY NOT BE POSSIBLE TO MODIFY, TERMINATE, OR OFFSET YOUR OBLIGATIONS OR YOUR EXPOSURE TO THE RISKS ASSOCIATED WITH A TRANSACTION PRIOR TO ITS SCHEDULED TERMINATION DATE.

* * * * *

■ 8. Effective July 2, 2012, revise § 4.27, as added November 16, 2011, at 76 FR 71114, and effective March 31, 2012 to read as follows:

§ 4.27 Additional reporting by advisors of certain large commodity pools.

(a) *General definitions.* For the purposes of this section:

(1) *Commodity pool operator* or *CPO* has the same meaning as *commodity pool operator* defined in section 1a(11) of the Commodity Exchange Act;

(2) *Commodity trading advisor* or *CTA* has the same meaning as defined in section 1a(12);

(3) *Direct* has the same meaning as defined in section 4.10(f);

(4) *Net asset value* or *NAV* has the same meaning as *net asset value* as defined in section 4.10(b);

(5) *Pool* has the same meaning as defined in section 1(a)(10) of the Commodity Exchange Act;

(6) *Reporting period* means the reporting period as defined in the forms promulgated hereunder;

(b) *Persons required to report.* A reporting person is:

(1) Any commodity pool operator that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder; or

(2) Any commodity trading advisor that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder.

(c) *Reporting.* (1) Except as provided in paragraph (c)(2) of this section, each reporting person shall file with the National Futures Association, a report with respect to the directed assets of each pool under the advisement of the commodity pool operator consistent with appendix A to this part or commodity trading advisor consistent with appendix C to this part.

(2) All financial information shall be reported in accordance with generally accepted accounting principles consistently applied.

(d) *Investment advisers to private funds.* Except as otherwise expressly provided in this section, CPOs and CTAs that are dually registered with the Securities and Exchange Commission and are required to file Form PF pursuant to the rules promulgated under the Investment Advisers Act of 1940, shall file Form PF with the Securities and Exchange Commission in lieu of filing such other reports with respect to private funds as may be required under this section. In addition, except as otherwise expressly provided in this section, CPOs and CTAs that are dually registered with the Securities and

Exchange Commission and are required to file Form PF pursuant to the rules promulgated under the Investment Advisers Act of 1940, may file Form PF with the Securities and Exchange Commission in lieu of filing such other reports with respect to commodity pools that are not private funds as may be required under this section. Dually registered CPOs and CTAs that file Form PF with the Securities and Exchange Commission will be deemed to have filed Form PF with the Commission for purposes of any enforcement action regarding any false or misleading statement of a material fact in Form PF.

(e) *Filing requirements.* Each report required to be filed with the National Futures Association under this section shall:

(1)(i) Contain an oath and affirmation that, to the best of the knowledge and belief of the individual making the oath and affirmation, the information contained in the document is accurate and complete; *Provided, however,* That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete and

(ii) Each oath or affirmation must be made by a representative duly authorized to bind the CPO or CTA.

(2) Be submitted consistent with the National Futures Association's electronic filing procedures.

(f) *Termination of reporting requirement.* All reporting persons shall continue to file such reports as are required under this section until the effective date of a Form 7W filed in accordance with the Commission's regulations.

(g) *Public records.* Reports filed pursuant to this section shall not be considered Public Records as defined in § 145.0 of this chapter.

■ 9. Revise appendix A to part 4 to read as follows:

Appendix A to Part 4—Form CPO–PQR

BILLING CODE 6351–01–P

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION

CFTC Form CPO-PQR
OMB No.: 3038-XXXX

POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING OR REVIEWING THE REPORTING FORM.

This document is not a reporting form. Do not send this document to NFA. It is a template that you may use to assist in filing the electronic reporting form with the NFA at: http://www.nfa.futures.org.

You may fill out the template online and save and/or print it when you are finished or you can download the template and/or print it and fill it out later.

DEFINED TERMS

Words that are underlined in this form are defined terms and have the meanings contained in the Definitions of Terms section.

GENERAL

Read the Instructions and Questions Carefully

Please read the instructions and the questions in this Form CPO-PQR carefully.

In this Form CPO-PQR, "you" means the CPO.

Call the CFTC with Questions

If there is any question about whether particular information must be provided or about the manner in which particular information must be provided, contact the CFTC for clarification.

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

REPORTING INSTRUCTIONS

1. All CPOs Are Required to Complete and File the Form CPO-PQR

All CPOs are required to complete and file a Form CPO-PQR for each Reporting Period during which they satisfy the definition of CPO and operate at least one Pool. If a pool is operated by Co-CPOs, the CPO with the higher total AUM, aggregated across all pools operated by the CPO should report for that Pool. Further, if a pool is operated by Co-CPOs and one of them is an Investment Adviser, the non-Investment Adviser CPO must file relevant section(s) even though a Form PF was filed for that pool by the Investment Adviser CPO.

2. Only Certain Schedules of this Form CPO-PQR Are Required of Certain CPOs

Only certain Schedules of this Form CPO-PQR are required to be completed and filed by certain CPOs.

Schedule A

Schedule A must be completed and filed by each CPO for every Reporting Period during which they satisfy the definition of CPO and operate at least one Pool. Large CPOs must complete and file a Schedule A within 60 days of the close of the most recent Reporting Period during which they satisfied the definition of Large CPO. All other CPOs must complete and file a Schedule A within 90 days of the close of the calendar year. The information provided herein should be as of the last business day of the reporting period.

Part 1 of Schedule A surveys basic information about the reporting CPO. Part 2 of Schedule A asks for more specific information about each of the CPO's Pools, including questions about the Pool's key relationship and about the Pool's investment positions.

Substituted Compliance for Schedules B and C

To the extent that a CPO is a dual registrant and is required to file Form PF with the SEC, then it may elect to file Form PF for all pools it, or any related person as defined for purposes of Form PF, may operate.

Schedule B

Schedule B must be completed and filed annually by Mid-Sized CPOs. Mid-Sized CPOs must complete and file a Schedule B within 90 days of the close of each calendar year during which they satisfied the definition of Mid-Sized CPO and operated at least one Pool. A CPO that qualifies as a Mid-Sized CPO at any point during the calendar year must complete and file a separate Schedule B for each Pool that it operated during the calendar year.

Schedule B must be completed and filed quarterly by Large CPOs. Large CPOs must complete and file a Schedule B within 60 days of the close of the most recent Reporting Period during which they satisfied the definition of Large CPO and operated at least one Pool. A CPO that qualifies as a Large CPO at any point during the Reporting Period must complete and file a separate Schedule B for each Pool that it operated during the Reporting Period.

Schedule B Substitution

Any Mid-Sized CPO or Large CPO that is: (i) registered with the SEC as an Investment Adviser; and (ii) operated only Pools that satisfy the definition of Private Fund during the calendar year or Reporting Period, respectively, will be deemed to have satisfied its Schedule B filing requirements by completing and filing Sections 1.b. and 1.c. of Form PF for each Pool that it operated during the calendar year or Reporting Period, respectively, in question.

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

2. Only Certain Schedules of this Form CPO-PQR Are Required of Certain CPOs (cont'd)

Further, to the extent that any Mid-Sized CPO or Large CPO is: (i) registered with the SEC as an Investment Adviser; and (ii) operated any Pools that do not satisfy the definition of Private Fund during the calendar year or Reporting Period, respectively, and does NOT elect to file Form PF under the substituted compliance provisions of Form PF, they will be required to complete and file a Schedule B for each Pool that it operated during the calendar year or Reporting Period, respectively, that did not satisfy the definition of a Private Fund. Schedule B will need to be completed in addition to the Mid-Sized CPO's or Large CPO's filing Form PF requirements.

Schedule B asks for information about each Pool's creditors, counterparties, borrowings, and clearing mechanisms.

Schedule C

Schedule C must be completed and filed only by Large CPOs. Large CPOs must complete and file a Schedule C within 60 days of the close of the most recent Reporting Period during which they satisfy the definition of a Large CPO and operate at least one Pool. A CPO that qualifies as a Large CPO at any point during the Reporting Period must complete and file a separate Part 2 of Schedule C for each Large Pool that it operated during the Reporting Period.

Schedule C Substitution

Any Large CPO that is: (i) registered with the SEC as an Investment Adviser; and (ii) operated only Pools that satisfy the definition of Private Fund during the Reporting Period will be deemed to have satisfied its Schedule C filing requirements by completing and filing the applicable Sections 1 and 2 of Form PF for the Reporting Period in question.

Further, to the extent that any Large CPO is: (i) registered with the SEC as an Investment Adviser; and (ii) operated any Pools that do not satisfy the definition of Private Fund during the Reporting Period and does NOT elect to file Form PF under the substituted compliance provisions of Form PF, they will be required to complete Parts 1 and 2 of Schedule C with respect to the Pool(s) that it operated during the Reporting Period that did not satisfy the definition of a Private Fund. For these Large CPOs, Part 1 of Schedule C will need to be completed with respect to all Pools that they operated during the Reporting Period that did not satisfy the definition of Private Fund, and Part 2 of Schedule C will need to be completed with respect to all Large Pools that they operated during the Reporting Period that did not satisfy the definition of Private Fund. These Schedule C filings will need to be completed in addition to the Large CPO's filing Form PF requirements.

Part 1 of Schedule C asks for information about the aggregated portfolios of the Pools that were not Private Funds that the Large CPO operated during the Reporting Period.

Part 2 of Schedule C asks for certain risk metrics about the Large Pools that were not Private Funds that the Large CPO operated during the Reporting Period.

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

3. The CPO May Be Required to Aggregate Information Concerning Certain Types of Pools

For purposes of determining whether a CPO meets the reporting thresholds for Schedules B and/or C of this Form CPO-PQR, the CPO must: (i) aggregate all Parallel Pool Structures, Parallel Managed Accounts and Master Feeder Arrangements; and (ii) treat any Pool or Parallel Managed Account operated by any of its Affiliated Entities as though it was operated by the CPO.

For purposes of determining whether a Pool qualifies as a Large Pool for Schedule C of this Form CPO-PQR, the CPO must: (i) aggregate all Pools that are part of the same Parallel Fund Structure or Master-Feeder Arrangement; (ii) aggregate any Parallel Managed Accounts with the largest Pool to which that Parallel Managed Account relates; and (iii) treat any Pool or Parallel Managed Account operated by any of your Affiliated Entities as though it was operated by the CPO.

However, for the parts of Form CPO-PQR that request information about individual Pools, you must report aggregate information for Parallel Managed Accounts and Master Feeder Arrangements as if each were an individual Pool, but not Parallel Pools. Assets held in Parallel Managed Accounts should be treated as assets of the Pools with which they are aggregated.

4. I advise a Pool that invests in other Pools or funds (e.g., a "fund of funds"). How should I treat these investments for purposes of Form CPO-PQR?

Investments in other Pools generally. For purposes of this Form CPO-PQR, you may disregard any Pool's equity investments in other Pools. However, if you disregard these investments, you must do so consistently (e.g., do not include disregarded investments in the net asset value used for determining whether the fund is a "Qualifying Pool"). For Schedule A, Question 11, even if you disregard these assets, you may report the performance of the entire Pool and are not required to recalculate performance in order to exclude these investments. Do not disregard any liabilities, even if incurred in connection with these investments.

Pools that invest substantially all of their assets in other Pools or funds. If you are the CPO for a Pool that: (i) invests substantially all of its assets in the equity of Pools or Private Funds for which you are not the CPO; and (ii) aside from such Pool or Private Fund investments, holds only cash and cash equivalents and instruments acquired for the purpose of hedging currency exposure, then you are only required to complete Schedule A for that Pool. For all other purposes, you should disregard such Pools. For example, where questions request aggregate information regarding the Pools you advise, do not include the assets or liabilities of any such Pool.

Notwithstanding the foregoing, you must include disregarded assets in responding to Schedule A, Question 0).

5. I am required to aggregate funds or accounts to determine whether I meet a reporting threshold, or I am electing to aggregate funds for reporting purposes. How do I "aggregate" funds or accounts for these purposes?

Where two or more Parallel Pool Structures or Master-Feeder Arrangements are aggregated in accordance with Instruction 3, you must treat the aggregated funds as if they were all one Pool. Investments that a Feeder Fund makes in a Master Fund should be disregarded, but other investments of the feeder fund should be treated as though they were investments of the aggregated fund.

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

Where you are aggregating dependent parallel managed accounts to determine whether you meet a reporting threshold, assets held in the accounts should be treated as assets of the Pools with which they are aggregated.

Example 1. You advise a master-feeder arrangement with one feeder fund. The feeder fund has invested $500 in the master fund and holds a foreign exchange derivative with a notional value of $100. The master fund has used the $500 received from the feeder fund to invest in corporate bonds. Neither fund has any other assets or liabilities.
For purposes of determining whether the funds comprise a qualifying Pool, this master-feeder arrangement should be treated as a single Pool whose only investments are $500 in *corporate bonds* and a foreign exchange derivative with a notional value of $100. If you elect to aggregate the master-feeder arrangement for reporting purposes, the treatment would be the same.

Example 2. You advise a parallel pool structure consisting of two pools, named parallel pool A and parallel pool B. You also advise a related dependent parallel managed account. The account and each fund have invested in corporate bonds of Company X and have no other assets or liabilities. The value of parallel pool A's investment is $400, the value of parallel pool B's investment is $300 and the value of the account's investment is $200.
For purposes of determining whether either of the parallel pools is a qualifying Pool, the entire parallel fund structure and the related dependent parallel managed account should be treated as a single Pool whose only asset is $900 of corporate bonds issued by Company X.
If you elect to aggregate the parallel fund structure for reporting purposes, you would disregard the dependent parallel managed account, so the result would be a single Pool whose only asset is $700 of corporate bonds issued by Company X.

6. I advise a Pool that invests in entities that are not Pools, *or* are exempt. How should I treat these investments for purposes of Form CPO-PQR?

Except as provided in Instruction 4, investments in funds should be included for all purposes under this Form CPO-PQR. You are not, however, required to "look through" a Pool's investments in any other entity unless the Form CPO-PQR specifically requests information regarding that entity or the other entity's primary purpose is to hold assets or incur leverage as part of the Pool's investment activities.

7. The Form CPO-PQR Must Be Filed Electronically with NFA

All CPOs must file their Forms CPO-PQR electronically using NFA's EasyFile System. NFA's EasyFile System can be accessed through NFA's website at www.nfa.futures.org. You will use the same logon and password for filing your Form CPO-PQR as you would for any other EasyFile filings. Questions regarding your NFA ID# or your use of NFA's EasyFile system should be directed to the NFA. The NFA's contact information is available on its website.

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using the Form CPO-PQR Template

8. All Figures Reported in U.S. Dollars

All questions asking for amounts or investments must be reported in U.S. dollars. Any amounts converted to U.S. dollars must use the conversion rate in effect on the Reporting Date.

9. Use of U.S. GAAP

All financial information in this Report must be presented and computed in accordance with GAAP consistently applied.

10. Oath and Affirmation

This Form CPO-PQR will not be accepted unless it is complete and contains an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; provided however, that is shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in this Form CPO-PQR is not accurate and complete.

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Definitions of Terms for the Form CPO-PQR Template

DEFINITIONS OF TERMS

Affiliated Entity: The term "Affiliated Entity" means any entity is an affiliate of another entity. An entity is an affiliate of another entity if the entity directly or indirectly controls, is controlled by or is under common control with the other entity.

Assets Under Management or AUM: The term "Assets Under Management" or "AUM" means the amount of all assets that are under the control of the CPO.

BP: The term "BP" means basis points.

Broker: The term "Broker" means any entity that provides clearing, prime brokerage or similar services to the Pool.

CDS: The term "CDS" means credit default swap.

CCP: The term "CCP" means a central counterparty or central clearing house, such as, but not limited to: CC&G, CME Clearing, The Depository Trust & Clearing Corporation (including FICC, NSCC and Euro CCP), EMCF, Eurex Clearing, Fedwire, ICE Clear Europe, ICE Clear U.S., ICE Trust, LCH Clearnet Limited, LCH Clearnet SA, Options Clearing Corporation and SIX x-clear.

Commodity Futures Trading Commission or CFTC: The term "Commodity Futures Trading Commission" or "CFTC" means the United States Commodity Futures Trading Commission.

Commodity Pool or Pool: The term "Commodity Pool" or "Pool" has the same meaning as "commodity pool" as defined in section 1a(10) of the Commodity Exchange Act.

Commodity Pool Operator or CPO: The term "commodity pool operator" or "CPO" has the same meaning as "commodity pool operator" defined in section 1a(11) of the Commodity Exchange Act.

Commodity Trading Advisor or CTA: The term "commodity trading advisor" or "CTA" has the same meaning as "commodity trading adviser" as defined in section 1a(12) of the Commodity Exchange Act.

Feeder Fund: See Master-Feeder Arrangement.

Financial Institution: The term "financial institution" means any of the following: (i) a bank or savings association, in each case as defined in the Federal Deposit Insurance Act; (ii) a bank holding company or financial holding company, in each case as defined in the Bank Holding Company Act of 1956; (iii) a savings and loan holding company, as defined in the Home Owners' Loan Act; (iv) a Federal credit union, State credit union or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act; (v) a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971; or (vi) an entity chartered or otherwise organized outside the United States that engages in banking activities.

Form CPO-PQR: The term "Form CPO-PQR" means this Form CPO-PQR.

Form PF: The term "Form PF" refers to the Form PF.

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Definitions of Terms for the Form CPO-PQR Template

GAAP: The term "GAAP" means U.S. Generally Accepted Accounting Principles.

Investment Adviser: The term "Investment Adviser" has the same meaning as "investment adviser" as defined in Section 202(a)(11) of the Investment Advisers Act of 1940.

Large CPO: The term "Large CPO" refers to any CPO that had at least $1.5 billion in aggregated Pool Assets Under Management as of the close of business on any day during the Reporting Period.

Large Pool: The term "Large Pool" means any Pool that has a Net Asset Value individually, or in combination with any Parallel Pool Structure, of at least $500 million as of the close of business on any day during the Reporting Period.

Master Fund: See Master-Feeder Arrangement.

Master-Feeder Arrangement: The phrase "Master-Feeder Arrangement" means an arrangement in which one or more funds ("Feeder Funds") invest all or substantially all of their assets in a single fund ("Master Fund"). A fund would also be a Feeder Fund investing in a Master Fund for the purposes of this definition if it issued multiple classes or series of shares or interests and each class (or series) invests substantially all of its assets in shares (or other interests in) a single underlying Master Fund.

Mid-Sized CPO: The term "Mid-Sized CPO" refers to any CPO that had at least $150 million in aggregated Pool Assets Under Management as of the close of business on any day during the Reporting Period.

National Futures Association or NFA: The term "National Futures Association" or "NFA" refers to the National Futures Association, a registered futures association under Section 17 of the Commodity Exchange Act.

Negative OTE: The term "Negative OTE" means negative open trade equity.

Net Asset Value or NAV: The term "Net Asset Value" or "NAV" has the same meaning as "net asset value" as defined in Commission Rule 4.10(b).

Non-U.S. Financial Institution: A "non-U.S. Financial Institution" means any of the following Financial Institutions: (i) a Financial Institution chartered outside the United States; (ii) a subsidiary of a U.S. Financial Institution that is separately incorporated or otherwise organized outside the United States; or (iii) a branch or agency that resides in the United States but has a parent that is a Financial Institution chartered outside the United States.

OTC: The term "OTC" means over-the-counter.

Parallel Managed Account: The term "Parallel Managed Account" means any managed account or other pool of assets that the CPO operates and that pursues substantially the same investment objective and strategy and invests side-by-side in substantially the same assets as the identified Pool.

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Definitions of Terms for the Form CPO-PQR Template

Parallel Pool Structure: The term "Parallel Pool Structure" means any structure in which one or more Pools pursues substantially the same investment objective and strategy and invests side by side in substantially the same assets as another Pool.

Private Fund: The term "Private Fund" has the same meaning as "private fund" as defined in Form PF.

Positive OTE: The term "Positive OTE" means positive open trade equity.

Reporting Date: The term "Reporting Date" means the last calendar day of the Reporting Period for which this Form CPO-PQR is required to be completed and filed. For example, the Reporting Date for the first calendar quarter of a year is March 31; the Reporting Date for the second calendar quarter is June 30.

Reporting Period: The term "Reporting Period" means any of the individual calendar quarters (ending March 31, June 30, September 30, and December 31) for Large CPOs and the calendar year end for all other CPOs.

Trading Manager: The term "Trading Manager" means any entity or individual with sole or partial authority to invest Pool assets or to allocate Pool assets to other managers or investee Pools (including cash management firms). CTAs and other CPOs can be Trading Managers; however, a CPO should not identify itself as a Trading Manager.

Secured Borrowing: The term "Secured Borrowing" means obligations for borrowed money in respect of which the borrower has posted collateral or other credit support. For purposes of this definition, repos are secured borrowings.

Securities and Exchange Commission or SEC: The term "Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission.

Side Arrangements and Side Letters: The term "Side Arrangements" or the term "Side Letters" means any arrangement that is extended to less than 100% of the Pool's participants.

U.S. Financial Institution: The term "U.S. Financial Institution" means any of the following Financial Institutions: (i) a Financial Institution chartered in the United States (whether federally-chartered or state-chartered); (ii) a subsidiary of a Non-U.S. Financial Institution that is separately incorporated or otherwise organized in the United States; or (iii) a branch or agency that resides outside the United States but has a parent that is a Financial Institution chartered in the United States.

Unsecured Borrowing: The term "Unsecured Borrowing" means obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support.

VaR: The term "VaR" means value at risk.

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule A

INSTRUCTIONS FOR COMPLETING SCHEDULE A

Every CPO is required to complete and file Schedule A of this Form CPO-PQR. This Schedule A must be completed for every Reporting Period during which the CPO operated at least one Pool. Part 1 of Schedule A asks for information about the CPO. Part 2 of Schedule A asks for information about each individual Pool that the CPO operated during the Reporting Period. CPOs must complete and file a separate Part 2 for each Pool they operated any time during the Reporting Period.

Unless otherwise specified in a particular question, all information provided in this Schedule A should be accurate as of the Reporting Date.

PART 1 · INFORMATION ABOUT THE CPO

1. CPO INFORMATION

Provide the following general information concerning the CPO:

a. CPO's Name: [ ]

b. CPO's NFA ID#: [ ]

c. Person to contact concerning this Form CPO-PQR: [ ]

d. CPO's chief compliance officer: [ ]

e. Total number of employees of the CPO: [ ]

f. Total number of equity holders of the CPO: [ ]

g. Total number of Pools operated by the CPO: [ ]

h. Telephone number and email for person identified in c. above [ ]

2. CPO ASSETS UNDER MANAGEMENT

Provide the following information concerning the amount of Assets Under Management by the CPO:

a. CPO's Total Assets Under Management: [ ]

b. CPO's Total Net Assets Under Management: [ ]

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO

REMINDER: The CPO must complete and file a separate Part 2 for each Pool that the CPO operated during the Reporting Period.

3. POOL INFORMATION

Provide the following general information concerning the Pool:

a. Pool's name: ☐

b. Pool's NFA ID#: ☐

c. If the Pool is operated by Co-CPOs the name of the other CPOs ☐

d. Under the laws of what state or country is the Pool organized: ☐

e. On what date does the Pool's fiscal year end: ☐

f. Is this Pool a Private Fund? Yes ☐ No ☐

g. List the English name of each Foreign Financial Regulatory Authority and the country with which the Pool is registered:

Foreign Financial Regulatory Authority	Country

h. Is this a Master Fund in a Master-Feeder Arrangement? Yes ☐ No ☐

If "Yes," provide the name and NFA ID# of each Feeder Fund investing in this Pool:

Feeder Fund	NFA ID#

i. Is this a Feeder Fund in a Master-Feeder Arrangement? Yes ☐ No ☐

If "Yes," provide the name and NFA ID# of the Master Fund in which this Pool invests:

Master Fund	NFA ID#

j. If this Pool invests in other Pools, a) what is the maximum number of investee pool tiers? ☐

i. What is the value of this Pool's investments in equity of other Pools or private funds? ☐

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4. POOL THIRD PARTY ADMINISTRATORS

Provide the following information concerning the Pool's third party administrator(s):

a. Does the CPO use third party administrators for the Pool? Yes ☐ No ☐

If "Yes," provide the following information for each third party administrator:

i. Name of the administrator: ☐

ii. NFA ID# of administrator: ☐

iii. Address of the administrator: ☐

iv. Telephone number of the administrator: ☐

v. Starting date of the relationship with the administrator: ☐

vi. Services performed by the administrator:

Preparation of Pool financial statements: ☐ Maintenance of the Pool's books and records: ☐

Calculation of Pool's performance: ☐ Other _____: ☐

b. What percentage of the Pool's Assets Under Management is valued by a third party administrator, or similar entity, that is independent of the CPO? ☐ %

If the number entered is greater than "0," provide the following information:

Name(s) of the third party(-ies): ☐

5. POOL BROKERS

Provide the following information concerning the Pool's Broker(s):

a. Does the CPO use Brokers for the Pool? Yes ☐ No ☐

If "Yes," provide the following information for each Broker:

i. Name of the Broker: ☐

ii. NFA ID# of Broker: ☐

iii. Address of Broker ☐

iv. Telephone number of the Broker: ☐

v. Starting date of the relationship with the Broker: ☐

vi. Services performed by the Broker:

Clearing services for the Pool: ☐ Custodian services for some or all Pool assets: ☐

Prime brokerage services for the Pool: ☐ Other _____: ☐

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6. POOL TRADING MANAGERS

Provide the following information concerning the Pool's Trading Manager(s):

a. Has the CPO authorized Trading Managers to invest or allocate some or all of the Pool's Assets Under Management? Yes ☐ No ☐

If "Yes," provide the following information for each Trading Manager:

i. Name of the Trading Manager: ☐

ii. NFA ID# of the Trading Manager: ☐

iii. Address of the Trading Manager: ☐

iv. Telephone number of the Trading Manager: ☐

v. Starting date of the relationship with the Trading Manager: ☐

vi. What percentage of the Pool's Assets Under Management does the Trading Manager have authority to invest or allocate? ☐ %

7. POOL CUSTODIANS

Provide the following information concerning the Pool's custodian(s):

a. Does the CPO use custodians to hold some or all of the Pool's Assets Under Management?

Yes ☐ No ☐

If "Yes," provide the following information for each custodian:

i. Name of the custodian: ☐

ii. NFA ID# of the custodian: ☐

iii. Address of the custodian: ☐

iv. Telephone number of the custodian: ☐

v. Starting date of the relationship with the custodian: ☐

vi. What percentage of the Pool's Assets Under Management is held by the custodian? ☐ %

8. POOL AUDITOR

Provide the following information concerning the Pool's auditor(s):

a. Does the CPO have the Pool's financial statements audited? Yes ☐ No ☐

If "Yes," provide the following information:

i. Is the audit conducted in accordance with GAAP? Yes ☐ No ☐

ii. Name of the auditing firm: ☐

iii. Address of the auditing firm: ☐

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iv. Telephone number of the auditing firm: [ ]

v. Starting date of the relationship with the auditing firm: [ ]

b. Are the Pool's audited financial statements distributed to the Pool's participants?

Yes ☐ No ☐

9. POOL MARKETERS

Provide the following information concerning the Pool's marketer(s):

a. Does the CPO use the services of third parties to market participations in the Pool?

Yes ☐ No ☐

If "Yes," provide the following information for each marketing firm:

i. Name of the marketing firm: [ ]

ii. Address of the marketing firm: [ ]

iii. Telephone number of the marketing firm: [ ]

iv. Starting date of the relationship with the marketing firm: [ ]

v. Address of any website used by the marketing firm to market participations in the Pool:

[ ]

10. POOL'S STATEMENT OF CHANGES CONCERNING ASSETS UNDER MANAGEMENT

Provide the following information concerning the Pool's activity during the Reporting Period. For the purposes of this question:

a. The Assets Under Management and Net Asset Value at the beginning of the Reporting Period are considered to be the same as the assets under management and Net Asset Value at the end of the previous Reporting Period, in accordance with Commission Rule 4.25(a)(7)(A).

b. The additions to the Pool include all additions whether voluntary or involuntary in accordance with Commission Rule 4.25(a)(7)(B).

c. The withdrawals and redemptions from the Pool include all withdrawals or redemptions whether voluntary or not, in accordance with Commission Rule 4.25(a)(7)(C).

d. The Pool's Assets Under Management and Net Asset Value on the Reporting Date must be calculated by adding or subtracting from the Assets Under Management and Net Asset Value at the beginning of the Reporting Period, respectively, any additions, withdrawals, redemptions and net performance, as provided in Commission Rule 4.25(a)(7)(E).

i. Pool's Assets Under Management at the beginning of the Reporting Period: [ ]

ii. Pool's Net Asset Value at the beginning of the Reporting Period: [ ]

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iii. Pool's net income during the Reporting Period: [ ]

iv. Additions to the Pool during the Reporting Period: [ ]

v. Withdrawals and Redemptions from the Pool during the Reporting Period: [ ]

vi. Pool's Assets Under Management on the Reporting Date: [ ]

vii. Pool's Net Asset Value on the Reporting Date: [ ]

viii. Pool's base currency: [ ]

11. POOL'S MONTHLY RATES OF RETURN

Provide the Pool's monthly rate of return for each month that the Pool has operated. The Pool's monthly rate of return should be calculated in accordance with Commission Rule 4.25(a)(7)(F). Provide the Pool's annual rate of return for the appropriate year in the row marked "Annual."

	2011	2010	2009	2008	2007	2006	2005
Jan.							
Feb.							
March							
April							
May							
June							
July							
August							
Sept.							
Oct.							
Nov.							
Dec.							
ANNUAL							

12. POOL SUBSCRIPTIONS AND REDEMPTIONS

Provide the following information concerning subscriptions to and redemptions from the Pool during the Reporting Period.

a. Total Pool subscriptions by participants during the Reporting Period: [ ]

b. Total Pool redemptions by participants during the Reporting Period: [ ]

c. Are any Pool participants or share classes currently below the Pool's high water mark?

Yes ☐ No ☐

If "Yes," provide the following information:

i. What is the percentage of participants below the Pool's high water mark as of the Reporting Date? [ ] %

ii. What is the weighted average percentage of participants below the Pool's high water mark as of the Reporting Date? [ ] %

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d. Provide the following information regarding the Pool's restrictions on participant withdrawals and redemptions.

(For Questions iv. and v., please note that the standards for imposing suspensions and restrictions on withdrawals/redemptions may vary among funds. Make a good faith determination of the provisions that would likely be triggered during conditions that you view as significant market stress.)

i. Does the reporting fund provide participants with withdrawal/redemption rights in the ordinary course?

☐ Yes ☐ No

(If you responded "yes" to Question 12(d)(i), then you must respond to Questions 12(d)(ii)-(v).)

As of the data reporting date, what percentage of the Pool's net asset value, if any:

ii. May be subjected to a suspension of participant withdrawals/redemptions CPO (this question relates to a CPO's right to suspend and not just whether a suspension is currently effective) ☐

iii. May be subjected to material restrictions on participant withdrawals/ redemptions (e.g., "gates") CPO (this question relates to a CPO's right to impose a restriction and not just whether a restriction has been imposed) ..... ☐

iv. Is subject to a suspension of participant withdrawals/redemptions (this question relates to whether a suspension is currently effective and not just a CPO's right to suspend) ..... ☐

v. Is subject to a material restriction on participant withdrawals/redemptions (e.g., a "gate") (this question relates to whether a restriction has been imposed and not just a CPO's right to impose a restriction) ..... ☐

e. Has the Pool imposed a halt or any other material limitation on redemptions during the Reporting Period?

☐ Yes ☐ No

If "Yes," provide the following information:

i. On what date was the halt or material limitation imposed? ☐

ii. If the halt or material limitation has been lifted, on what date was it lifted? ☐

iii. What disclosure was provided to participants to notify them that the halt or material limitation was being imposed? What disclosure was provided to participants to notify them that the halt or material limitation was being lifted?

☐

iv. On what date(s) was this disclosure provided? ☐

v. Briefly explain the halt or material limitation(s) on redemptions and the reason for such halt or material limitation(s):

☐

– This Completes Schedule A of Form CPO-PQR –

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS
Form CPO-PQR Template · Schedule B

INSTRUCTIONS FOR COMPLETING SCHEDULE B

A CPO is only required to complete and file Schedule B of this Form CPO-PQR if at any point during the Reporting Period the CPO qualified as a Mid-Sized CPO or Large CPO.

Schedule B must be completed and filed annually by Mid-Sized CPOs. Mid-Sized CPOs must complete and file a Schedule B within 90 days of the close of each calendar year during which they satisfied the definition of Mid-Sized CPO and operated at least one Pool. A CPO that qualifies as a Mid-Sized CPO at any point during the calendar year must complete and file a separate Schedule B for each Pool that it operated during the calendar year.

Schedule B must be completed and filed quarterly by Large CPOs. Large CPOs must complete and file a Schedule B within 60 days of the close of the most recent Reporting Period during which they satisfied the definition of Large CPO and operated at least one Pool. A CPO that qualifies as a Large CPO at any point during the Reporting Period must complete and file a separate Schedule B for each Pool that it operated during the Reporting Period.

Notwithstanding the above paragraph, certain Mid-Sized CPOs and Large CPOs that are also registered as Investment Advisers with the SEC may be deemed to have satisfied their Schedule B filing requirements by completing and filing Sections 1.b. and 1.c. of Form PF. Whether a Mid-Sized CPO or Large CPO has satisfied its Schedule B filing requirements will depend upon the type of Pools it operated during the calendar year or Reporting Period, respectively. Refer to the instructions of this Form CPO-PQR to determine whether you are required to complete this Schedule B and, if you are, how frequently you are required to file.

Unless otherwise specified in a particular question, all information provided in this Schedule B should be accurate as of the Reporting Date for all Large CPOs and accurate as of December 31 of each calendar year for all Mid-Sized CPOs.

REMINDER: A CPO that qualified as a Mid-Sized CPO at any point during the calendar year or Large CPO at any point during the Reporting Period must complete and file a separate Schedule B for each Pool that it operated during the calendar year or Reporting Period, respectively, if not filing Form PF with the SEC in lieu thereof.

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule B

DETAILED INFORMATION ABOUT THE POOLS OPERATED BY MID-SIZED CPOs AND LARGE CPOs

1. POOL INFORMATION

Provide the following general information concerning the Pool:

a. Pool's name: _____

b. Pool's NFA ID#: _____

c. Does the Pool have a single primary investment strategy or multiple strategies?

☐ Single Primary Strategy ☐ Multiple Strategies

d. Indicate which of the investment strategies below best describe the *reporting fund's* strategies. For each strategy that you have selected, provide a good faith estimate of the percentage of the *reporting fund's net asset value* represented by that strategy. If, in your view, the *reporting fund's* allocation among strategies is appropriately represented by the percentage of deployed capital, you may also provide that information.

(Select the investment strategies that best describe the reporting fund's strategies, even if the descriptions below do not precisely match your characterization of those strategies; select "other" only if a strategy that the reporting fund uses is significantly different from any of the strategies identified below. You may refer to the reporting fund's use of these strategies as of the data reporting date or throughout the reporting period, but you must report using the same basis in future filings.)

(The strategies listed below are mutually exclusive (i.e., do not report the same assets under multiple strategies). If providing percentages of capital, the total should add up to approximately 100%.)

Strategy	% of *NAV* (required)	% of capital (optional)
☐ Equity, Market Neutral		
☐ Equity, Long/Short		
☐ Equity, Short Bias		
☐ Equity, Fundamental		
☐ Macro, Active Trading (high frequency trading)		
☐ Macro, Commodity		
☐ Macro, Currency		
☐ Macro, Global Macro		
☐ Relative Value, Fixed Income Asset Backed		
☐ Relative Value, Fixed Income Convertible Arbitrage		
☐ Relative Value, Fixed Income Corporate		
☐ Relative Value, Fixed Income Sovereign		
☐ Relative Value, Volatility		

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☐ Event Driven, Activist		
☐ Event Driven, Distressed/Restructuring		
☐ Event Driven, Risk Arbitrage/Merger Arbitrage		
☐ Event Driven, Equity Special Situations		
☐ Event Driven, Private Issue/Reg D		
☐ Credit, Fundamental		
☐ Managed Futures/*CTA*		
☐ Quantitative		
☐ Investment in other funds		
☐ Other: _____		

e. Provide the approximate percentage of the Pool's portfolio that is managed using quantitative trading algorithms or quantitative techniques to select investments. Do not include the use of algorithms used solely for trade execution:

☐ 0%
☐ 1-10%
☐ 11-25%
☐ 26-50%
☐ 51-75%
☐ 76-99%
☐ 100%

f. Provide the following information concerning the Pool's participant concentration. Beneficial owners of Pool participations that are Affiliated Entities should be treated as a single participant:

i. Total number of participants in the Pool: ☐
ii. Percentage of the Pool that is beneficially owned by the five largest participants: ☐

g. During the reporting period, approximately what percentage of the Pool's net asset value was managed using high-frequency trading strategies?

(In your response, please do not include strategies using algorithms solely for trade execution. This question concerns strategies that are substantially computer-driven, where decisions to place bids or offers, and to buy or sell, are primarily based on algorithmic responses to intraday price action in equities, futures and options, and where the total number of shares or contracts traded throughout the day is generally significantly larger than the net change in position from one day to the next.)

☐ 0%
☐ 10-25%
☐ 51-75%
☐ 100% or more
☐ less than 10%
☐ 26-50%
☐ 76-99%

2. POOL BORROWINGS AND TYPES OF CREDITORS

Provide the following information concerning the Pool's borrowings and types of creditors. Include all Secured Borrowings and Unsecured Borrowings, but not synthetic borrowings. The percentages entered below for questions 2.b., 2.c., 2.d. and 2.e. should total 100%:

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a. Total Borrowings (dollar amount): [ ]

b. Percentage borrowed from U.S. Financial Institutions: [ ]

c. Percentage borrowed from non-U.S. Financial Institutions: [ ]

d. Percentage borrowed from U.S. creditors that are not Financial Institutions: [ ]

e. Percentage borrowed from non-U.S. creditors that are not Financial Institutions: [ ]

3. POOL COUNTERPARTY CREDIT EXPOSURE

Provide the following information about the Pool's counterparty credit exposure. Do not include CCPs as counterparties and aggregate all Affiliated Entities as a single group for purposes of this question.

Your responses should take into account: (i) mark-to-market gains and losses on derivatives; (ii) margin posted to the counterparty (for subparagraph 3.b.) or margin posted by the counterparty (for subparagraph 3.c.); and (iii) any loans or loan commitments. Your responses should not take into account: (i) assets that the counterparty is holding in custody on your behalf; (ii) derivative transactions that have been executed but not settled; (iii) margin held in a customer omnibus account at a CCP; or (iv) holdings of debt or equity securities issued by the counterparty.

a. Provide the Pool's aggregate net counterparty credit exposure, measured in dollars: [ ]

b. Identify the five counterparties to which the *reporting fund* has the greatest mark-to-market net counterparty credit exposure, measured as a percentage of the *reporting fund's net asset value*.

(For purposes of this question, you should treat affiliated entities as a single group to the extent exposures may be contractually or legally set-off or netted across those entities and/or one affiliate guarantees or may otherwise be obligated to satisfy the obligations of another. CCPs should not be regarded as counterparties for purposes of this question.)

(In your response, you should take into account: (i) mark-to-market gains and losses on derivatives; and (ii) any loans or loan commitments.)

(However, you should not take into account: (i) margin posted by the counterparty; or (ii) holdings of debt or equity securities issued by the counterparty.)

	Legal name of the counterparty (or, if multiple affiliated entities, counterparties)	Indicate below if the counterparty is affiliated with a major financial institution	Exposure (% of reporting fund's net asset value)
i.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	
ii.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	
iii.		[repeat drop-down list of	

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		creditor/counterparty names] Other: _____ [Not applicable]	
iv.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	
v.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	

c. Identify the five counterparties that have the greatest mark-to-market net counterparty credit exposure to the *reporting fund*, measured in U.S. dollars.

(For purposes of this question, you should treat affiliated entities as a single group to the extent exposures may be contractually or legally set-off or netted across those entities and/or one affiliate guarantees or may otherwise be obligated to satisfy the obligations of another. CCPs should not be regarded as counterparties for purposes of this question.)

(In your response, you should take into account: (i) mark-to-market gains and losses on derivatives; and (ii) any loans or loan commitments.)

(However, you should not take into account: (i) margin posted to the counterparty; or (ii) holdings of debt or equity securities issued by the counterparty.)

	Legal name of the counterparty (or, if multiple affiliated entities, counterparties)	Indicate below if the counterparty is affiliated with a major financial institution	Exposure (in U.S. dollars)
i.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	
ii.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	
iii.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	
iv.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	
v.		[repeat drop-down list of creditor/counterparty names] Other: _____ [Not applicable]	

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d. Identify the three types of unregulated entities to which the Pool has the greatest net counterparty exposure, measured as a percentage of the Pool's Net Asset Value:

☐Hedge Fund	_____%	☐Securitized Asset Fund	_____%
☐Private Equity Fund	_____%	☐Other Private Fund	_____%
☐Liquidity Fund	_____%	☐Sovereign Wealth Fund	_____%
☐Venture Capital Fund	_____%	☐Other: [ ]	
☐Real Estate Fund	_____%		

4. POOL TRADING AND CLEARING MECHANISMS

Provide the following information concerning the Pool's use of trading and clearing mechanisms. For purposes of this question: (i) a trade includes any transaction, irrespective of whether entered into on a bilateral basis, on exchange, or through a trading facility or other system, and (ii) transactions for which margin is held in a customer omnibus account at a CCP should be considered cleared by a CCP.

Trading and Clearing of Derivatives

a. For each of the following types of derivatives that are traded by the Pool, estimate the percentage (in terms of notional value) of the Pool's activity that is traded on a regulated exchange as opposed to over-the-counter. The percentages entered for each row should total 100%:

	Traded on a Regulated Exchange	Traded Over-the-Counter
Credit derivatives:		
Interest rate derivatives:		
Commodity derivatives:		
Equity derivatives:		
Foreign exchange derivatives:		
Asset backed securities derivatives:		
Other derivatives:		

b. For each of the following types derivatives that are traded by the Pool, estimate the percentage (in terms of notional value) of the Pool's activity that is cleared by a CCP as opposed to being transacted bilaterally (not cleared by a CCP). The percentages entered for each row should total 100%:

	Cleared by a CCP	Transacted Bilaterally
Credit derivatives:		
Interest rate derivatives:		
Commodity derivatives:		
Equity derivatives:		
Foreign exchange derivatives:		
Asset backed securities derivatives:		
Other derivatives:		

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c. For each of the following types securities that are traded by the Pool, estimate the percentage (in terms of market value) of the Pool's activity that is traded on a regulated exchange as opposed to over-the-counter. The percentages entered for each row should total 100%:

	Traded on a Regulated Exchange	Traded Over-the-Counter
Equity securities:		
Debt securities:		

d. For each of the following types securities that are traded by the Pool, estimate the percentage (in terms of market value) of the Pool's activity that is cleared by a CCP as opposed to being transacted bilaterally (not cleared by a CCP). The percentages entered for each row should total 100%:

	Cleared by a CCP	Transacted Bilaterally
Equity securities:		
Debt securities:		

Clearing of Repos

e. For the repo trades into which the Pool has entered, estimate the percentages (in terms of market value) of the Pool's repo trades that are cleared by a CCP, that are transacted bilaterally (not cleared by a CCP) and that constitute a tri-party repo. Tri-party repo is any repo where the collateral is held at a custodian (not a CCP) that acts as a third party agent to both repo buyer and the repo seller. The percentages entered should total 100%:

	Cleared by a CCP	Transacted Bilaterally	Tri-Party Repo
Repo			

5. VALUE OF THE POOL'S AGGREGATED DERIVATIVE POSITIONS

Provide the aggregate value of all derivative positions of the Pool. The value of any derivative should be its total gross notional value, except that the value of an option should be its delta adjusted notional value. Do not net long and short positions.

Aggregate value of derivative positions: [ ]

6. POOL SCHEDULE OF INVESTMENTS

Provide the Pool's investments in each of the subcategories listed under the following seven headings: (1) Cash; (2) Equities; (3) Alternative Investments; (4) Fixed Income; (5) Derivatives; (6) Options; and (7) Funds. First, determine how the Pool's investments should be allocated among each of these seven categories. Once you have determined how the Pool's investments should be allocated, enter the dollar value of the Pool's total investment in each applicable category on the top, boldfaced line. For example, under the "Cash" heading, the Pool's total investment should be listed on the line reading "Total Cash." After the top, boldfaced line is completed, proceed to the subcategories. For each subcategory, determine whether the Pool has investments that equal or exceed 5% of the Pool's Net Asset Value. If so, provide the dollar value of each such investment in the appropriate subcategory. If the dollar value of any investment in a subcategory equals or exceeds 5% of the Pool's Net Asset Value, you must itemize the investments in that subcategory.

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CASH		
Total Cash		
At Carrying Broker		
At Bank		
EQUITIES	**Long**	**Short**
Total Listed Equities		
Stocks		
a. Energy and Utilities		
b. Technology		
c. Media		
d. Telecommunication		
e. Healthcare		
f. Consumer Services		
g. Business Services		
h. Issued by Financial Institutions		
i. Consumer Goods		
j. Industrial Materials		
Exchange Traded Funds		
American Deposit Receipts		
Other		
Total Unlisted Equities		
Unlisted Equities Issued by Financial Institutions		
ALTERNATIVE INVESTMENTS	**Long**	**Short**
Total Alternative Investments		
Real Estate		
a. Commercial		
b. Residential		
Private Equity		
Venture Capital		
Forex		
Spot		

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a. Total Metals		
i. Gold		
b. Total Energy		
i. Crude oil		
ii. Natural gas		
iii. Power		
c. Other		
Loans to Affiliates		
Promissory Notes		
Physicals		
a. Total Metals		
i. Gold		
b. Agriculture		
c. Total Energy		
i. Crude oil		
ii. Natural gas		
iii. Power		
Other		

FIXED INCOME	**Long**	**Short**
Total Fixed Income		
Notes, Bonds and Bills		
a. Corporate		
i. Investment grade		
ii. Non-investment grade		
b. Municipal		
c. Government		
i. U.S. Treasury securities		
ii. Agency securities		
iii. Foreign (G10 countries)		
iv. Foreign (all other)		
d. Gov't Sponsored		

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e. Convertible

i. Investment grade

ii. Non-investment grade

Certificates of Deposit

a. U.S.

b. Foreign

Asset Backed Securities

a. Mortgage Backed Securities

i. Commercial Securitizations
- A. Senior or higher
- B. Mezzanine
- C. Junior/Equity

ii. Commercial Resecuritizations
- A. Senior or higher
- B. Mezzanine
- C. Junior/Equity

iii. Residential Securitizations
- A. Senior or higher
- B. Mezzanine
- C. Junior/Equity

iv. Residential Resecuritizations
- A. Senior or higher
- B. Mezzanine
- C. Junior/Equity

v. Agency Securitizations
- A. Senior or higher
- B. Mezzanine
- C. Junior/Equity

vi. Agency Resecuritizations
- A. Senior or higher
- B. Mezzanine
- C. Junior/Equity

b. CDO Securitizations
- i. Senior or higher
- ii. Mezzanine
- iii. Junior/Equity

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c. CDO Resecuritizations		
i. Senior or higher		
ii. Mezzanine		
iii. Junior/Equity		
d. CLOs Securitizations		
i. Senior or higher		
ii. Mezzanine		
iii. Junior/Equity		
e. CLO Resecuritizations		
i. Senior or higher		
ii. Mezzanine		
iii. Junior/Equity		
f. Credit Card Securitizations		
i. Senior or higher		
ii. Mezzanine		
iii. Junior/Equity		
g. Credit Card Resecuritizations		
i. Senior or higher		
ii. Mezzanine		
iii. Junior/Equity		
h. Auto-Loan Securitizations		
i. Senior or higher		
ii. Mezzanine		
iii. Junior/Equity		
i. Auto-Loan Resecuritizations		
i. Senior or higher		
ii. Mezzanine		
iii. Junior/Equity		
j. Other		
i. Senior or higher		
ii. Mezzanine		
iii. Junior/Equity		
Repos		
Reverse Repos		

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DERIVATIVES	Positive OTE	Negative OTE
Total Derivatives		
Futures		
a. Indices		
i. Equity		
ii. Commodity		
b. Metals		
i. Gold		
c. Agriculture		
d. Energy		
i. Crude oil		
ii. Natural gas		
iii. Power		
e. Interest Rate		
f. Currency		
g. Related to Financial Institutions		
h. Other		
Forwards		
Swaps		
a. Interest Rate Swap		
b. Equity/Index Swap		
c. Dividend Swap		
d. Currency Swap		
e. Variance Swap		
f. Credit Default Swap		
i. Single name CDS		
A. Related to Financial Institutions		
ii. Index CDS		
iii. Exotic CDS		
g. OTC Swap		
i. Related to Financial Institutions		
h. Total Return Swap		
i. Other		

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OPTIONS	Long Option Value	Short Option Value
Total Options		
Futures		
a. Indices		
i. Equity		
ii. Commodity		
b. Metals		
i. Gold		
c. Agriculture		
d. Energy		
i. Crude oil		
ii. Natural Gas		
iii. Power		
e. Interest Rate		
f. Currency		
g. Related to Financial Institutions		
h. Other		
Stocks		
a. Related to Financial Institutions		
Customized/OTC		
Physicals		
a. Metals		
i. Gold		
b. Agriculture		
c. Currency		
d. Energy		
i. Crude oil		
ii. Natural gas		
iii. Power		
e. Other		

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FUNDS	Long
Total Funds	
Mutual Fund	
a. U.S.	
b. Foreign	
NFA Listed Fund	
Hedge Fund	
Equity Fund	
Money Market Fund	
Private Equity Fund	
REIT	
Other Private funds	
Funds and accounts other than private funds (i.e., the remainder of your assets under management)	

ITEMIZATION

a. If the dollar value of any investment in any subcategory under the heading "Equities," "Alternative Investments" or "Fixed Income" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	Cost	Fair Value	Year-to-Date Gain (Loss)

b. If the dollar value of any investment in any subcategory under the heading "Derivatives" or "Options" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	OTE	Counterparty	Year-to-Date Gain (Loss)

c. If the dollar value of any investment in any subcategory under the heading "Funds" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Fund Name	Fund Type	Fair Value	Year-to-Date Gain (Loss)

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7. MISCELLANEOUS

In the space below, provide explanations to clarify any assumptions that you made in responding to any question in Schedule B of this Form CPO-PQR. Assumptions must be in addition to, or reasonably follow from, any instructions or other guidance provided in, or in connection with, Schedule B of this Form CPO-PQR. If you are aware of any instructions or other guidance that may require a different assumption, provide a citation and explain why that assumption is not appropriate for this purpose.

Question Number	*Explanation*

– This Completes Schedule B of Form CPO-PQR –

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

INSTRUCTIONS FOR COMPLETING SCHEDULE C

A CPO is only required to complete and file Schedule C of this Form CPO-PQR if at any point during the Reporting Period the CPO qualified as a Large CPO.

Schedule C must be completed and filed only by Large CPOs. Large CPOs must complete and file a Schedule C for every Reporting Period during which they satisfy the definition of a Large CPO and operate at least one Pool. A CPO that qualifies as a Large CPO at any point during the Reporting Period must complete and file a separate Part 2 of Schedule C for each Large Pool that it operated during the Reporting Period.

No Schedule C Filing Requirements
Any Large CPO that is: (i) registered with the SEC as an Investment Adviser; and (ii) operated only Pools that satisfy the definition of Private Fund during the Reporting Period will be deemed to have satisfied its Schedule C filing requirements by completing and filing Section 2 of Form PF for the Reporting Period in question.

Limited Schedule C Filing Requirements
However, any Large CPO that is: (i) registered with the SEC as an Investment Adviser; and (ii) operated any Pools that do not satisfy the definition of Private Fund during the Reporting Period may choose to file the relevant sections of Form PF with respect to those funds. For Large CPOs that do not choose to file Form PF for Pools that are not Private Funds, Part 1 of Schedule C will need to be completed with respect to all Pools that they operated during the Reporting Period that did not satisfy the definition of Private Fund, and Part 2 of Schedule C will need to be completed with respect to each Large Pools that they operated during the Reporting Period that did not satisfy the definition of Private Fund. These Schedule C filings will need to be completed in addition to the Large CPO's Form PF filing requirements.

Refer to the instructions of this Form CPO-PQR to determine whether you are required to complete this Schedule C.

Part 1 of Schedule C asks the Large CPO to provide information on the aggregated investments of all Pools that are not Private Funds that were operated by the Large CPO during the most recent Reporting Period. Any Large CPO who has completed and filed Section 2 of Form PF for the Private Funds it operated during this Reporting Period, and who is choosing to file Part 1 of Schedule C for Pools that are not Private Funds, must answer Part 1 only with respect to the Pools that are not Private Funds.

Part 2 of Schedule C asks the Large CPO to provide certain risk metrics for each Large Pool that is not a Private Fund that was operated by the Large CPO during the most recent Reporting Period. A Large CPO must complete and file a separate Part 2 of Schedule C for each Large Pool that is not a Private Fund that the Large CPO operated during the most recent Reporting Period. Any Large CPO who has completed and filed Section 2 of the SEC's Form PF for the Private Funds it operated during this Reporting Period, and who is choosing to file Part 2 of Schedule C for Pools that are not Private Funds, should be sure to complete and file a Part 2 only for its Large Pools that are not Private Funds.

Unless otherwise specified in a particular question, all information provided in this Schedule C should be accurate as of the Reporting Date.

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

1. GEOGRAPHICAL BREAKDOWN OF POOLS' INVESTMENTS

a. Provide a geographical breakdown of the investments (by percentage of aggregated Assets Under Management) of all Pools that are not Private Funds that were operated by the Large CPO during the most recent Reporting Period. Except for foreign exchange derivatives, investments should be allocated by the jurisdiction of the organization of the issuer or counterparty. For foreign exchange derivatives, investments should be allocated by the country to whose currency the Pool has exposure through the derivative. The percentages entered below should total 100%.

(i)	Africa	
(ii)	Asia and Pacific (other than the Middle East)	
(iii)	Europe (*EEA*)	
(iv)	Europe (other than *EEA*)	
(v)	Middle East	
(vi)	North America	
(vii)	South America	
(viii)	Supranational	

b. Provide the value of investments in the following countries held by the *hedge funds* that you advise (by percentage of the total *net asset value* of these *hedge funds*).

(Exclude interest rate derivatives and foreign exchange derivatives from both the numerator and denominator.)

	Country	% of NAV
(i)	Brazil	
(ii)	China (including Hong Kong)	
(iii)	India	
(iv)	Japan	
(v)	Russia	
(vi)	United States	

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2. TURNOVER RATE OF AGGREGATE PORTFOLIO OF POOLS

Provide the turnover rate by volume for the aggregate portfolio of all Pools that are not Private Funds and that were operated by the Large CPO during the most recent Reporting Period. The turnover rate should be calculated as follows:

Divide the lesser of the amounts of the Pools' purchases or sales of assets for the month by the average of the value of the Pools' assets during the month. Calculate the "monthly average" by totaling the values of Pools' assets as of the beginning and the end of the month and dividing that sum by two.

i. Do not net long and short positions. However, in relation to derivatives, packages such as call-spreads may be treated as a single position (rather than as a long position and a short position).

ii. The value of any derivative should be its total gross notional value, except that the value of an option should be its delta adjusted notional value

iii. "Purchases" include any cash paid upon the conversion of one asset into another and the costs of rights or warrants.

iv. "Sales" include net proceeds of the sale of rights and warrants and net proceeds of assets that have been called or for which payment has been made through redemption or maturity.

v. Include proceeds from a short sale in the amount of sales of assets in the relevant subcategory during the month. Include the costs of covering a short sale in the amount of purchases in the relevant subcategory during the month.

vi. Include premiums paid to purchase options and premiums received from the sale of options in the amount of purchases during the month.

	First Month		Second Month		Third Month
Open Positions:					

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

PART 2 · INFORMATION ABOUT THE LARGE POOLS OF LARGE CPOs

REMINDER: A CPO that qualified as a Large CPO at any point during the most recent Reporting Period must complete and file a separate Part 2 of Schedule C for each Pool that is not a Private Fund that the Large CPO operated during the most recent Reporting Period.

1. LARGE POOL INFORMATION

Provide the following general information concerning the Large Pool:

a. Large Pool's name: [ ]

b. Large Pool's NFA ID#: [ ]

c. If the Pool has a Co-CPO, or Co-CPOs provide the name of CPO reporting the Pool's information:

[ ]

d. Total unencumbered cash held by the Large Pool at the close of each month during the Reporting Period:

	First Month	Second Month	Third Month
Unencumbered Cash:			

e. Total number of open positions (approximate) held by the Large Pool at the close of each month during the Reporting Period:

	First Month	Second Month	Third Month
Open Positions:			

2. LIQUIDITY OF LARGE POOL'S PORTFOLIO

Provide the percentage of the Large Pool's portfolio (excluding cash and cash equivalents) that may be liquidated within each of the periods specified below. Each asset should be assigned only to one period and such assignment should be based on the shortest period during which such asset could reasonably be liquidated. Make good faith assumptions for liquidity based on market conditions during the most recent Reporting Period. Assume no "fire-sale" discounting. If certain positions are important contingent parts of the same trade, then all contingent parts of the trade should be listed in the same period as the least liquid part.

	Percentage of Portfolio Capable of Liquidation in:
1 day or less:	
2 days – 7 days:	
8 days – 30 days:	
31 days – 90 days:	
91 days – 180 days:	
181 days – 365 days:	
longer than 365 days:	

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CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

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3. LARGE POOL COUNTERPARTY CREDIT EXPOSURE

Provide the following information about the Pool's counterparty credit exposure. Do not include CCPs as counterparties and aggregate all Affiliated Entities as a single group for purposes of this question. For purposes of this question, include as collateral any assets purchased in connection with a reverse repo and any collateral that the counterparty has posted to the Large Pool under an arrangement pursuant to which the Large Pool has loaned securities to the counterparty. If you do not separate collateral into initial margin/independent amount and variation margin amounts, or a trade does not require posting of variation margin, then include all of the collateral in initial margin/independent amount.

a. For each of the five counterparties identified in question 3.b. of Schedule B, provide the following information regarding the collateral and other credit support that the counterparty has posted to the Large Pool.

i. Provide the following values of the collateral posted to the Large Pool:

	Initial Margin/ Independent Amounts	Variation Margin
Value of collateral posted in the form of cash and cash equivalents:		
Value of collateral posted in the form of securities (other than cash /cash equivalents):		
Value of all other collateral posted:		

ii. Provide the following percentages of margin amounts that have been rehypothecated or may be rehypothecated by the Large Pool:

	May be Rehypothecated	The Large Pool has Rehypothecated
Percentage of initial margin/independent amounts that:		
Percentage of variation margin that:		

iii. Provide the face amount of letters of credit or other similar third party credit support posted to the Large Pool: [ ]

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b. For each of the five counterparties identified in question 3.c. of Schedule B, provide the following information regarding the collateral and other credit support that the Large Pool has posted to the counterparty.

i. Provide the following values of the collateral posted by the Large Pool to the counterparty:

	Initial Margin/ Independent Amounts	Variation Margin
Value of collateral posted in the form of cash and cash equivalents:		
Value of collateral posted in the form of securities (other than cash /cash equivalents):		
Value of all other collateral posted:		

ii. Provide the following percentages of margin amounts posted by the Large Pool that have been rehypothecated or may be rehypothecated by the counterparty:

	May be Rehypothecated
Percentage of initial margin/independent amounts that:	
Percentage of variation margin that:	

iii. Provide the face amount of letters of credit or other similar third party credit support posted by the Large Pool to the counterparty: ☐

c. Did the pool clear any transactions through a CCP during the reporting period?

☐ Yes ☐ No

4. LARGE POOL RISK METRICS

Provide the following information concerning the Large Pool's risk metrics during the Reporting Period:

a. Did the Large CPO regularly calculate the VaR of the Large Pool during the Reporting Period:

☐ Yes ☐ No

b. If "Yes," provide the following information concerning the VaR calculation(s). If you regularly calculate the VaR of the Large Pool using multiple combinations of confidence interval, horizon and historical observation period, complete a separate question 4.b. of Part 2 of Schedule C for each such combination.

i. What confidence interval was used (e.g. 1 – alpha) (as a percentage): ☐

ii. What time horizon was used (in number of days): ☐

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iii. What weighting method was used:

☐ None ☐ Other: ☐

☐ Exponential

If "exponential" provide the weighting factor used: ☐

iv. What method was used to calculate VaR:

☐ Historical simulation
☐ Parametric
☐ Monte Carlo simulation
☐ Other ☐

v. Historical look-back period used, if applicable: ☐

vi. Under the above parameters, what was VaR for the Large Pool for each of the three months of the Reporting Period, stated as a percent of Net Asset Value:

	First Month	Second Month	Third Month
VaR:			

c. Are there any risk metrics other than (or in addition to) *VaR* that you consider to be important to the *reporting fund's* risk management?

(If none, "None.") ☐

d. For each of the market factors specified below, determine the effect that each specified change would have on the Large Pool's portfolio and provide the results, stated as a percent of Net Asset Value.

You may omit a response to any of the specified market factors that the Large CPO does not regularly consider (whether in formal testing or otherwise) in the Large Pool's risk management. If you omit any market factor, check the box in the first column indicating that this market factor is "Not Relevant" to the Large Pool's portfolio.

For each specified change in market factor, separate the effect on the Large Pool's portfolio into long and short components where (i) the long component represents the aggregate result of all positions with a positive change in valuation under a specified change and (ii) the short component represents the aggregate result of all positions with a negative change in valuation under a specified change.

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Observe the following regarding the market factors specified below:

i. A change in "equity prices" means that the prices of all equities move up or down by the specified change, without regard to whether the equities are listed on any exchange or included in any index.

ii. "Risk free interest rates" means rates of interest accruing on sovereign bonds issued by governments having the highest credit quality, such as U.S. Treasury bonds.

iii. A change in "credit spreads" means that all credit spreads against risk free interest rates change by the specified amount.

iv. A change in "currency rates" means that the value of all currencies move up or down by the specified amount.

v. A change in "commodity prices" means that the prices of all physical commodities move up or down by the specified amount.

vi. A change in "implied options volatilities" means the implied volatilities of all the options that the Large Pool holds increase or decrease by the specified number of percentage points; and

vii. A change in "default rates" means that the rate at which debtors on all instruments of the specified type increases or decreases by the specified number of percentage points.

Not Relevant	Relevant/not formally tested	Market Factor: Equity Prices		Effect on long component of portfolio (as % of NAV)		Effect on short component of portfolio (as % of NAV)
☐	☐					
		Equity prices increase 5%				
		Equity prices decrease 5%				
		Equity prices increase 20%				
		Equity prices decrease 20%				

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Not Relevant	Relevant/not formally tested	Market Factor: Risk Free Interest Rates		Effect on long component of portfolio (as % of NAV)		Effect on short component of portfolio (as % of NAV)
☐	☐					
		Risk free interest rates increase 25 bp				
		Risk free interest rates decrease 25 bp				
		Risk free interest rates increase 75 bp				
		Risk free interest rates decrease 75 bp				

Not Relevant	Relevant/not formally tested	Market Factor: Credit Spreads		Effect on long component of portfolio (as % of NAV)		Effect on short component of portfolio (as % of NAV)
☐	☐					
		Credit spreads increase 50bp				
		Credit spreads decrease 50 bp				
		Credit spreads increase 250 bp				
		Credit spreads decrease 250 bp				

Not Relevant	Relevant/not formally tested	Market Factor: Currency Rates		Effect on long component of portfolio (as % of NAV)		Effect on short component of portfolio (as % of NAV)
☐	☐					
		Currency rates increase 5%				
		Currency rates decrease 5%				
		Currency rates increase 20%				
		Currency rates decrease 20%				

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Not Relevant	Relevant/not formally tested	Market Factor: Commodity Prices		Effect on long component of portfolio (as % of NAV)		Effect on short component of portfolio (as % of NAV)
☐	☐					
		Commodity prices increase 10%				
		Commodity prices decrease 10%				
		Commodity prices increase 40%				
		Commodity prices decrease 40%				

Not Relevant	Relevant/not formally tested	Market Factor: Options Implied Volatility		Effect on long component of portfolio (as % of NAV)		Effect on short component of portfolio (as % of NAV)
☐	☐					
		Implied volatilities increase 4 percentage points				
		Implied volatilities decrease 4 percentage points				
		Implied volatilities increase 10 percentage points				
		Implied volatilities decrease 10 percentage points				

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Not Relevant	Relevant/not formally tested	Market Factor: Default Rates for ABS		Effect on long component of portfolio (as % of NAV)		Effect on short component of portfolio (as % of NAV)
☐	☐					
		Default rates increase 1 percentage point				
		Default rates decrease 1 percentage point				
		Default rates increase 5 percentage points				
		Default rates decrease 5 percentage points				

Not Relevant	Relevant/not formally tested	Market Factor: Default Rates for Corporate Bonds		Effect on long component of portfolio (as % of NAV)		Effect on short component of portfolio (as % of NAV)
☐	☐					
		Default rates increase 1 percentage point				
		Default rates decrease 1 percentage point				
		Default rates increase 5 percentage points				
		Default rates decrease 5 percentage points				

5. LARGE POOL BORROWING INFORMATION

Provide the following information concerning the value of the Large Pool's borrowings for each of the three months of the Reporting Period, types of creditors and the collateral posted to secure borrowings. For the purposes of this question, "borrowings" includes both Secured Borrowings and Unsecured Borrowings. For each type of borrowing specified below, provide the dollar amount of the Large Pool's borrowings and the percentage borrowed from each of the specified types of creditors. The percentages entered in each month's column should total 100%.

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a. Unsecured Borrowing:

	First Month	Second Month	Third Month
Total Dollar amount:			
Percentage borrowed from U.S. Financial Institutions			
Percentage borrowed from Non-U.S. Financial Institutions			
Percentage borrowed from non- U.S, creditors that are not Financial Institutions			
Percentage borrowed from U.S creditors that are not Financial Institutions			

b. Secured Borrowing:

Classify Secured Borrowings according to the legal agreement governing the borrowing (e.g., Global Master Repurchase Agreement for repos and Prime Brokerage Agreement for prime brokerage). Please note that for repo borrowings, the amount should be the net amount of cash borrowed (after taking into account any initial margin/independent amount, "haircuts" and repayments). Positions under a Global Master Repurchase Agreement should not be netted.

i. Via prime brokerage:

	First Month	Second Month	Third Month
Total Dollar amount:			
Value of collateral posted in the form of cash and cash equivalents			
Value of collateral posted in the form of securities (not cash/cash equivalents)			
Value of other collateral posted			
Face amount of letters of credit (or similar third party credit support) posted			
Percentage of posted collateral that may be rehypothecated			
Percentage borrowed from U.S. Financial Institutions			
Percentage borrowed from Non-U.S. Financial Institutions			
Percentage borrowed from creditors that are not Financial Institutions			

ii. Via repo. For the questions concerning collateral via repo, include as collateral any assets sold in connection with the repo as well as any variation margin.

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	First Month	Second Month	Third Month
Total Dollar amount:			
Value of collateral posted in the form of cash and cash equivalents			
Value of collateral posted in the form of securities (not cash/cash equivalents)			
Value of other collateral posted			
Face amount of letters of credit (or similar third party credit support) posted			
Percentage of posted collateral that may be rehypothecated			
Percentage borrowed from U.S. Financial Institutions			
Percentage borrowed from Non-U.S. Financial Institutions			
Percentage borrowed from creditors that are not Financial Institutions			

iii. Other Secured Borrowings:

	First Month	Second Month	Third Month
Total dollar amount:			
Value of collateral posted in the form of cash and cash equivalents			
Value of collateral posted in the form of securities (not cash/cash equivalents)			
Value of other collateral posted			
Face amount of letters of credit (or similar third party credit support) posted			
Percentage of posted collateral that may be rehypothecated			
Percentage borrowed from U.S. Financial Institutions			
Percentage borrowed from Non-U.S. Financial Institutions			
Percentage borrowed from creditors that are not Financial Institutions			

6. LARGE POOL DERIVATIVE POSITIONS AND POSTED COLLATERAL

Provide the following information concerning the value of the Large Pool's derivative positions and the collateral posted to secure those positions for each of the three months of the Reporting Period. For the value of any

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derivative, except options, should be its total gross notional value. The value of an option should be its delta adjusted notional value. Do not net long and short positions.

	First Month	Second Month	Third Month
Aggregate value of all derivative positions:			
Value of collateral posted in the form of cash and cash equivalents			
As initial margin/independent amounts:			
As variation margin:			
Value of collateral posted in the form of securities (not cash/cash equivalents)			
As initial margin/independent amounts:			
As variation margin:			
Value of other collateral posted			
As initial margin/independent amounts:			
As variation margin:			
Face amount of letters of credit (or similar third party credit support) posted			
Percentage of initial margin/independent amounts that may be rehypothecated:			
Percentage of variation margin that may be rehypothecated:			

7. LARGE POOL FINANCING LIQUIDITY

Provide the following information concerning the Large Pool's financing liquidity:

a. Provide the aggregate dollar amount of cash financing drawn by or available to the Large Pool, including all drawn and undrawn, committed and uncommitted lines of credit as well as any term financ

b. Below, enter the percentage of cash financing (as stated in response to question 7.a.) that is contractually committed to the Large Pool by its creditor(s) for the specified periods of time. Amounts of financing should be divided among the specified periods of time in accordance with the longest period for which the creditor is contractually committed to providing such financing. For purposes of this question, if a creditor (or syndicate or administrative/collateral agent) is permitted to unilaterally vary the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral, then the line of credit should be deemed uncommitted.

	Percentage of Total Financing:
1 day or less:	
2 days – 7 days:	

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8 days – 30 days:	
31 days – 90 days:	
91 days – 180 days:	
181 days – 364 days:	
365 days or longer:	

8. LARGE POOL PARTICIPANT INFORMATION

Provide the following information concerning the Large Pool's participants:

a. As of the Reporting Date, what percentage of the Large Pool's Net Asset Value:

	Percentage of Large Pool's NAV
Is subject to a "side pocket" arrangement:	
May be subject to a suspension of participant withdrawal or redemption by the Large CPO or other governing body:	
May be subject to material restrictions of participant withdrawal or redemption by the Large CPO or other governing body:	
Is subject to a daily margin requirement:	

b. For within the specified periods of time below, enter the percentage of the Large Pool's Net Asset Value that could have been withdrawn or redeemed by the Large Pool's participants as of the Reporting Date. The Large Pool's Net Asset Value should be divided among the specified periods of time in accordance with the shortest period within which participant assets could be withdrawn or redeemed. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals or redemptions and that there are no redemption fees. Base your answers on the valuation date rather than the date on which proceeds are paid to the participant(s). The percentages entered below should total 100%.

	Percentage of Total Financing:
1 day or less:	
2 days – 7 days:	
8 days – 30 days:	
31 days – 90 days:	
91 days – 180 days:	
181 days – 365 days:	
365 days or longer:	

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

9. DURATION OF LARGE POOL'S FIXED INCOME ASSETS

Reporting fund exposures.

(Give a dollar value for long and short positions as of the last day in each month of the reporting period, by sub-asset class, including all exposure whether held physically, synthetically or through derivatives. Enter "NA" in each space for which there are no relevant positions.)

(Include any closed out and OTC forward positions that have not yet expired/matured. Do not net positions within sub-asset classes. Positions held in side-pockets should be included as positions of the hedge funds. Provide the absolute value of short positions. Each position should only be included in a single sub-asset class.)

(Where "duration/WAT/10-year eq." is required, provide at least one of the following with respect to the position and indicate which measure is being used: bond duration, weighted average tenor or 10-year bond equivalent. Duration and weighted average tenor should be entered in terms of years to two decimal places.)

	1st Month		2nd Month		3rd Month	
	LV	SV	LV	SV	LV	SV
a. Listed equity						
i. Issued by financial institutions.....						
ii. Other listed equity						
b. Unlisted equity						
i. Issued by financial institutions.....						
ii. Other unlisted equity.....						
c. Listed equity derivatives						
i. Related to financial institutions.....						
ii. Other listed equity derivatives						
d. Derivative exposures to unlisted equities						
i. Related to financial institutions.....						
ii. Other derivative exposures to unlisted equities.....						
e. Corporate bonds issued by financial institutions (other than convertible bonds)						
i. Investment grade						
☐ Duration ☐ WAT ☐ 10-year eq..						
ii. Non-investment grade						
☐ Duration ☐ WAT ☐ 10-year eq..						

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

f. Corporate bonds not issued by financial institutions (other than convertible bonds)

i. Investment grade						
☐ Duration ☐ WAT ☐ 10-year eq. .						
ii. Non-investment grade						
☐ Duration ☐ WAT ☐ 10-year eq. .						

g. Convertible bonds issued by financial institutions

i. Investment grade						
☐ Duration ☐ WAT ☐ 10-year eq. .						
ii. Non-investment grade						
☐ Duration ☐ WAT ☐ 10-year eq. .						

h. Convertible bonds not issued by financial institutions

i. Investment grade						
☐ Duration ☐ WAT ☐ 10-year eq. .						
ii. Non-investment grade						
☐ Duration ☐ WAT ☐ 10-year eq. .						

i. Sovereign bonds and municipal bonds

i. U.S. treasury securities						
☐ Duration ☐ WAT ☐ 10-year eq. .						
ii. Agency securities						
☐ Duration ☐ WAT ☐ 10-year eq. .						
iii. GSE bonds.....						
☐ Duration ☐ WAT ☐ 10-year eq. .						
iv. Sovereign bonds issued by G10 countries other than the U.S.....						
☐ Duration ☐ WAT ☐ 10-year eq. .						
v. Other sovereign bonds (including supranational bonds).....						
☐ Duration ☐ WAT ☐ 10-year eq. .						
vi. U.S. state and local bonds.....						
☐ Duration ☐ WAT ☐ 10-year eq. .						

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

j. Loans						
i. Leveraged loans						
☐ Duration ☐ WAT ☐ 10-year eq.						
ii. Other loans (not including repos)						
☐ Duration ☐ WAT ☐ 10-year eq.						
k. Repos						
☐ Duration ☐ WAT ☐ 10-year eq.						
l. ABS/structured products						
i. MBS						
☐ Duration ☐ WAT ☐ 10-year eq.						
ii. ABCP						
☐ Duration ☐ WAT ☐ 10-year eq.						
iii. CDO/CLO						
☐ Duration ☐ WAT ☐ 10-year eq.						
iv. Other ABS						
☐ Duration ☐ WAT ☐ 10-year eq.						
v. Other structured products						
m. Credit derivatives						
i. Single name CDS						
ii. Index CDS						
iii. Exotic CDS						
n. Foreign exchange derivatives (investment)						
o. Foreign exchange derivatives (hedging)						
p. Non-U.S. currency holdings						
q. Interest rate derivatives						
r. Commodities (derivatives)						
i. Crude oil						
ii. Natural gas						
iii. Gold						
iv. Power						

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template · Schedule C

v. Other commodities						
s. Commodities (physical)						
i. Crude oil						
ii. Natural gas						
iii. Gold						
iv. Power						
v. Other commodities						
t. Other derivatives						
u. Physical real estate						
v. Investments in internal private funds						
w. Investments in external private funds						
x. Investments in registered investment companies						
y. Cash and cash equivalents						
i. Certificates of deposit						
☐ Duration ☐ WAT ☐ 10-year eq.						
ii. Other deposits						
iii. Money market funds						
iv. Other cash and cash equivalents (excluding government securities)						
z. Investments in funds for cash management purposes (other than money market funds)						
aa. Investments in other sub-asset classes						

10. MISCELLANEOUS

In the space below, provide explanations to clarify any assumptions that you made in responding to any question in Schedule B of this Form CPO-PQR. Assumptions must be in addition to, or reasonably follow from, any instructions or other guidance provided in, or in connection with, Schedule B of this Form CPO-PQR. If you are aware of any instructions or other guidance that may require a different assumption, provide a citation and explain why that assumption is not appropriate for this purpose.

Question Number	*Explanation*

– This Completes Schedule C of Form CPO-PQR –

TEMPLATE: DO NOT SEND TO NFA

CFTC POOL QUARTERLY REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

OATH

BY FILING THIS REPORT, THE UNDERSIGNED AGREES THAT THE ANSWERS AND INFORMATION PROVIDED HEREIN are complete and accurate, and are not misleading in any material respect to the best of the undersigned's knowledge and belief. Furthermore, by filing this Form CPO-PQR, the undersigned agrees that he or she knows that it is unlawful to sign this Form CPO-PQR if he or she knows or should know that any of the answers and information provided herein is not accurate and complete.

Name of the individual signing this Form CPO-PQR on behalf of the CPO:

Capacity in which the above is signing on behalf of the CPO:

■ 10. Add appendix C to part 4 to read as follows:

Appendix C to Part 4—Form CTA–PR

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION

CFTC Form CTA-PR
OMB No.: 3038-XXXX

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Instructions for Using the Form CTA-PR Template

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING OR REVIEWING THE REPORTING FORM.

This document is not a reporting form. Do not send this document to NFA. It is a template that you may use to assist in filing the electronic reporting form with the NFA at: http://www.nfa.futures.org.

You may fill out the template online and save and/or print it when you are finished or you can download the template and/or print it and fill it out later.

DEFINED TERMS

Words that are underlined in this form are defined terms and have the meanings contained in the Definitions of Terms section.

GENERAL

Read the Instructions and Questions Carefully

Please read the instructions and the questions in this Form CTA-PR carefully. A question that is answered incorrectly because it was misread or misinterpreted can severely impact your ability to operate as a CTA.

In this Form CTA-PR, "you" means the CTA.

Call CFTC with Questions

If there is any question about whether particular information must be provided or about the manner in which particular information must be provided, contact the CFTC for clarification.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Instructions for Using the Form CTA-PR Template

REPORTING INSTRUCTIONS

1. All CTAs Are Required to Complete and File the Form CTA-PR Annually.

2. The Form CTA-PR Must Be Filed Electronically with NFA

All CTAs must file their Forms CTA-PR electronically using NFA's EasyFile System. NFA's EasyFile System can be accessed through NFA's website at www.nfa.futures.org. You will use the same logon and password for filing your Form CTA-PR as you would for any other EasyFile filings. Questions regarding your NFA ID# or your use of NFA's EasyFile system should be directed to the NFA. The NFA's contact information is available on its website.

3. All Figures Reported in U.S. Dollars

All questions asking for amounts or investments must be reported in U.S. dollars. Any amounts converted to U.S. dollars must use the conversion rate in effect on the Reporting Date.

4. Use of U.S. GAAP

All financial information in this Report must be presented and computed in accordance with Generally Accepted Accounting Principles consistently applied.

5. Oath and Affirmation

This Form CTA-PR will not be accepted unless it is complete and contains an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; provided however, that is shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in this Form CTA-PR is not accurate and complete.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Definitions of Terms for the Form CTA-PR Template

DEFINITIONS OF TERMS

Commodity Futures Trading Commission or CFTC: The term "Commodity Futures Trading Commission" or "CFTC" refers to the United States Commodity Futures Trading Commission.

Commodity Pool or Pool: The term "Commodity Pool" or "Pool" has the same meaning as "commodity pool" as defined in section 1a(10) of the Commodity Exchange Act.

Commodity Trading Advisor: The term "commodity trading advisor" or "CTA" has the same meaning as "commodity trading adviser" as defined in section 1a(12) of the Commodity Exchange Act.

Direct: The term "Direct" as used in the context of trading commodity interest accounts, has the same meaning as "direct" as defined in CFTC Rule 4.10(f).

Form CTA-PR: The term "Form CTA-PR" refers to this Form CTA-PR.

GAAP: The term "Generally Accepted Accounting Principles" refers to U.S. GAAP.

National Futures Association or NFA: The term "National Futures Association" or "NFA" refers to the National Futures Association, a registered futures association under Section 17 of the Commodity Exchange Act.

Reporting Date: The term "Reporting Date" means the last calendar day of the calendar year for which this Form CTA-PR is required to be completed and filed.

Trading Program: The term "Trading Program has the same meaning as "trading program" as defined in CFTC Rule 4.10(g).

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template

INFORMATION ABOUT THE CTA

1. CTA INFORMATION

Provide the following general information concerning the CTA:

a. CTA's Name: [ ]

b. CTA's NFA ID#: [ ]

c. Person to contact concerning this Form CTA-PR: [ ]

d. Total number of Trading Programs offered by the CTA: [ ]

e. Total number of Trading Programs offered by the CTA under which the CTA Directs Pool assets: [ ]

2. POOL ASSETS DIRECTED BY THE CTA

Provide the following information concerning the amount of assets Directed by the CTA:

a. Total assets Directed by CTA: [ ]

b. Total Pool assets Directed by CTA: [ ]

c. Name(s) of Pools advised by the CTA: [ ]

d: Name of the reporting CPO for each Pool identified in 2.c. above: [ ]

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Oath

OATH

BY FILING THIS Form CTA-PR, THE UNDERSIGNED AGREES THAT THE ANSWERS AND INFORMATION PROVIDED HEREIN are complete and accurate, and are not misleading in any material respect to the best of the undersigned's knowledge and belief. Furthermore, by filing this Form CTA-PR, the undersigned agrees that he or she knows that it is unlawful to sign this Form CTA-PR if he or she knows or should know that any of the answers and information provided herein is not accurate and complete.

Name of the individual signing this Form CTA-PR on behalf of the CTA:

Capacity in which the above is signing on behalf of the CTA:

BILLING CODE 6351–01–C

PART 145—COMMISSION RECORDS AND INFORMATION

■ 11. The authority citation for part 145 continues to read as follows:

Authority: Publ. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)).

■ 12. In § 145.5, revise paragraphs (d)(1)(viii) and (h) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) * * *

(1) * * *

(viii) The following reports and statements that are also set forth in paragraph (h) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

(A)(*1*) The following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and (d); Question 3, subparts (g) and (h); Question 9; Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Schedules B and C;

(*2*) The following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Question 2, subparts (c) and (d);

* * * * *

(h) Contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (d)(1)(viii) of this section, except as specified in 17 CFR 1.10(g)(2) and 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

(1) The following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and (d); Question 3, subparts (g) and (h); Question 9; Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13; and Schedules B and C;

(2) The following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Question 2, subparts (c) and (d); and

* * * * *

PART 147—OPEN COMMISSION MEETINGS

■ 13. The authority citation for part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)).

■ 14. In § 147.3, revise paragraphs (b)(4)(i)(H) and (b)(8) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4)(i) * * *

(H) The following reports and statements that are also set forth in paragraph (b)(8) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10;

FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); the following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and (d); Question 3, subparts (g) and (h); Question 9; Question 10, subparts (b), (c), (d), (e), and (g); Question 11; and Question 12; and Schedules B and C; and the following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Question 2, subparts (c) and (d);

* * * * *

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (b)(4)(i)(H) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

(i) The following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and D; Question 3, subparts (g) and (h); Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13; and Schedules B and C; and

(ii) The following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Schedule B: Question 4, subparts (b), (c), (d), and (e); Question 5; and Question 6;

* * * * *

Issued in Washington, DC, on February 8, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

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

Appendices to Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler, Commissioners Chilton, O'Malia and Wetjen voted in the affirmative; Commissioners Sommers voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule increasing the transparency to regulators of commodity pool operators (CPOs) and commodity trading advisors (CTAs) acting in the derivatives marketplace—for both futures and swaps. This rule reinstates the regulatory requirements in place prior to 2003 for registered investment companies that trade over a de minimis amount in commodities or market themselves as commodity funds. This rule enhances transparency in a number of ways and increases customer protections through amendments to the compliance obligations for CPOs and CTAs.

First, these amendments are consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), as these changes bring the swaps activities of CPOs and CTAs under the CFTC's oversight. If CPOs and CTAs are trading swaps, they will have to register with the Commission, giving their customers the benefit of the protections in the Dodd-Frank Act.

Second, these amendments addressed the concerns raised by the National Futures Association (NFA) in its petition requesting the Commission to reinstate Commission oversight of CPOs and CTAs for futures that existed prior to 2003. Since 2003, the participation of registered investment companies in commodity futures, swaps, and options markets has increased significantly. Some registered investment companies have been marketing commodity pools to retail investors and are operating without the supervision of the CFTC and the NFA. In addition, foreign advisors with U.S. customers have been exempt from supervision since 2003. The final rule reinstates the protections that futures customers of CPOs and CTAs had prior to the exemptions the Commission granted in 2003. It is critical to bring the pools that have been in the dark since 2003 back into the light so their customers can benefit from the CFTC's oversight.

Third, the final rule increases transparency to regulators by enhancing data available to the Commission and the NFA, providing a much more complete understanding of how these pools are operating in the derivatives markets for futures and swaps. The data, which CPOs and CTAs will submit through Form CPO–PQR and Form CTA–PR, will help the Commission develop further regulatory protections for customers of these entities, market participants and the American public.

The Commission benefited from significant public comment on this rule. Some commenters raised questions about the definition of bona fide hedging under section 4.5, in particular that risk mitigation positions were not included in such bona fide hedging transactions. The final rule provides treatments consistent with the Commission's treatment of registered investment companies prior to 2003, and, in fact, this rule reinstates criteria in place before 2003. The Commission determined not to include risk management positions within the bona fide hedging exemption because many, if not most, positions in a portfolio could potentially be characterized as serving a risk management purpose. This would result in an overly broad exclusion from the definition of CPO.

Further, bona fide hedging transactions are excluded from determining whether a registered investment company has to register under 4.5, though these transactions are not excluded when determining whether commodity pools not registered with the Securities and Exchange Commission (SEC) will be required to register with the CFTC under section 4.13(a)(3). With respect to the consideration of bona fide hedging positions under 4.13(a)(3), the Commission previously stated its position that bona fide hedging positions should not be excluded within the de minimis exemption in 4.13(a)(3) when it proposed that rule. In the proposal for 4.13(a)(3) (68 FR 12622, 12627), the Commission stated its belief that 4.13(a)(3) should not differentiate between trading for bona fide hedging and non-hedging purposes because the rule is intended to apply to strictly de minimis situations, where trading is limited regardless of purpose. Conversely, the exclusion under 4.5 was not solely determined by the de minimis nature of the trading, but rather the combination of the de minimis amount of trading *and* the fact that the investment vehicle was otherwise regulated by the SEC. *See* 67 FR 65743.

Several commenters asked the Commission to reconsider the treatment of family offices under these rules. The Commission will continue to permit family offices to rely on existing guidance for family offices seeking relief from the requirements of Part 4. The Commission also is directing staff to look into the possibility of adopting a family offices exemption that is similar to the rule recently adopted by the SEC and is soliciting comment from the public.

Appendix 3—Dissenting Statement of Commissioner Jill E. Sommers

The amendments to the Commission's Part 4 regulations we are adopting with these final rules were prompted by a petition from the NFA seeking to reinstate certain operating restrictions that were in place prior to 2003 for entities excluded from the definition of CPO under § 4.5. Had we limited the amendments to address the issues raised by the NFA's petition, we could have met our regulatory objectives without disrupting a significant number of business structures. I would have supported such an approach. As it is, we have gone far beyond what was needed to resolve NFA's concerns and I must dissent.

Section 404 of the Dodd-Frank Act requires certain advisors of private funds to register

with the SEC and to report to the SEC information ''as necessary and appropriate * * * for the protection of investors or for the assessment of systemic risk by the Financial Stability Oversight Council.'' With the finalization of these rules, the Commission has determined that the ''sources of risk delineated in the Dodd-Frank Act with respect to private funds are also presented by commodity pools'' and that registration of certain previously exempt or excluded CPOs is therefore necessary ''to assess the risk posed by such investment vehicles in the derivatives markets and the financial system generally.'' The Commission states that the data it will collect as a consequence of registration is necessary ''in order to fulfill the Commission's systemic risk mitigation mandate.'' While I agree that the Commission has a regulatory interest in the activities of commodity pools, this overstates the case and gives a false impression that the data we gather will enable us to actively monitor pools for systemic risk, that we have the resources to do so, and that we will do so. Moreover, Congress was aware of the existing exclusions and exemptions for CPOs when it passed Dodd-Frank and did not direct the Commission to narrow their scope or require reporting for systemic risk purposes. The Commission justifies the new rules as a response to the financial crisis of 2007 and 2008 and the passage of Dodd-Frank, yet there is no evidence to suggest that inadequate regulation of commodity pools was a contributing cause of the crisis, or that subjecting entities to a dual registration scheme will somehow prevent a similar crisis in the future.

I could nevertheless support a revision of the current exclusions and exemptions that would give us access to information we determine is necessary to carry out our regulatory mission if supported by a sufficient cost-benefit analysis. The rationale underlying a number of the decisions encompassed by the rules is sorely lacking, however, and is not supported by the existing cost-benefit analysis. The Commission concludes, for example, that bona fide hedging transactions are unlikely to present the same level of risk as risk mitigation positions because they are offset by exposure in the physical markets. A risk mitigation position is, by definition, a position that mitigates or ''offsets'' exposure in another market. Both are hedges and there is no explanation as to why the Commission believes that bona fide hedges are less risky. The preamble states that the alternative net notional test under § 4.5 is meant to be consistent with the net notional test set forth in § 4.13(a)(3), except the § 4.5 test allows unlimited use of futures, options or swaps for bona fide hedging purposes, while the § 4.13(a)(3) test does not. No explanation is given for the differing treatment. We reject an exemption for foreign advisors similar to the exemption allowed by the Investment Advisors Act of 1940 under Section 403 of Dodd-Frank because we lack information on the activities of foreign pools, even though, as some commenters observed, this may result in nearly all non-U.S. based CPOs operating a pool with at least one U.S. investor having to register and report all of their derivatives activities to the Commission, including activity that may be subject to comparable foreign regulation. While we leave open the possibility of future exemptions based on information we collect on Forms CPO–PQR and CTA–PR, the more likely result of this new policy is that U.S. participants will be excluded from investing in foreign pools. The Commission may have good reasons for this course of action, but no rationale is given.

Our ''split the baby'' approach on the issue of family offices is illogical. The Commission states that it is ''essential that family offices remain subject to the data collection requirements'' to fulfill our regulatory mission and to develop a comprehensive view of such firms to determine whether an exemption may be appropriate in the future. At the same time, we are allowing an unknown percentage of family offices to rely on previously issued interpretive letters to avoid registration, reporting and other compliance obligations. This makes no sense. We either need this data or we do not. Family offices may fit within the parameters of the existing interpretive letters, in which case we will not develop the comprehensive view we are seeking. On the other hand, we ignore the fact that we have consistently found, for more than three decades, that family offices are not the type of collective investment vehicle that Congress intended to regulate in adopting the CPO and commodity pool definitions, a finding that Congress confirmed in § 409 of Dodd-Frank with respect to investment advisors. Moreover, our repeal of the family office exemption is inconsistent with the exclusion recently adopted by the SEC pursuant to § 409 at a time when Dodd-Frank has urged us to harmonize our rules to the fullest extent possible.

It is unlikely, in my view, that the cost-benefit analysis supporting the rules will survive judicial scrutiny if challenged. And, although I am relieved that the recordkeeping, reporting and disclosure obligations required by the rules will be delayed until after proposed harmonization rules are finalized, the rules contain a confusing and needlessly complicated set of compliance dates for other provisions.

While I have felt that many of the rules we have finalized in the last few months were far too overreaching, our justification that a particular rule was required by statute was largely accurate. With regard to these rules the same justification does not hold true. These rules are not mandated by Dodd-Frank, and I do not believe that the benefits articulated within the final rules outweigh the substantial costs to the fund industry. We admit in the preamble that we do not have enough information to determine the validity of requiring some of these entities to register. A more prudent approach would have been to gather the information first and then decide what constitutes sound policy. For these and other reasons, I cannot support the final rules.

[FR Doc. 2012–3390 Filed 2–23–12; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission is proposing amendments to its regulations regarding requirements applicable to investment companies registered under the Investment Company Act of 1940 (''registered investment companies'') whose advisors will be subject to registration as commodity pool operators due to changes that the Commission is adopting.

DATES: Comments should be received on or before April 24, 2012.

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

- *Agency Web site, via its Comments Online Process:* Comments may be submitted to *http://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx.* Follow the instructions for submitting comments on the Web site.
- *Mail:* David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- ''Regulation 4.5 Harmonization'' must be in the subject field of comments submitted electronically, and clearly indicated on written submissions. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9 (17 CFR 145.9).
- The CFTC reserves the right, but shall have no obligation, to: review, prescreen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed which contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, Telephone: (202) 418–5463, Email: *kwalek@cftc.gov*, Amanda Lesher Olear, Special Counsel, Telephone: (202) 418–5283, Email: *aolear@cftc.gov*, or Michael Ehrstein, Attorney-Advisor, Telephone: 202–418–5957, Email: *mehrstein@cftc.gov*, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The Commodity Exchange Act (''CEA'') [1] provides the Commission with the authority to register Commodity Pool Operators (''CPOs'') and Commodity Trading Advisors (''CTAs''),[2] to exclude any entity from registration as a CPO or CTA,[3] and to require ''[e]very commodity trading advisor and commodity pool operator registered under [the CEA] to maintain books and records and file such reports in such form and manner as may be prescribed by the Commission.'' [4] The Commission also has the power to ''make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate the provisions or to accomplish any of the purposes of [the CEA].''[5] The Commission's discretionary power to exclude or exempt persons from registration was intended to be exercised ''to exempt from registration those persons who otherwise meet the criteria for registration * * * if, in the opinion of the Commission, there is no substantial public interest to be served by the registration.'' [6] It is pursuant to this authority that the Commission has promulgated the exclusions from the definition of CPO that are delineated in § 4.5.[7]

B. Reinstatement of Trading and Marketing Criteria in § 4.5

In February 2011, the Commission proposed to revise the requirements for determining which persons should be required to register as a CPO under § 4.5.[8] The Commission is adopting the proposed changes to § 4.5, with some minor modifications, and is proposing certain provisions to facilitate compliance by registered investment companies with the Commission's disclosure, reporting, and recordkeeping requirements. The proposed amendments that follow are based on the consideration of the comments that were submitted on the previously proposed amendments to § 4.5, information provided during a staff roundtable on July 16, 2011 (''Roundtable''),[9] and meetings with interested parties.[10]

C. Proposed Harmonization Provisions

Many commenters noted that sponsors of registered investment companies which also would be required to register as CPOs would be subject to duplicative, inconsistent, and possibly conflicting disclosure and reporting requirements. In comment letters, meetings, and at the Roundtable, a number of suggestions were made regarding the manner in which the Securities and Exchange Commission (''SEC'') and CFTC requirements could be harmonized. Specific areas identified by the commenters as needing harmonization include: the timing of delivery of Disclosure Documents to prospective participants; the signed acknowledgement requirement for receipt of Disclosure Documents; the cycle for updating Disclosure Documents; The timing of financial reporting to participants; the requirement that a CPO maintain its books and records on site; the required disclosure of fees; the required disclosure of past performance; the inclusion of mandatory certification language; and the SEC-permitted use of a summary prospectus of open-ended registered investment companies.

[1] 7 U.S.C. 1, *et seq.*

[2] 7 U.S.C. 6m.

[3] 7 U.S.C. 1a(11) and 1a(12).

[4] 7 U.S.C. 6n(3)(A). Under part 4 of the Commission's regulations, entities registered as CPOs have reporting obligations with respect to their operated pools. *See* 17 CFR 4.22.

[5] 7 U.S.C. 12a(5).

[6] *See* H.R. Rep. No. 93–975, 93d Cong., 2d Sess. (1974), p. 20.

[7] 17 CFR 4.5. *See* 68 FR 47231 (Aug. 8, 2003).

[8] 76 FR 7976 (Feb. 12, 2011).

[9] *See* Notice of CFTC Staff Roundtable Discussion on Proposed Changes to Registration and Compliance Regime for Commodity Pool Operators and Commodity Trading Advisors, available at *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff070611.*

[10] *See generally, http://comments.cftc.gov/PublicComments/CommentList.aspx?id=973.*

Several commenters suggested that the Commission make available relief, with respect to document and report distribution, similar to that which it has recently adopted with respect to exchange-traded funds (''ETFs'').[11] Other commenters suggested that where requirements are inconsistent, the Commission should defer to SEC requirements. A few commenters made recommendations about the treatment of specific disclosures, such as presenting both SEC and CFTC-required fee information and presenting certain performance information required by the CFTC in the Statement of Additional Information (''SAI''). At least one commenter noted that registered investment companies should be required to comply with all disclosure and other requirements applicable to registered CPOs.

The Commission has carefully considered the comments regarding harmonization and has determined to propose the following exemptive provisions that would be available to advisors of registered investment companies who are required to register as CPOs.

1. Delivery of Disclosure Documents and Periodic Reports

Part 4 of the Commission's regulations impose certain risk disclosure, reporting, and recordkeeping obligations on registered CPOs. Section 4.21 [12] of the Commission's regulations requires that each CPO registered or required to be registered with the Commission deliver a Disclosure Document prepared in accordance with §§ 4.24 and 4.25,[13] which set forth the specific information required to be disclosed, including the past performance of the offered pool to each prospective participant in a pool that it operates or intends to operate. Section 4.21 further provides that the CPO may not accept or receive funds, securities, or other property from a prospective participant unless the CPO first receives from the prospective participant a signed and dated acknowledgment stating that the prospective participant received a Disclosure Document for the pool.

With respect to a CPO's reporting obligations, § 4.22 [14] requires that each CPO registered or required to be registered periodically distribute to each participant in each pool that it operates an Account Statement presented in the form of a Statement of Income (Loss) and a Statement of Changes in Net Asset Value for the prescribed period. The Account Statement must be distributed monthly for pools with net assets of more than $500,000, and otherwise at least quarterly.[15] The financial statements must be presented in accordance with generally accepted accounting principles, consistently applied.[16] With respect to a CPO's recordkeeping obligations, § 4.23 [17] of the Commission's regulations requires, in relevant part, that each CPO who is registered or required to be registered must make and keep the books and records specified in the regulation ''at its main business office.''

2. Comments Received Regarding Recently Adopted Exemptive Relief for Exchange Traded Funds

In response to the Commission's proposal to amend § 4.5, several commenters suggested that the Commission consider extending the exemptive relief that it recently adopted for CPO's operating ETFs under § 4.12(c),[18] which makes available to such CPOs specified relief from the Disclosure Document delivery and acknowledgment requirements of § 4.21, the monthly Account Statement delivery requirement of § 4.22, and the requirement to keep the CPO's books and records at its main business address in § 4.23. The relief permits CPOs to comply with the Disclosure Document and account statement delivery requirements by making such documents available on their web sites, and to maintain their records with specified third parties, on the condition that certain information and representations are filed with the CPO's notice claiming relief.[19] The criteria for claiming this relief are that: (1) The units of participation in the pool will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933,[20] and (2) the units will be listed for trading on a national securities exchange registered as such under the Securities Exchange Act of 1934.[21] In its release proposing ETF relief, the Commission noted that historically, ETFs have been investment companies registered under the Investment Company Act of 1940 either as unit investment trusts or as open-end investment companies.[22] The Commission did not, however, make such registration a condition of relief. Commenters noted that, like ETFs, the distribution and subscription mechanisms for registered investment companies would make it difficult for them to meet the Disclosure Document delivery and acknowledgment requirements under the Commission's regulations. Commenters and Roundtable panelists also noted that the records of registered investment companies often are maintained by third parties, such as administrators, making it difficult for registered investment companies to comply with the requirement of § 4.23 that a pool's books and records be maintained at the CPO's main business office.[23] To address these concerns, the Commission is proposing to add an alternative criterion under § 4.12(c) that will permit registered investment companies to claim the disclosure, reporting, and recordkeeping relief currently available to ETFs.

Several commenters further requested that the Commission extend the same relief it made available to operators of ETFs for delivery of required disclosures and periodic reports to CPOs of publicly offered commodity pools, noting that such offerings are regulated by the CFTC, SEC, National Futures Association (''NFA''), Financial Industry Regulatory Authority (''FINRA''), and each state in which they are offered. The Commission agrees that for purposes of the exemption, there is no useful distinction between publicly offered pools whose units are listed for trading on a national securities exchange, and those which are not. Therefore, the Commission is proposing to amend § 4.12(c) such that the CPO of any pool whose units of participation will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933 may claim the relief from the delivery and acknowledgement requirements under § 4.21, certain periodic financial reporting obligations under § 4.22, and the requirement that records be maintained at the CPO's main office under § 4.23, available under § 4.12(c) with respect to that pool.

3. Content and Timing of Disclosure Documents

Many of the disclosures required by part 4 of the Commission's regulations are consistent with SEC-required disclosures. Where CFTC requirements differ slightly, the Commission believes that CFTC-required disclosures can be presented concomitant with SEC-required information in a registered investment company's prospectus. To

[11] 76 FR 28641 (May 18, 2011).

[12] 17 CFR 4.21.

[13] 17 CFR 4.24 and 4.25.

[14] 17 CFR 4.22.

[15] 17 CFR 4.22(b).

[16] 17 CFR 4.22(a).

[17] 17 CFR 4.23.

[18] 17 CFR 4.12(c).

[19] *Id.*

[20] 15 U.S.C. 77a, *et seq.*

[21] 15 U.S.C. 78a, *et seq.*

[22] 75 FR 54794, 54795 (Sept. 9, 2010).

[23] 17 CFR 4.23.

address the few instances where conflicts in disclosure have been identified, the Commission is proposing relief to harmonize these requirements. With respect to performance, § 4.25(b) specifies that if the pool has traded commodity interests for three years or more, during which at least seventy-five percent of its contributions have been made by persons unaffiliated with the CPO, CTAs, or their principals, the only required performance is that of the offered pool.[24] If a pool has not operated for at least three years, the CPO must present the performance of other pools and accounts enumerated in §§ 4.25(c)(2)–(5).[25] The Commission is proposing that the performance of other pools and accounts required to be disclosed by §§ 4.25(c)(2)–(5) may be presented in the registered investment company's SAI. The Commission notes that SEC requirements may conflict with CFTC requirements with respect to reporting past performance and accordingly seeks comment below.[26] In addition, the Commission is proposing that, in lieu of the standard cautionary statement prescribed by § 4.24(a),[27] the cover page of the registered investment company's prospectus may contain a statement that combines the language required by both § 4.24(a) and Rule 481(b)(1) under the Securities Act of 1933.[28] With respect to the break-even point[29] required by § 4.24(d)(5),[30] the Commission will consider the forepart of the document to be the section immediately following all disclosures required by SEC Form N–1A [31] to be included in the summary prospectus, or otherwise, for registered investment companies using Form N–2, in the forepart of the prospectus. Any other information required to be presented in the forepart of the document by § 4.24(d), but that is not included in the summary section of the prospectus for open-ended registered investment companies, may also be presented immediately following the summary section of the prospectus for open-ended funds, or otherwise, for registered investment companies using Form N–2, in the forepart of the prospectus. Finally, with respect to disclosure of fees and expenses required by § 4.24(i), any such expenses that are not included in the fee table required by Item 3 of Form N–1A or Item 3 of Form N–2 would be disclosed in the prospectus, along with the tabular presentation of the calculation of the pool's break-even point required by § 4.24(i)(6). The Commission continues to believe that the inclusion of the tabular presentation of the calculation of the break-even point consistent with the Commission's regulations is a necessary disclosure because, among other requirements, it mandates a greater level of detail regarding brokerage fees and does not assume a specific rate of return. The Commission believes that this results in meaningful disclosure through the break-even analysis and facilitates an investor's assessment of a registered investment company that uses derivatives.

Commenters noted that the CFTC's and SEC's timing requirements for Disclosure Document updates were inconsistent. Section 4.26 of the Commission's regulations specifies that a Disclosure Document may be used for nine months from the date of the document before a new Disclosure Document must be prepared and filed. Conversely, provisions of the securities laws effectively require an annual prospectus update. Section 10(a)(3) of the Securities Act of 1933 specifies that ''when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use * * *.'' [32] Because financial statements are prepared annually as of the end of the investment company's fiscal year, and information from the financial statements is included in the prospectus, the operation of Section 10(a)(3) results in an annual prospectus updating cycle. To address this inconsistency, the Commission is proposing to require that CPOs and CTAs file updates of all Disclosure Documents twelve months from the date of the document.

Some commenters, including NFA, raised an operational issue in connection with Disclosure Document amendments filed pursuant to § 4.26(c).[33] NFA noted that CPOs filing amended Disclosure Documents cannot distribute the document until NFA accepts the disclosure document. NFA suggested that the Commission consider whether it may be appropriate to allow CPOs of pools that provide for daily liquidity to post the Disclosure Document with the highlighted changes on their internet web sites for pool participants at the same time the CPO files with NFA, with the final document posted upon completion of the NFA review process. The Commission notes that § 4.26(d)(2) currently permits CPOs to provide Disclosure Document updates to participants at the same time such updates are filed with NFA. Therefore, if the proposed relief is adopted by the Commission, CPOs claiming such relief may follow the procedure recommended by NFA with no additional action by the Commission.

4. Reports—Timing and Certification

Section 4.22(a) requires CPOs to provide periodic reports, generally monthly, to participants in the pools that they operate. SEC regulations require that registered investment companies provide semiannual reports to shareholders. Regulations of both commissions require provision of annual financial statements to commodity pool participants and investment company shareholders, respectively.[34] Some commenters noted that the requirement to prepare and provide monthly account statements would be burdensome because registered investment companies are not required to do so under SEC regulations, and suggested that the Commission accept the reporting required under securities laws. The Commission has carefully considered these comments and determined not to propose relief regarding the content or timing of the monthly account statement, as the information required to prepare the account statement should be readily available to the operator of an investment vehicle maintaining records of its trading activity and other operations in accordance with recordkeeping requirements under the CEA and applicable securities laws. Registered investment companies will

[24] 17 CFR 4.25(b).

[25] 17 CFR 4.25(c)(2)–(5).

[26] The Commission has had preliminary discussions with SEC staff on this issue. The SEC staff stated that it would consider requests for no-action relief regarding the performance presentations, if necessary and appropriate.

[27] Section 4.24(a) of the Commission's regulations requires that each disclosure document prepared and distributed by registered CPOs prominently display the following prescribed cautionary statement on its cover: THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS POOL NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT. 17 CFR 4.24(a).

[28] 17 CFR 230.481.

[29] Section 4.10(j) of the Commission's regulations defines the ''break-even point'' as ''the trading profit that a pool must realize in the first year of a participant's investment to equal all fees and expenses such that such participant will recoup its initial investment, as calculated pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act.'' 17 CFR 4.10(j)(1). The break-even point must be expressed in terms of dollars and as a percentage of the minimum unit of initial investment. 17 CFR 4.10(j)(2). It must also assume the redemption of the investment as of the close of the first year of investment. *Id.*

[30] 17 CFR 4.24(d)(5).

[31] 17 CFR 274.11a.

[32] 15 U.S.C. 77j.

[33] 17 CFR 4.26.

[34] 17 CFR 4.22 and 270.30e–1.

be able to satisfy the requirement to deliver account statements to participants by making such statements available on their internet Web sites, thereby substantially reducing any burden under § 4.22(a).

One commenter noted that the language required by the CFTC and the SEC in their respective periodic and annual report certifications is not identical, and encouraged the Commission to work with the SEC either to accept one language in lieu of the other or to develop agreed upon language for these certifications. Section 4.22(h) requires the individual making the oath or affirmation on behalf of the CPO to affirm that, to the best of his or her knowledge and belief, the information contained in the document is accurate and complete. The first item in the certification required by SEC Form N–CSR is: ''Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.'' The certification under § 4.22(h) must be included with the periodic and annual reports provided to participants and with the annual report filed with NFA. The certification required by SEC Form N–CSR is made available through EDGAR, but does not have to be provided to shareholders. Because the Form N–CSR certification includes language that is substantively consistent with the certification required under § 4.22(h), the Commission will accept the SEC's certification as meeting the requirement under § 4.22(h), as long as such certification is part of the Form N–CSR filed with the SEC.

The Commission seeks comment on the proposed harmonization provisions. In particular, do any provisions of part 4 in addition to those identified in the proposal need to be harmonized? For instance, as noted in the Commission's final rulemaking, Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations,[35] the Commission is considering adopting a family offices exemption from CPO registration akin to the exemption adopted by the SEC.[36] What are the factors that weigh in favor or against such an exemption? Do the proposed harmonization provisions for break-even analysis and performance disclosure strike the appropriate balance between achieving the Commission's objective of providing material information to pool participants, and reducing duplicative or conflicting disclosure? Should the Commission consider harmonizing its account statement reporting requirement with the SEC's semiannual reporting requirement? Should the Commission consider harmonizing its past performance reporting requirements with the SEC requirements? Are there other approaches to harmonizing these requirements that the Commission should consider? Should the Commission consider applying any of the harmonization provisions to operators of pools that are not registered investment companies?

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[37] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[38]

CPOs: The Commission has previously determined that registered CPOs are not small entities for the purpose of the RFA.[39] With respect to CPOs exempt from registration, the Commission has determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Rule 4.13(a)(2).[40] Based on the requisite level of sophistication needed to comply with the SEC's regulatory regime for registered investment companies and the fact that registered investment companies are generally intended to serve as retail investment vehicles and do not qualify for exemption under § 4.13(a)(2), the Commission believes that registered investment companies are generally not small entities for purposes of the RFA analysis. Moreover, the proposals herein will reduce the burden of complying with part 4 for CPOs of registered investment companies. The Commission has determined that the proposed regulation will not create a significant economic impact on a substantial number of small entities.

CTAs: The Commission has previously decided to evaluate, within the context of a particular rule proposal, whether all or some CTAs should be considered to be small entities, and if so, to analyze the economic impact on them of any such rule.[41] The sole aspect of the proposal that affects CTAs would allow disclosure documents to be used for 12 months rather than nine months, thereby reducing the frequency with which updates must be prepared. Therefore, the Commission has determined that the proposal will not create a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules, will not have a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.[42] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB'').

The Commission is amending Collection 3038–0023 to allow for an increase in response hours for the rulemaking resulting from the amendments to § 4.5 that the Commission adopted in a concurrent release.[43] In the context of that rulemaking, the Commission received comments asserting that, absent harmonization of the Commission's compliance regime for CPOs with that of the SEC for registered investment companies, entities operating registered investment companies that would be required to register with the Commission would not be able to comply with the Commission's regulations and would have to discontinue their activities involving commodity interests. Because the Commission is proposing provisions to harmonize its compliance regime for sponsors or advisors to registered investment companies required to register as CPOs, the Commission believes that such entities will be able to register with the Commission and comply with the applicable compliance obligations.

The Commission also is amending Collection 3038–0005 to allow for an increase in response hours for the rulemaking associated with modified

[35] Published elsewhere in this issue of the **Federal Register**.

[36] *See* 17 CFR 250.202(a)(11)(G)–1.

[37] *See* 5 U.S.C. 601, *et seq.*

[38] 47 FR 18618 (Apr. 30, 1982).

[39] *See* 47 FR 18618, 18619 (Apr. 30, 1982).

[40] *See* 47 FR at 18619–20.

[41] *See* 47 FR at 18620.

[42] *See* 44 U.S.C. 3501 *et seq.*

[43] CITE to FR for Non-Joint Rulemaking.

compliance obligations under part 4 of the Commission's regulations resulting from these revisions. The titles for these collections are ''Part 3—Registration'' (OMB Control number 3038–0023) and ''Part 4—Commodity Pool Operators and Commodity Trading Advisors'' (OMB Control number 3038–0005). Responses to this collection of information will be mandatory.

The Commission will protect proprietary information according to the Freedom of Information Act (''FOIA'') and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market position of any person and trade secrets or names of customers.'' [44] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[45]

In the Commission's February proposal, the Commission estimated that the burden of § 4.5 compliance would be 16.68 hours for an estimated 416 CPOs and CTAs that would be obligated to comply.[46] There currently is no source of reliable information regarding the general use of derivatives by registered investment companies. Because of this lack of information, the Commission has derived the estimated entities affected and the number of burden hours associated with this proposal through the use of statistical analysis. According to the one source of data available to the Commission, in 2010, there were 669 sponsors of 9,719 registered investment companies, including mutual funds, closed end funds, exchange traded funds, and unit investment trusts.[47] In the comment letter submitted by the Investment Company Institute (''ICI'') with respect to the Commission's February proposal the ICI stated that it surveyed its membership and 13 sponsors responded representing 2,111 registered investment companies. Of those 2,111 registered investment companies, the 13 sponsors estimated that 485 would trigger registration and compliance obligations under § 4.5 as amended. This constitutes approximately 23% of the reported registered investment companies.

The Commission then deducted the 2,111 registered investment companies discussed in the ICI comment letter from the 9,719 entities comprising the universe of registered investment companies, and deducted the 13 sponsors surveyed by the ICI from the universe of 669 fund sponsors to arrive at 656 fund sponsors operating 7,608 registered investment companies. This resulted in an average of 11.6 registered investment companies being offered per sponsor.

The Commission then calculated 23% of the 7,608 registered investment companies not covered by the ICI survey, which equals 1,750 registered investment companies that the Commission would expect to trigger registration under amended § 4.5. Then, the Commission divided this number by the average number of registered investment companies operated per sponsor and added the 13 sponsors from the ICI survey to reach 164 sponsors expected to be required to register under amended § 4.5. Because the Commission cannot state with absolute certainty that only 164 entities would be required to register, due to the uncertainty inherent in the use of averages, the Commission believes that the number of sponsors or advisors required to register to be somewhere between 164 and 669 entities. For PRA purposes, the Commission believes that it is appropriate to use the midpoint between the outer bounds of the range, which is 416 entities. The Commission estimates that there will still be some burden associated with § 4.5 compliance under the proposed rule, as there are some incompatibilities between SEC and Commission regulations (as discussed above). The Commission estimated this burden at approximately 2 hours annually. Thus, the Commission estimates that this new proposal will reduce the information collection burden associated with § 4.5 compliance for the estimated 416 entities by 14.68 hours per entity.

1. Additional Information Provided by CPOs and CTAs

a. OMB Control Number 3038–0023

Part 3 of the Commission's regulations concern registration requirements. The Commission is amending existing Collection 3038–0023 to reflect the obligations associated with the registration of new entrants, *i.e.,* CPOs that were previously exempt from registration under § 4.5 that had not previously been required to register. Because the registration requirements are in all respects the same as for current registrants, the collection has been amended only insofar as it concerns the increased estimated number of respondents and the corresponding estimated annual burden.

Estimated number of respondents: 75,841.

Annual responses by each respondent: 76,350.

Annual reporting burden: 6,871.6.

b. OMB Control Number 3038–0005

Part 4 of the Commission's regulations concerns the operations of CTAs and CPOs, and the circumstances under which they may be exempted or excluded from registration. Under existing Collection 3038–0005 the estimated average time spent per response has not been altered; however, adjustments have been made to the collection to account for the new burden expected under the proposed rulemaking. The total burden associated with Collection 3038–0005 is expected to be:

Estimated number of respondents: 44,142.

Annual responses by each respondent: 62,121.

Estimated average hours per response: 4.22.

Annual reporting burden: 262,347.8.

The proposed harmonization specifically will add the following burden with respect to compliance obligations other than Form CPO–PQR:

Estimated number of respondents: 416.

Annual responses by each respondent: 5.

Estimated average hours per response: 2.

Annual reporting burden: 4160.

The proposed harmonization will add the following burden with respect to the burden associated with Form CPO–PQR:

Schedule A:

Estimated number of respondents: 586.

Annual responses by each respondent: 4.

Estimated average hours per response: 6.

[44] *See* 7 U.S.C. 12.

[45] *See* 5 U.S.C. 552a.

[46] The Commission notes that the PRA burden proposes that it be considered in light of the costs entities may have incurred under the part 4 regulations as proposed in the Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations rulemaking. In that rulemaking, the Commission estimated that entities would incur 9.58 burden hours in filing an annual report, 3.85 burden hours in compiling and distributing periodic account statements, and 3.25 burden hours in compiling and distributing disclosure documents; in sum, the Commission estimated that these provisions would incur a burden in total of 16.68 hours. By operation of this proposal, registered investment companies regulated by the SEC will be able to use similar documents required under SEC regulations to satisfy their CFTC registration and compliance requirements under part 4 of the Commission's regulations.

[47] *See* 2011 Investment Company Fact Book, Chap. 1 and Data Tables, Investment Company Institute (2011), available at *http://www.icifactbook.org/.*

Annual reporting burden: 14,064.
Schedule B:
Estimated number of respondents: 586.
Annual responses by each respondent: 4.
Estimated average hours per response: 4.
Annual reporting burden: 9,376.
Schedule C:
Estimated number of respondents: 586.
Annual responses by each respondent: 4.
Estimated average hours per response: 18.
Annual reporting burden: 42,192.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (ii) determine whether there are ways to enhance the quality, utility, and clarity of the information collected; and (iv) minimize the burden of the collection of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by email at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that they can be summarized and addressed in the final rule. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov.

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking.

C. Considerations of Costs and Benefits

Section 15(a) of the Act requires the Commission, before promulgating a regulation under the Act or issuing an order, to consider the costs and benefits of its action.[48] Section 15(a) specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[49] The Commission can, in its discretion, give greater weight to any of the five considerations and determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest, or to effectuate any of the provisions, or to accomplish any of the purposes, of the Act.

In February 2011, the Commission proposed to revise the requirements for determining which persons should be required to register as a CPO under § 4.5. The Commission received numerous comments that sponsors of registered investment companies that also would be required to register as CPOs would be subject to duplicative, inconsistent, and possibly conflicting disclosure and reporting requirements. The purpose of this proposal is to harmonize certain CFTC and SEC registration requirements in an effort to reduce the costs to dual registrants of complying with two regulatory regimes. To address the commenters' concerns about the content and timing of disclosure documents, account statement delivery and certification, and recordkeeping requirements, the Commission is proposing to harmonize its regulatory requirements with those of the SEC to reduce the costs for dual registrants. Each of these harmonizing provisions involves recordkeeping and reporting obligations that would be a collection of information under the PRA.

The Commission is obligated to estimate the burden of and provide supporting statements for any collections of information it seeks to establish under considerations contained in the PRA,[50] and to seek approval of those requirements from the OMB. Therefore, the estimated burden costs and support for the collections of information is provided for in the PRA section of this notice of proposed rulemaking and the information collection requests that will be filed with OMB contemporaneously with this rulemaking as required by that statute.

1. Section 15(a) Considerations

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

a. Protection of Market Participants and the Public

The Commission believes that these regulations protect market participants and the public by achieving the same regulatory objectives of its proposed part 4 registration and reporting requirements but at reduced costs.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission believes that harmonization and its concomitant reduction in regulatory burden promotes the efficiency of futures markets in an indirect way; by lessening the costs that entities must bear to operate within markets, participants can pass along such savings to their customers or devote more resources to serving those customers. Moreover, as registered participants are relieved of some burdens, the incentive to remain unregistered may diminish.

c. Price Discovery

The Commission has not identified a specific effect on price discovery as a result of these harmonizing regulations.

d. Sound Risk Management

The Commission has not identified a specific effect on sound risk management as a result of these harmonizing regulations.

e. Other Public Interest Considerations

The CFTC has not identified other public interest considerations related to the costs and benefits of these regulations.

2. Conclusion

The Commission believes these regulations will lower burdens for many market participants who are also registered with other regulatory agencies as a result of doing business in multiple markets. The Commission welcomes all public comments on its cost and benefit considerations, including its analysis of the regulations in light of the five factors enumerated in § 15(a). Specifically, are

[48] 7 U.S.C. 19(a).
[49] 7 U.S.C. 19(a).
[50] 44 U.S.C. 3501 *et seq.*

there potential costs associated with these harmonizing rules that the Commission has not considered? Are there benefits to market participants, the public, or futures markets that the Commission should consider?

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Consumer protection, Reporting and recordkeeping requirements.

Accordingly, the CFTC proposes to amend 17 CFR part 4 as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Amend § 4.12 by revising paragraph (c) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(c) *Exemption from Subpart B for certain commodity pool operators based on registration under the Securities Act of 1933 or the Investment Company Act of 1940.* (1) *Eligibility.* Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (c)(2) of this section if, with respect to the pool for which it makes such claim:

(i) The units of participation will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933; or

(ii) The pool is registered under the Investment Company Act of 1940.

(2) *Relief available to pool operator.* The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1) of this section may claim the following relief:

(i) In the case of § 4.21, exemption from the Disclosure Document delivery and acknowledgment requirements of that section, Provided, however, that the pool operator:

(A) Causes the pool's Disclosure Document to be readily accessible on an Internet Web site maintained by the pool operator;

(B) Causes the Disclosure Document to be kept current in accordance with the requirements of § 4.26(a);

(C) Clearly informs prospective pool participants with whom it has contact of the Internet address of such Web site and directs any broker, dealer or other selling agent to whom the pool operator sells units of participation in the pool to so inform prospective pool participants; and

(D)(*1*) If claiming relief under paragraph (c)(1)(i) of this section, comply with all other requirements applicable to pool Disclosure Documents under part 4. The pool operator may satisfy the requirement of § 4.26(b) to attach to the Disclosure Document a copy of the pool's most current Account Statement and Annual Report if the pool operator makes such Account Statement and Annual Report readily accessible on an Internet Web site maintained by the pool operator.

(*2*) If claiming relief under paragraph (c)(1)(ii) of this section, comply with all other requirements applicable to pool Disclosure Documents under part 4, except that, with respect to the specific requirements listed below, comply as follows:

(*i*) With respect to the legend required by § 4.24(a), include a legend that indicates that the Commodity Futures Trading Commission and the Securities and Exchange Commission have not approved or disapproved of the securities or passed upon the merits of participating in the pool, nor has either agency passed upon the accuracy or adequacy of the disclosure in the prospectus, and that any contrary representation is a criminal offense. The legend may be in one of the following or other clear and concise language:

Example A: The Securities and Exchange Commission and the Commodity Futures Trading Commission have not approved or disapproved these securities or this pool, or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission and the Commodity Futures Trading Commission have not approved or disapproved these securities or this pool, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(*ii*) With respect to performance that is required under § 4.25(c)(2), (3), (4) or (5), present such information in the Statement of Additional Information.

(ii) In the case of § 4.22, exemption from the Account Statement distribution requirement of that section; *Provided,* however, that the pool operator:

(A) Causes the pool's Account Statements, including the certification required by § 4.22(h) to be readily accessible on an Internet Web site maintained by the pool operator within 30 calendar days after the last day of the applicable reporting period and continuing for a period of not less than 30 calendar days. The commodity pool operator may meet the requirement of § 4.22(h) by including the certification required by Rule 30e–1 under the Investment Company Act of 1940 (17 CFR 270.30e–1) with its posting of the pool's Account Statements; and

(B) Causes the Disclosure Document for the pool to clearly indicate:

(*1*) That the information required to be included in the Account Statements will be readily accessible on an Internet Web site maintained by the pool operator; and

(*2*) The Internet address of such Web site.

* * * * *

3. Amend § 4.26 by revising paragraph (a)(2) to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

(a) * * *

(2) No commodity pool operator may use a Disclosure Document or profile document dated more than twelve months prior to the date of its use.

* * * * *

4. Amend § 4.36 by revising paragraph (b) to read as follows:

§ 4.36 Use, amendment and filing of Disclosure Document.

* * * * *

(b) No commodity trading advisor may use a Disclosure Document dated more than twelve months prior to the date of its use.

* * * * *

Issued in Washington, DC, on February 8, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations: Appendices to Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators—Commission Voting Summary and Statements of Commissioners.

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Gary Gensler

The Commodity Futures Trading Commission's (CFTC) part 4 rules require recordkeeping, reporting and disclosures from Commodity Pool Operators. I support the proposed rule that would harmonize such requirements with those of the Securities and Exchange Commission (SEC) for investment companies registered with both the CFTC and SEC. The Commission is committed to

ensuring that customers of registered investment companies receive basic protections while also seeking to balance the compliance requirements for the operators of these funds. I look forward to comments from the public to further build on this harmonization effort.

Appendix 3—Statement of Commissioner Jill E. Sommers

The final rules amending the Commission's Part 4 regulations adopted today will require, among other things, that investment advisors of certain registered investment companies register as CPOs and operate under a dual SEC/CFTC regulatory regime. As explained in my dissent to the final rules, I could have supported a version of the rules that would have achieved the regulatory objectives outlined by the NFA in its August 18, 2010 petition to amend Rule 4.5. While I opposed the version of the rules the Commission ultimately adopted, having finalized them I support the Commission's effort to harmonize the resulting compliance obligations. Dually registered entities should not be subject to duplicative, inconsistent, or conflicting requirements. The proposed rules, if finalized in their current form, would not achieve true harmonization. I urge those affected by the rules to submit detailed comment letters, with a focus on the costs and benefits of the rules as proposed and any suggested alternatives.

[FR Doc. 2012–3388 Filed 2–23–12; 8:45 am]

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Part IV

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 209, 215, 216, *et al.*

Defense Federal Acquisition Regulation Supplements; Final Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 216, and 252

RIN 0750–AH37

Defense Federal Acquisition Regulation Supplement: Award Fee Reduction or Denial for Health or Safety Issues (DFARS Case 2011–D033)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement those sections of the National Defense Authorization Acts for Fiscal Years 2010 and 2011, providing increased authorities to reduce or deny award fees to companies found to jeopardize the health or safety of Government personnel. In addition, this rule modifies the requirement that information on the final determination of award fee be entered into the Federal Awardee Performance and Integrity Information System (FAPIIS).

DATES: *Effective Date:* February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, telephone 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 76 FR 57674 on September 16, 2011, to implement sections 823 and 834 of the National Defense Authorization Acts (NDAA) for Fiscal Years (FY) 2010 and 2011, providing increased statutory authorities to reduce or deny award fees to companies found to jeopardize the health or safety of Government personnel and adding a mechanism to decrease or eliminate a contractor's award fee for a specific performance period. In addition, the interim rule implemented the modification by section 834 of section 872 of the NDAA for FY 2009, which required that information on the final determination of award fee be entered into the Federal Awardee Performance and Integrity Information System (FAPIIS). One respondent submitted a public comment in response to the interim rule.

II. Discussion and Analysis of the Public Comment

The Defense Acquisition Regulations Council (the Council) reviewed the public comment in the development of the final rule. A discussion of the comment is provided as follows:

A. Summary of Significant Changes

The interim rule is adopted, without change, as a final rule.

B. Analysis of Public Comment

Comment: The respondent noted that DFARS 209.105–2–70 uses the term ''DoD appointing official,'' while the clause, at DFARS 252.216–7007(a)(ii)(E), states that the determination is made by the Secretary of Defense. The respondent suggested that the same term be used in both locations.

Response: The terminology used was carefully considered by DoD. Section 834 of the statute requires the Secretary of Defense to provide for an ''expeditious, independent investigation'' and ''make a final determination, pursuant to procedures established by the Secretary for purposes of this section. Defense Criminal Investigative Organizations (DCIOs) currently have procedures in place to conduct criminal investigations of contractor misconduct. These procedures are outside the acquisition regulatory process, and, further, there are differences in the procedural processes followed within different parts of DoD. After consideration of the comment, DoD determined that the DFARS text at 209.105–2–70 should be as specific as possible for the guidance of the contracting officer, i.e., ''the DoD appointing official that requested a DoD investigation makes a final determination * * *'' However, DoD used the ''Secretary of Defense'' in the DFARS clause because it is not necessary to specify to the contractor the delegation of authority within DoD.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD 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 section 834 of the NDAA for FY 2011 does not apply to firms that are subject to the jurisdiction of U.S. courts. By definition, small businesses are U.S. businesses and, therefore, are subject to the jurisdiction of the U.S. courts. Accordingly, this rule will not affect small businesses. For the definition of ''small business,'' the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105 discuss who is a small business: ''(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.''

This rule also implements section 823 of the NDAA for FY 2010. Section 823 required contracting officers to consider reduction or denial of award fee if the actions of the contractor or a subcontractor at any tier jeopardized the health or safety of Government personnel. DoD did not prepare an initial regulatory flexibility analysis upon publication of the interim rule implementing section 823 (75 FR 69360, effective November 12, 2010) because, generally, contracts awarded to small businesses are not likely to utilize incentive- and award-fee contract structures. No comments were received from small entities on the interim rule.

V. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 209, 216, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 209, 216, and 252, which was published at 76 FR 57674 on September 16, 2011, is adopted as a final rule without change.

[FR Doc. 2012–4040 Filed 2–23–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 232, 234, 242, 244, 245, and 252

RIN 0750–AG58

Defense Federal Acquisition Regulation Supplement; Business Systems—Definition and Administration (DFARS Case 2009–D038)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to improve the effectiveness of DoD oversight of contractor business systems.

DATES: *Effective date:* February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an initial proposed rule for Business Systems—Definition and Administration (DFARS Case 2009–D038) in the **Federal Register** on January 15, 2010 (75 FR 2457). Based on the comments received, DoD published a second proposed rule on December 3, 2010 (75 FR 75550). The public comment period closed January 10, 2011. On January 7, 2011, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 was signed into law (Pub. L. 111–383). Section 893 of the NDAA for FY 2011, Contractor Business Systems, set forth statutory requirements for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of DoD programs. Based on the comments received in response to the second proposed rule and the requirements of the NDAA for FY 2011, DoD published an interim rule with request for comments on May 18, 2011 (76 FR 28856). The public comment period ended on July 18, 2011. Comments were received from 14 respondents in response to the interim rule.

Contractor business systems and internal controls are the first line of defense against waste, fraud, and abuse. Weak control systems increase the risk of unallowable and unreasonable costs on Government contracts. To improve the effectiveness of Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA) oversight of contractor business systems, DoD has clarified the definition and administration of contractor business systems as follows:

A. Contractor business systems have been defined as accounting systems, estimating systems, purchasing systems, earned value management systems (EVMS), material management and accounting systems (MMAS), and property management systems.

B. Compliance enforcement mechanisms have been implemented in the form of a business systems clause which includes payment withholding that allows contracting officers to withhold a percentage of payments, under certain conditions, when a contractor's business system contains significant deficiencies. Payments could be withheld on—

- Interim payments under—
  - Cost-reimbursement contracts;
  - Incentive type contracts;
  - Time-and-materials contracts;
  - Labor-hour contracts;
- Progress payments; and
- Performance-based payments.

II. Discussion and Analysis

A. Analysis of Public Comments

1. Accounting System Monitoring

Comment: A respondent stated that DFARS 252.242–7006(c)(8) is vague. Periodic monitoring of the system can take many forms and be performed by numerous personnel. The respondent suggested that wording more in line with DFARS 252.244–7001(c)(18), DFARS 252.215–7002(d)(4)(xii), or DFARS 252.215–7002(d)(4)(xiii) would better state who is expected to perform the monitoring, why the monitoring is being performed, and would give a clearer expectation of level of monitoring to be performed.

Response: The size and complexity of companies and their processes, operations, and accounting systems capabilities vary. Therefore, it is not feasible to establish specific requirements regarding the extent or frequency of monitoring by the contractor. However, the term ''periodic'' has been removed and additional language has been added, similar to the language at 252.244–7001 and 252.215–7002, to clarify that the contractor's accounting system shall provide for management reviews or internal audits of the contractor's system to ensure compliance with the contractor's policies, procedures, and established accounting practices.

2. Business Systems Clause Prescription

Comment: A ''covered contract'' is defined at DFARS 242.7000(a) as one that is subject to Cost Accounting Standards (CAS). A respondent stated that the problem with this prescription is that a contracting officer will not typically know if the resulting contract will be subject to CAS when drafting the solicitation. A determination as to whether CAS applies to a particular contract is made after the offeror submits an offer containing the information required by the provision at FAR 52.230–1, Cost Accounting Notices and Certification. The contracting officer then inserts the appropriate CAS clauses in the contract, if necessary. The respondent suggested that one way to correct this is to add a paragraph to the clause making it self-deleting if CAS does not apply to the contract.

Response: The clause has been amended to make it self-deleting if CAS does not apply.

3. Definition of Covered Contract

Comment: A respondent suggested that the definition of ''covered contract'' be modified to match the definition in section 893 of the NDAA for FY 2011.

Response: Section 816 of the NDAA for 2012 redefined ''covered contract'' as ''a contract that is subject to the cost accounting standards promulgated pursuant to section 1502 of title 41, United States Code, that could be affected if the data produced by a contractor business system has a significant deficiency.'' The section 816 definition matches the definition used in this rule, therefore, no revisions are necessary.

4. Cost vs. Cost-Reimbursement

Comment: A respondent stated that the word ''cost'' is used throughout the rule when ''cost-reimbursement'' is what is meant. Unless this rule only applies to cost contracts, a specific type

of cost-reimbursement contract described at FAR 16.302, then ''cost'' needs to be changed to ''cost-reimbursement'' throughout the rule.

Response: The term ''cost'' has been replaced by ''cost-reimbursement,'' as appropriate, throughout the rule.

5. Certified Cost or Pricing Data

Comment: A respondent suggested that the word ''certified'' needs to be inserted before the term ''cost or pricing data'' at DFARS 242.7203(b). The clause at DFARS 252.215–7002 uses the term ''cost or pricing data'' twice in paragraph (c).

Response: The term ''cost or pricing data'' has been replaced by ''certified cost or pricing data,'' as appropriate, throughout the rule.

6. Fixed-Price Contract

Comment: A respondent suggested that the words ''fixed-price'' be inserted before the second instance of the word ''contract'' at DFARS 242.7502(a) so that the sentence is consistent with DFARS 242.7503(b).

Response: The language at DFARS 242.7502(a) applies to any contracts that provide for progress payments based on costs or on a percentage or stage of completion. Adding the words ''fixed-price'' before the second instance of the word ''contract'' is not compatible with the intent of DFARS 242.7502(a). However, DFARS 242.7503(b) has been revised to delete the fixed-price modifier so that the two sentences are consistent.

7. Property Management

Comment: A respondent stated that the proposed change to require administrative contracting officer (ACO) determination of property management system compliance is inconsistent with ACO determinations of other business systems. According to the respondent, except for property management, all business systems proposed for ACO determination of acceptability are reviewed by DCAA functional specialists outside of the DCMA or Program Office organizational structures, or by functional specialists who do not have a defined career field certification standard and warrant/letter of appointment. In those instances, functional specialist recommendations are advisory and the ACO determination of system status is necessary. The respondent stated that property management system compliance differs from the system status determinations cited in the proposed change in that property administrator certification/qualification requirements are identified under the unique Defense Acquisition Workforce Improvement Act (DAWIA) career field certification standard for industrial contract property management and they are issued letters of appointment, which requires them to routinely perform their duties as warranted contracting officers and communicate system status determinations. According to the respondent, ACO responsibility for determinations of property management system compliance does not support consistent treatment of contractors assigned for DCMA administration. The respondent noted that the DCMA Centers concept was established when it was found that certain specialty functions such as property, plant clearance, terminations, transportation, etc., suffered declines in communications and technical expertise due to lack of functional supervision. Within DCMA, infrastructure and tools to support consistency in property management reside in the DCMA Business Centers, not with the Chief Operating Officer/Chief Management Officer. Government Accountability Office Standards require performance of duties by appropriate, trained personnel. The respondent suggested that ACOs do not have the appropriate competencies (knowledge, skills, and abilities) to perform this function.

Response: DAWIA requirements for the industrial property management specialist workforce do not alter, and are not inconsistent with DFARS requirements for contracting officers to make determinations regarding a contractor's business system approval or disapproval. This responsibility exists apart from DAWIA requirements for acquisition personnel and regardless of agency processes for formally appointing individuals as property administrators or plant clearance officers. The DFARS rule does not contemplate or require contracting officers to have technical expertise in each of the six identified business systems. Contracting officers will continue to rely on functional specialists to perform the necessary contractor systems reviews as they always have. DCMA's ''Center'' concept is not universal to all of DCMA property operations. For example, a number of property administrators and plant clearance officers do not report operationally to the property center (now referred to as the property ''group''), and instead report directly to DCMA International. DFARS 245.105 is clear that Government property administrators are responsible for providing recommendations and reporting system deficiencies to the cognizant contracting officer, including recommendations regarding contractor property management system approval or disapproval. However, the authority for a determination of system approval or disapproval shall remain with the cognizant contracting officer who is also responsible for applying a payment withhold for disapproved business systems in accordance with DFARS 252.242–7005, Contractor Business Systems.

8. Cognizant Contracting Officer

Comment: A respondent requested that a definition of ''cognizant contracting officer'' be added to ensure that it is clear who is responsible for (1) assessing and approving/disapproving the six business systems, (2) making the decision to withhold payments, and (3) implementing and tracking withholds.

Response: The term ''cognizant contracting officer'' is used throughout the DFARS to identify the appropriate contracting officer assigned specific responsibilities such as approving or disapproving a contractor's business systems and making payment withhold decisions under this rule.

9. DoD Officials' Remediation Responsibility

Comment: A number of respondents stated that the interim rule does not address DoD officials working with the contractor to remediate deficiencies or to develop a corrective action plan. The NDAA for FY 2011 contains the requirement for DoD officials to work with the contractor to correct cited deficiencies. The respondents suggested that this language be explicitly stated in the final rule along with additional language that would promote a ''team effort'' resolution of any significant deficiency. Further, the respondents suggested that the Government should be required to consider mitigating controls as part of any evaluation as to the reliability of information produced by a business system(s).

Response: The language in the rule complies with the NDAA for FY 2011. The rule identifies cognizant contracting officers as the DoD officials who are available to work with contractors in the process of identifying significant deficiencies, accepting corrective action plans, and monitoring the contractor's progress in correcting the deficiencies. Contracting officers will notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency, and then identify any issues with a contractor's corrective action plan.

10. Audit Report Quality

Comment: A respondent stated that DCAA does not have a clean audit opinion on the integrity of the audits they perform; reliance is being placed on an audit agency that must qualify its own audit reports. According to the respondent, the GAO audit reports cited the DCAA for many deficiencies that bring into question the validity of audit reports issued against contractors' business systems. The respondent stated that DCAA should not be viewed as the experts and withholds should not be based on audit reports or audit report quality control systems of questionable validity. The respondent asserted that the Government is attempting to hold contractors to a level of perfection that their own audit agency is unable to maintain. Consequently, the respondent suggested that the audit report should not be used as the sole foundation for a contracting officer's determination of system adequacy, particularly if regulatory withholding of payment will be the result.

Response: Currently, DCAA reports for audits performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) must be qualified because the current external opinion has expired. This qualification solely states that the time frame required by GAGAS for an external peer review has expired. Outside of this exception, all of DCAA's audits are being performed in accordance with GAGAS. Furthermore, the objective of the rule is to ensure that contractor business systems provide timely, reliable information for the management of DoD programs. Contracting personnel will make appropriate determinations in accordance with this rule.

11. Resources and Resolution Timing

Comment: A number of respondents stated that DCAA and DCMA are not properly staffed to address the new DFARS rule. Further, with regard to EVMS, the rule provides extensive authority to contracting officers and DCAA and DCMA auditors in evaluating implementation of the ANSI/EIA 748 standard, which was intentionally designed to be flexible. According to the respondents, the magnitude of programs and contractors requiring EVMS surveillance and assessment inherently results in less experienced personnel in positions with this authority. The respondents suggested that Government resources are not adequate in numbers or depth of skills to provide the required oversight.

Response: This rule does not add additional oversight responsibilities to DCAA and DCMA, but instead mitigates the Government's risk when contractors fail to maintain business systems, as is required by the terms and conditions of their contracts. Contracting personnel will continue to make appropriate determinations in accordance with this rule. DoD has been taking measures to align resources and ensure work is complementary. The increased cooperation and coordination between DCAA and DCMA will enable DoD to employ audit resources where they are needed.

12. Impact on the Government and Contracting Community

Comment: A respondent stated that long-term withholds will hurt the Government and contracting community. Some system deficiencies can be corrected almost immediately, leaving the withhold in place until DCAA completes its follow-up audit. According to the respondent, reducing the percentage of the withhold to half of the initial percentage will still place contractors in a financial crisis. The respondent stated that contractors will have to increase their bids to cover potential withholds, which would increase the overall price to the Government.

Response: Both the contractors' and the Government's administrative costs should be reduced in the long run with the reliance on efficient contractor business systems.

13. National Security

Comment: A respondent stated that the withholding of payments could lessen competition and endanger national security. According to the respondent, national security in many respects is dependent on contractors. From weapon systems to wartime services, contractors perform a vital role in national security. The respondent stated that the economic times are bleak, which is already requiring contractors to operate on thin margins. The respondent expressed concern that if a contractor has a withhold placed upon its billings and is unable to meet financial obligations and, therefore, is unable to meets its contractual terms due to reduced cash flow, then national security will be compromised.

Response: This rule will not cause long term harm to the defense industrial base or national security. Rather, DoD contractor competition and national security will be enhanced with the improvement of DoD contractors' business systems, and imminent cost savings that will result. Contractor business systems and internal controls are the first line of defense against waste, fraud, and abuse. Weak control systems increase the risk of unallowable and unreasonable costs on Government contracts, unnecessarily draining limited DoD resources at the taxpayers' expense.

14. Significant Deficiency

Comment: A respondent expressed concern that DCAA has not updated its guidance to reflect the definition of significant deficiency. According to the respondent, DCAA has not issued audit guidance to align its definition of significant deficiency to that in the NDAA and interim rule. DCAA's latest guidance in its MRD 08–PAS–011(R) dated March 2, 2008, starts out defining a significant deficiency as a ''potential unallowable cost that is not clearly immaterial.'' However, in MRD 08–PAS–043(R) dated December 19, 2008, DCAA clarified its guidance that ''DCAA only performs audits of contractor systems that are material to Government contract costs'' and that a contractor's ''failure to accomplish any applicable control objective should be reported as a significant deficiency/material weakness.'' The respondent stated that DCAA's clarification changes the criteria from a ''potential unallowable cost that is not clearly immaterial'' to if any deficiency is found during an audit, it is reported and the system is rated as inadequate. The respondent expressed concern that DCAA's guidance is constantly changing with no oversight body to regulate its audit policies.

Response: DCAA is in the process of updating its guidance and will report significant deficiencies in accordance with the definition of significant deficiency in this rule, as set forth in section 893 of the NDAA for FY 2011. Additionally, contracting officers will administer this rule according to the requirements in section 893 of the NDAA for FY 2011, as implemented in this rule.

Comment: A respondent recommended that the following language be added to the contractor business systems clauses: ''Significant deficiencies are characterized by all of the following: (1) The system is not compliant to contract requirements; (2) There is significant net harm to the Government resulting in mismanagement, and schedule and cost impacts to the contracts covered by the business system; (3) The corrections to the system are worthwhile, and the related future benefits are clearly and substantially greater than the cost to correct; (4) The net harm to the contractor or the Government caused by the flaws in the business systems must

exceed five million dollars; and (5) Deficiencies must be directly related to contract management.''

Response: The respondent's suggested language exceeds the definition of ''significant deficiency'' in the NDAA for FY 2011 and has not been added to this rule.

Comment: With respect to the language relating to the finding of a significant deficiency by the contracting officer, the interim rule states: ''The initial determination by the Government will describe the deficiency in sufficient detail to allow the contractor to understand the deficiency.'' A respondent suggested that this language be expanded to include a specific explanation as to how the deficiency identified was determined to be a significant deficiency and further, why information produced by the business system under review is considered not to be reliable in accordance with the requirements of the enabling legislation, the NDAA for FY 2011, which defines a significant deficiency as ''A shortcoming in the system that materially affects the ability of DoD to rely upon information produced.''

Response: ''Significant deficiency'' means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes. The contracting officer's significant deficiency determination will describe the significant deficiency in sufficient detail to allow the contractor to understand the deficiency. This rule incorporates criteria for each business system, which define the aspects of the system that materially affect the ability of DoD to rely on information produced. Determinations of significant deficiencies will be based on the contractor's failure to comply with the business system criteria.

15. University Affiliated Research Center (UARC)

Comment: The interim rule exempts from coverage those contracts with educational institutions or Federally Funded Research and Development Centers operated by educational institutions. A respondent stated that the rule appears to subsume UARCs within the category of educational institutions, and requested that the final rule specifically list UARCs as exempt from application of the rule.

Response: The final rule exempts UARCs from the clause at DFARS 252.242–7005, Contractor Business Systems.

16. Financial Impact of a System Deficiency

Comment: A respondent took exception to DoD's response to a public comment from the second proposed rule, that in most cases, the financial impact of a system deficiency cannot be quantified because the system produces unreliable information. A respondent stated that contractors have fiduciary responsibilities to produce reliable information and make bona fide efforts to quantify everything that Government officials request.

Response: DoD relies on the information produced by contractor business systems unless those systems are found to contain significant deficiencies. Contractors have fiduciary responsibilities to produce reliable information. However, if a system is determined to have a significant deficiency, in most cases, DoD is unable to rely on that system to provide a reliable, quantifiable financial impact of that deficiency.

17. Subjective Implementation of the Rule

Comment: A respondent expressed serious reservations as to the need for the rule, and identified potential harms to contractors if the rule is administered in an inconsistent or arbitrary fashion. According to the respondent, because the determination of a system deficiency is dependent upon the subjective interpretation of critical system criteria, application of the rule could well lead to inconsistent treatment by individual contracting officers and their DCAA advisers.

Response: This rule incorporates criteria for each business system, which define the aspects of the system that materially affect the ability of DoD to rely on information produced. Determinations of significant deficiencies will be based on the contractor's failure to comply with the business system criteria. Each significant deficiency must be determined on its own set of facts and ultimately decided by the contracting officer.

18. Excessive Costs

Comment: A number of respondents expressed concern that because of the significant potential cash flow impact, contractors may be forced to incur unnecessary costs (which will, in turn, ultimately be passed on to the Government) to make their systems deficiency-proof in an attempt to avoid significant withholdings. According to the respondents, while this may seem like an appropriate goal, the costs of approaching a level nearing perfection are disproportionate to the incremental benefits of having a perfect system. The respondents stated that this rule will ultimately result in non-value added direct or indirect costs. The respondents suggested that better solutions exist that have benefits that will accrue to all of the interested parties.

Response: The mandate of section 893 of the NDAA for FY 2011 is to improve contractor business systems to achieve timely and reliable information. Contract terms explicitly require contractors to maintain business systems as a condition of contracting responsibility and, in some cases, eligibility for award. Contract prices are negotiated on the basis that contractors will maintain such systems, so that the Government does not need to maintain far more extensive inspection and audit functions than it already does. DoD contractor competition will be enhanced with the improvement of DoD contractors' business systems and imminent cost savings that will result.

19. Application of Withholdings

Comment: A respondent suggested that the final rule should explicitly limit the contracting officer's discretion to apply withholdings against only those contracts and invoices that could be affected by the identified system deficiency.

Response: The contracting officer has the sole discretion to identify covered contracts containing the clause at DFARS 252.242–7005, against which to apply payment withholds. DFARS 252.242–7005(d) limits implementation of a payment withhold for significant deficiencies in a contractor business system required under a contract. However, this does not limit the contracting officer's discretion to apply withholds against only those contracts and invoices that could be affected by the identified system deficiency.

20. Nexus Between Potential Harm and Withholding

Comment: A respondent stated that one of the most significant problems with the interim rule is that it fails to require any nexus whatsoever between (a) the identified system deficiency and the potential financial harm to the Government; (b) the identified system deficiency and the nature of the specific invoices against which the withholdings will be applied; and (c) the identified system deficiency and the total amount of the withholding. The respondent stated that DCAA's audit report should provide recommendations to the contracting officer as to whether withholding payment is necessary to

protect the Government's interests, and if not, what other protections might be available to the Government. The respondent suggested that such other protections might include: (1) Closer monitoring of payment requests submitted by the contractor in light of the noted deficiency; or (2) a decrement to certain, but not all, contract payments (or a withholding less than 5 percent) that might be more commensurate with the potential financial risk to the Government. The respondent further suggested that the final rule should clarify that the contracting officer must justify, in writing, the need to withhold against certain invoices based upon: (1) The nature of the particular system deficiency; (2) the perceived impact to the Government's reliability of information generated by such system due to the particular deficiency; (3) the nature of the invoices against which the withholdings will be applied and their correlation to the perceived risks associated with the specific system deficiency; and (4) the amount of withholding necessary to adequately protect the Government's interests due to the deficiency. The respondent suggested that requiring a written withholding determination will properly protect contractors from unreasonable or punitive withholdings that are unrelated to the system deficiency as well as ensure the withholdings are tailored to the Government's interests.

Response: The intent of the rule is to authorize payment withholding when the contracting officer finds that there are one or more significant deficiencies due to the contractor's failure to meet one or more of the system criteria. The rule requires contracting officers to consider significant deficiencies in determining the adequacy of a contractor's business system and potential payment withholding in accordance with section 893 of the NDAA for FY 2011. Contract terms explicitly require contractors to maintain the business systems in question as a condition of contracting responsibility and, in some cases, eligibility for award. Contract prices are negotiated on the basis that contractors will maintain such systems, so that the Government does not need to maintain far more extensive inspection and audit functions than it already does. Failure of the contractor to maintain acceptable systems during contract performance deprives the Government of assurances for which it pays fair value. While not ''deliverable'' services under specific contract line items, the contractual requirements for the contractor business systems are material terms, performance of which is required to ensure contracts will be performed on time, within cost estimates, and with appropriate standards of quality and accountability. The payment withholding remedy provides a measure of the overall contract performance of which the Government is deprived during the performance period, and for which the contractor should not receive the full financing payments. DoD is relying on the temporary payment withholding amounts, not as a penalty for a deficiency, but as representing a good-faith estimate sufficient to mitigate the Government's risk where the actual amounts are difficult to estimate or quantify. Deficiencies that do not directly relate to unallowable or unreasonable costs still pose risks to the Government, and may lead to harm that may not be calculated readily when the deficiencies are discovered. In most cases, the financial impact of a system deficiency cannot be quantified because a deficient system produces unreliable information. When the financial impact of a deficiency is quantifiable, DoD expects contracting officers to take appropriate actions to reduce fees, recoup unallowable costs, or take legal action if fraudulent activity is involved.

21. Subcontractor Costs

Comment: A respondent suggested that the final rule should exempt subcontractor costs from withholding under a prime contractor's invoice. Unless the identified system deficiency of the prime contractor casts some doubt on the reliability of the subcontractor's costs in the prime's invoice, the subcontractor costs should be removed from the calculation of any withholding.

Response: Business system deficiencies affect all cost elements. Such deficiencies may impact accumulating and recording of subcontractor costs and increase the risk of unallowable and unreasonable costs on DoD contracts.

22. Time Limit for Withholdings

Comment: The interim rule provides that if the contracting officer does not make a timely determination within 90 days as to whether a significant deficiency has been remediated, the withholding percentage of monies due will be reduced by 50 percent. A number of respondents expressed concern that if the contracting officer continues to not render a decision, withholding at this reduced level could continue indefinitely. The respondents suggested that the final rule should be revised to remove the withholdings in their entirety after 90 days of inaction by the Government.

Response: Contracting officers will make timely decisions and promptly discontinue payment withholding when they determine that there are no remaining significant deficiencies. The rule requires contracting officers to reduce withholding directly related to the significant deficiencies by at least 50 percent if, within 90 days of receipt of the contractor notification that the contractor has corrected the significant deficiencies, the contracting officer has not made a determination. This language is sufficient to mitigate a contractor's risk due to inaction by the Government.

23. Application to Existing Contracts

Comment: A respondent stated that the interim rule establishes guidelines for contracting officers to determine when the provisions of the interim rule will become effective, and properly focuses on the treatment of existing solicitations and future contracts. However, the respondent expressed concern that the rule is silent on the treatment of pre-existing contracts that obviously do not include the contractor business systems clause. The respondent suggested that unless the contractor and the Government agree upon a bilateral modification, it would be improper for the contracting officer to modify unilaterally an existing contract that imposes such significant new obligations and potential liabilities on the contractor.

Response: Revisions to the DFARS set forth in this rule do not affect existing contracts that do not include the business systems clause unless the contractor and the Government agree to modify the contract bilaterally.

24. Commercial Contracts

Comment: A respondent suggested that the rule should exempt commercial contracts explicitly. More specifically, the clauses at DFARS 252.242–7006, Accounting System Administration, and DFARS 252.244–7001, Contractor Purchasing Systems Administration, appear to be applicable to time-and-materials (T&M) and labor-hour contracts as written, per their prescriptions. The respondent questioned whether these provisions are applicable to T&M and firm-fixed-price (FFP) labor-hour contracts for commercial items. The respondent noted that there are times when DoD enters into T&M and labor-hour contracts using commercial labor rates such as GSA negotiated rates or other commercial rates. However, DFARS 252.242–7006 includes phrases such as

''segregation of direct costs from indirect costs, allocation of indirect costs, exclusion of unallowables'' that are not relevant principles for commercial-item contracts. According to the respondent, DFARS 252.244–7001 appears to be applicable if a contractor has any T&M or FFP labor-hour contracts, regardless of whether subcontractors are performing this labor. The respondent questioned whether the prescriptions of the clauses should indicate their applicability only to noncommercial-item T&M and labor-hour contracts, or whether the clauses should indicate what would be applicable to commercial-item contractors.

Response: In accordance with FAR 12.301(d)(1), the clauses at DFARS 252.242–7006, Accounting System Administration, and DFARS 252.244–7001, Contractor Purchasing Systems Administration, are not applicable to T&M and FFP labor-hour contracts for commercial items. Furthermore, paragraph (6) of 48 CFR 9903.201–1, CAS Applicability, exempts FFP, T&M, and labor-hour contracts and subcontracts, for the acquisition of commercial items. Consequently, commercial-item contracts are not covered contracts and will not contain the clause at DFARS 252.242–7005, Contractor Business Systems.

25. Significant Deficiency Determination Review

Comment: A respondent suggested that language should be inserted in the final rule that would require any withhold decision resulting from a business system significant deficiency to be approved at least two levels above the contracting officer prior to the imposition of the withhold.

Response: The contracting officer is the only person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. DoD contracting personnel are skilled professionals. All contracting personnel are required by law to obtain a certification to ensure they have the requisite skills in contracting. When specialized expertise is required, contracting officers consult with auditors and other individuals with specialized experience, as necessary, to ensure a full understanding of issues. In fact, the rule requires such consultations. Accordingly, the contracting officer is the appropriate authority for making decisions regarding contractor business systems.

26. Prompt Contracting Officer Notification

Comment: A respondent stated that in numerous places in the rule, the term ''promptly'' is used to describe the response time required of the contracting officer, while the contractor is given a very specific response time (i.e., 30 days). The respondent recommended that the Government response time be equally specific in terms of number of days, and that the contracting officer provide an initial written determination on any significant deficiency within 30 days of discovery.

Response: In fairness to the Government and contractors, the contracting officer must take whatever time is appropriate and necessary to review findings and recommendations prior to making an initial determination if one or more significant deficiencies materially affects the ability of DoD officials to rely upon information produced by the system.

27. Required Withholds

Comment: A respondent stated that the NDAA for FY 2011 provides the contracting officer the latitude to make reasonable decisions regarding withholding stating that ''an appropriate official of the Department of Defense may withhold up to 10 percent. * * *,'' however, the rule makes withholds an imperative. The respondent suggested that the rule should reflect the language in the law.

Response: Section 893 of the NDAA for FY 2011 requires the Secretary of Defense to develop and initiate a program for the improvement of contractor business systems to ensure that such systems provide timely, reliable information for the management of DoD programs. Further, the statute sets forth that an appropriate official of the Department of Defense may withhold up to 10 percent of progress payments, performance-based payments, and interim payments under covered contracts from a covered contractor, as needed, to protect the interests of the Department and ensure compliance, if one or more of the contractor business systems has been disapproved. As a matter of policy, the DoD program that implements section 893 mandates withholds for significant deficiencies found in contractor business systems to protect DoD and the U.S. taxpayers from potential waste, fraud, and abuse, as allowed for in the statute.

28. Internal Controls

Comment: A respondent suggested that internal controls should be explicitly defined using the Generally Accepted Government Auditing Standards definition, which states that internal controls are ''an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: Effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.''

Response: The rule focuses on ''business systems,'' which includes internal controls and the specific criteria that those systems must meet to be acceptable. The term ''internal controls'' is commonly defined throughout professional accounting documents and literature and, therefore, does not require an explicit definition in this rule.

29. Estimating System Integration

Comment: A respondent expressed concern that integrating business systems without clear benefit is costly, disruptive, and an allowable cost. The respondent recommended that the estimating system language be changed to eliminate the requirement to integrate the contractor's estimating system with the contractor's related management systems.

Response: An effective estimating system must gather and process information from other business systems outside the traditional estimating departmental functions. For example, a soundly functioning estimating department will find it necessary to obtain information about historical purchases from the accounting system to help form reliable estimates of prospective direct material purchases. System integration promotes consistency and prevents individual departments within a company from generating output without consideration of information available in other related business systems. Fair and reasonable estimates for future work must be reflective of the contractor organization as a whole, which requires a level of integration. An estimating system that is disconnected to the other contractor business systems is a reflection of poor internal controls.

30. Executive Order 12866

Comment: A respondent suggested that requirements for systems integration and oversight by applicable financial control systems are very expensive, specify contractor behavior instead of desired outcome, and should be eliminated, if feasible. In general, the interim rule should be harmonized with Executive Order 12866, which directs agencies, to the extent feasible, to

specify performance objectives rather than behavior, and to assess all costs and benefits of available regulatory alternatives, and to select regulatory approaches that maximize net benefits.

Response: The desired outcomes for the requirements for business systems integration and oversight by applicable financial control systems are to achieve accurate, complete, and current data, and consistency across the contractor's business systems. In accordance with Executive Order 12866, DoD has assessed all costs and benefits of available regulatory alternatives and has selected the regulatory approach that maximizes net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity.

31. Materiality

Comment: A respondent stated that the term ''material'' requires better amplification in the final rule to reduce variability in interpretation. The respondent suggested that the final rule should specify that when determining materiality, a contracting officer or auditor should rely on established Government standards such as CAS and Federal Accounting Standards Advisory Board statements.

Response: The rule requires that an acceptable business system comply with the system criteria set forth under each of the six business system clauses. The criteria for each business system defines the aspects of the system that materially affect the ability of DoD to rely on information produced. Determinations of significant deficiencies will be based on the contractor's failure to comply with the business system criteria. For example, the system criteria under the clause at DFARS 252.242–7006, Accounting System Administration, requires that the contractor's accounting system ''shall provide for * * * Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles.'' Each significant deficiency must be determined on its own set of facts regarding compliance with the system criteria.

32. Due Process

(A) *Comment:* A respondent stated that the rule denies a contractor due process and notification of alleged noncompliance by allowing the contracting officer to issue initial determinations prior to receiving all the facts, and giving the contractor only 30 days to respond. The respondent suggested that the contractor should be given 60 days from the initial determination that a significant deficiency exists to respond to the contracting officer, and also provide the contracting officer the flexibility to allow more than 60 days if deemed necessary.

Response: The rule provides adequate opportunities for communication between the contracting officer and the contractor prior to the implementation of payment withholds. The contractor will be notified of a preliminary finding of a deficiency during the course of formal system reviews and audits. This occurs before the auditor or functional specialist releases a report to the contractor and contracting officer. After receiving a report, the contracting officer will promptly evaluate and issue an initial determination. The contractor is then allowed 30 days to respond to any significant deficiencies. Contractors are given ample opportunity to present their position during system reviews. Accordingly, the requirement for a contractor to respond within 30 days of an initial determination is adequate. The rule does not preclude the contracting officer from granting a contractor additional time to respond should that be requested and warranted.

(B) *Comment:* A respondent stated that provisions in these clauses do not nullify rights under other contract clauses or due process actions. The respondent recommended adding the phrase ''except for actions resolved under contract disputes'' to the end of the sentence in DFARS 252.242–7005(d)(8).

Response: Nothing in the rule negates the contracting parties' rights and obligations under the Contract Disputes Act and disputes clause, the availability of other avenues of dispute resolution, or the entitlement to Contract Disputes Act interest on contractor claims. However, Prompt Payment Act interest entitlement is not intended in any event. Under these circumstances, a reference to disputes resolution in DFARS 252.242–7005(d)(8) is not needed.

33. Cost Considerations

Comment: A respondent recommended that plans and actions to correct significant deficiencies should always include cost considerations, as there will be a direct and indirect impact on contracts.

Response: While cost is a consideration, the criteria placed in the systems clauses for the six business systems covered by this rule have been identified as critical to assure the Government that the information created by the systems is reliable and that the systems operate to protect the Government's interest. There may be more than one way to correct a system deficiency. In selecting a particular corrective action, cost may be a factor for contractors to discuss with the Government when presenting a plan for corrective action.

34. PGI Language

Comment: A respondent referenced DFARS 215.407–5–70(e)(3)(ii) which instructs contracting officers to follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in DFARS Procedures, Guidance, and Information (PGI) 215.407–5–70(e). The respondent suggested that since PGI is not regulation, references to specific PGI should stay out of regulation.

Response: The PGI procedures referenced in DFARS 215.407–5–70(e)(3)(ii) are mandatory internal DoD procedures applicable to monitoring a contractor's corrective action and the correction of significant deficiencies. Although the internal procedures are not part of the regulation, inclusion in the DFARS of the requirement to follow the procedures is necessary in order to make the procedures mandatory. In other instances, a reference to PGI may be necessary in order to notify contracting officers that additional guidance is available.

35. Earned Value Management Systems (EVMS)

Comment: A respondent recommended that DoD validate the requirements of EVMS (ANSI/EIA–748 standard) with regard to reliability, effectiveness, and efficiency prior to proceeding to a final rule.

Response: DoD recognizes the 32 guidelines in the ANSI/EIA–748 for use on defense acquisition programs. These guidelines have become, and continue to be, the universally accepted criteria against which industry and the Government determine and document the reliability and effectiveness of their EVMS. The National Defense Industrial Association Program Management Systems Committee is required to periodically reaffirm ANSI/EIA–748 and make any required revisions, with full and active participation by the Government. Therefore, DoD continues to recognize the EVMS guidelines in the revised version of ANSI/EIA–748 and will continue to direct their use in DoD's earned value management policy.

36. Substantially Corrected Deficiencies

Comment: A respondent recommended that the contracting officer request the auditor or functional

specialist to review the contractor's corrective action when the deficiencies have been ''substantially'' corrected, and discontinue withholding of payments, release any payments previously withheld, and approve the system upon a contracting officer determination that the contractor has ''appropriately'' corrected significant deficiencies in lieu of the requirement that the contractor has corrected ''all'' significant deficiencies.

Response: Significant deficiency, in the case of a contractor business system, means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes. For this reason, the contracting officer shall discontinue the withholding of payments, release any payments previously withheld, and approve the system only after the contracting officer determines that the contractor has corrected all significant deficiencies as directed by the contracting officer's final determination.

37. Delivery of Contract Line Items

Comment: A respondent suggested that the contracting officer discontinue withholding of payments and release any payments previously held upon delivery of contract line items.

Response: In accordance with the clause at DFARS 252.242–7005, Contractor Business Systems, a payment withhold is only applied to progress payments, performance-based payments, and interim payments under cost-reimbursement contracts, incentive type contracts, T&M contracts, and labor-hour contracts. Payment withholding shall not apply to payments on fixed-price line items where performance is complete and the items were accepted by the Government. However, since contract line items under cost-reimbursement contracts are based on a contractor's actual costs and not on negotiated fixed prices, payment withholding will not be discontinued and previously withheld payments will not be released until the contract is completed, or all significant deficiencies have been corrected, whichever comes first.

38. Other Remedies

Comment: Reducing the negotiation objective for profit or fee is listed as one option for contracting officers to consider during negotiations when a proposal is generated by a purchasing system with an identified deficiency. A respondent suggested that this is a punitive and inappropriate response to a system deficiency and should be removed.

Response: This rule does not limit the contracting officer's discretion to apply any and all regulatory measures, as warranted by the circumstances, including mitigating the risk of system deficiencies by reducing the negotiation objective for profit or fee.

39. Property System Approval/Disapproval

Comment: A respondent suggested that property systems be determined to be adequate or inadequate instead of being approved or disapproved.

Response: The language in DFARS part 245 is consistent with other business systems language, as well as with section 893 of the NDAA for FY 2011.

40. Estimating System Infrastructure

Comment: A respondent stated that contractors must have the latitude to establish their own effective and efficient infrastructure to achieve specific ''performance objectives.'' Contractors must be judged by the quality of outcome rather than on externally imposed processes and policies. The respondent suggested replacing the phrase ''Estimating system means the Contractor's policies, procedures, and practices for budgeting and planning controls * * *'' with ''Estimating system means the Contractor's infrastructure for budgeting and planning controls * * *.''

Response: Effective internal control systems are process oriented rather than focused on outcomes alone. Effective policies, procedures, and practices are the foundation for all organizations to achieve their operational, financial, and compliance objectives on a consistent basis.

41. Privileged or Confidential

Comment: A respondent suggested revising DFARS 252.215–7002(d)(1) as follows: ''The Contractor shall disclose its estimating system to the Administrative Contracting Officer (ACO), in writing. The Government 'shall' protect the information as privileged or confidential. The Contractor must mark the documents with the appropriate legends before submission as well.''

Response: This rule is not intended to change the Government's existing obligations under law and regulation to protect a contractor's privileged or confidential information. The advisory at DFARS 252.215–7002(d)(1) that contractors mark documents with appropriate legends is intended to encourage good business practices in order to help the Government identify information that the contractor wishes to be protected.

42. Flow Down

Comment: DFARS clause 252.244–7001, paragraph (c)(16), requires notification to the Government of the award of all subcontracts that contain the FAR/DFARS flowdown clauses that allow for Government audit and to ensure the performance of audits. A respondent recommended that the rule articulate this specific FAR/DFARS clause and define whose responsibility it is to both conduct the audit and ensure the performance of the audit. Paragraph (c)(17) of this clause requires the contractor to ''enforce'' certain Government policies for subcontracts. The respondent stated that prime contractors can flow down requirements or certify to certain attestations, or ensure to the best of their ability, but cannot enforce them with a subcontract. That can be accomplished only by the subcontractors themselves. The respondent recommended that DoD replace the word ''enforce'' with ''implement.''

Response: The notification requirement under the purchasing system criterion in the clause at DFARS 252.244–7001, paragraph (c)(16), is appropriate. The criterion does not require flow down of FAR and DFARS clauses to subcontracts, but instead establishes the requirement that the contractor notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts.

43. Potential Risk of Harm

Comment: With reference to DFARS 252.245–7003(f), a respondent suggested that ''Potential risk of harm'' has been removed from other interim rules and should be removed here, as well.

Response: The phrase ''potential risk of harm'' has been removed from DFARS 252.245–7003(f).

44. Quicker Deficiency Corrections

Comment: A respondent stated that an auditor or functional analyst may identify a significant deficiency in one or more systems that may be corrected by relatively simple means, such as a change in policies, practices, or minor changes to the software of the system itself. Often the deficiency is identified and agreed to by the contractor and appropriate changes are made even before the deficiency report is received by the contracting officer, thus allowing

the auditor or functional analyst to review the changes being made to the business system. According to the respondent, in such cases, the contracting officer should have the option not to withhold any amounts from billings; as it reads now, it is unclear that the contracting officer has this option. Furthermore, such language would encourage quicker resolution for correcting deficiencies that are not in dispute since it would encourage contractors to accelerate making changes even before the contracting officer issues an initial determination. The other remedies for significant deficiencies would continue as is. The respondent recommended adding optional language to the contracting officer's final determination that states ''the contractor's business system is acceptable and approved based upon the corrective actions already taken by the contractor.''

Response: The withholding of payments shall not be implemented until the contracting officer issues a final determination that significant deficiencies remain. If a significant deficiency is corrected by relatively simple means, and appropriate changes are made before the deficiency report is received by the contracting officer, DoD expects that the contracting officer would utilize sound business judgment in issuing initial and final determinations, and implementing payment withholds, if applicable.

45. Contractor Appeals

Comment: One respondent recommended that when a contracting officer issues a final determination of a significant deficiency, the letter sent to the company should include language referring to the Contracts Disputes Act and what rights the contractor may have to appeal the contracting officer decision. According to the respondent, it is not clear that there is any appeal from the contracting officer's final decision, even though the decision may be completely in error. The respondent stated that the interim rule also does not address how such an appeal should be addressed by the contracting officer. It appears based on the Government comments to the interim rule that the Contracts Disputes Act of 1978 would apply to disputes over significant deficiencies in business systems. According to the respondent, it is not clear whether the final determination made by the contracting officer is subject to the appeals process outlined in FAR 33.211 or whether the contractor may have to certify and send a claim to the contracting officer to initiate the FAR part 33 process. The respondent suggested that this should be clarified in the final rule for the benefit of the Government and the contractors. Another respondent expressed concern that the appeals process in FAR 33.204 does not address the issue of the contracting officer having sole authority to implement the rule.

Response: Final determinations on the adequacy of the contractor's business systems under the rule are not contracting officer's final decisions for the purposes of the Contract Disputes Act of 1978 (CDA). Because the final determinations are not made in response to a claim submitted for a decision by a contractor against the Government related to a contract, they are not final decisions in accordance with the CDA. Further clarification in the rule of the disputes process or the rights the contractor may have under the CDA does not appear necessary.

46. Definition of Deficiency

Comment: A respondent stated that clarification of materiality in regard to system deficiencies continues to be inadequate. The interim rule indicates that a single significant deficiency in an EVMS guideline may result in withdrawal of EVMS approval for a company and subsequent implementation of the 5 percent payment withholding clause. The respondent stated that industry continues to maintain that this does not allow for tempering of findings based on risk, the degree of potential harm to the Government that could result from the identified deficiency, or any other factor that would indicate whether the deficiency is material in nature. The respondent suggested an incremental process for withholding of payments and withdrawal of EVMS system approval that takes materiality of deficiencies into consideration and incorporates DCMA's Corrective Action Request process and definitions for severity of findings of EVMS deficiencies.

Response: All significant deficiencies pose risks to the Government and may lead to harm that may not be readily calculated when the deficiencies are discovered. The intent of the rule is to withhold payments when there is a shortcoming in the system that materially affects the ability of DoD officials to rely on information produced by the system for management purposes, i.e., significant deficiency. In the case of EVM, a disapproval would mean the system has one or more significant deficiencies due to the contractor's failure to comply with the system criteria in the clause at DFARS 252.234–7002, Earned Value Management System, and the contracting officer would be required to apply a withhold in accordance with the clause at DFARS 252.242–7005, Contractor Business Systems.

47. EVMS Functional Specialist Consultation

Comment: A respondent stated that it continues to be unclear where the functional specialist resides in regards to EVMS, the CMO, or the DCMA Earned Value Management Center.

Response: EVMS functional specialists operate out of the DCMA Earned Value Management Center.

48. Contractor Monitoring and Reporting

Comment: A respondent suggested standardization of two contractor requirements across all business systems to (1) monitor and periodically review the business system to ensure compliance with established policies and procedures and (2) upon request, present results of those internal reviews to the administrative contracting officer (along the lines of DFARS 252.242–7004(c)(2) and (d)(10)). Currently, both requirements are included in the interim rule, but not for all business systems.

Response: While the system criteria language is not standardized across all business systems clauses, each business system clause contains system-specific requirements for contractor monitoring and disclosure. For example, under the property system criteria, the contractor is required to ''establish and maintain procedures necessary to assess its property management system effectiveness, and shall perform periodic internal reviews and audits. Significant findings and/or results of such reviews and audits pertaining to Government property shall be made available to the Property Administrator.'' Furthermore, the contractor ''shall periodically perform, record, and disclose physical inventory results.''

49. System Approval

Comment: A respondent suggested that the rule make it clear that based on section 893(b)(4) of the NDAA for FY 2011, a business system is considered to be approved absent a finding by the contracting officer of a significant deficiency.

Response: Section 893(b)(4) of the NDAA for FY 2011 simply requires development of a program to ''provide for the approval of any contractor business system that does not have a significant deficiency.'' Approval of a business system is an affirmative action.

The absence of a finding of a significant deficiency is not considered a system approval; however, a system review or audit that does not result in a finding of one or more significant deficiencies will lead to a system approval under the rule.

50. Contractor Notification

Comment: A respondent suggested that the rule provide that the contractor should have simultaneous access with the contracting officer to any report of a significant deficiency in order to expedite a thoughtful and timely response, given the interim rule has specific time frames in terms of responding to the Government.

Response: The rule provides adequate opportunities for communication between the contracting officer and the contractor prior to the implementation of payment withholds. The contractor will be notified of a preliminary finding of a deficiency during the course of formal systems reviews and audits. This occurs before the auditor or functional specialist releases a report to the contractor and contracting officer. After receiving a report, the contracting officer will promptly evaluate and issue an initial determination. The contractor is then allowed 30 days to respond to any significant deficiencies. Contractors are given ample opportunity to present their position during systems reviews.

51. Deficiencies Across Multiple Systems

Comment: A respondent suggested that language be added to the final rule that makes it clear that if one specific deficiency relates to more than one business system, that withholding not be calculated twice for the same deficiency, as this would in essence represent double counting and would produce an inequitable result.

Response: Withholds are based on deficient business systems. A significant deficiency may result in the disapproval of multiple business systems resulting in a withhold applied against each system up to a maximum withhold of 10 percent per contract. Specific system criteria or requirements exist for each of the business systems. If a significant deficiency exists, then the ability to rely on information produced by the system is materially affected and the contracting officer is required to issue a final determination with a notice to withhold payments. There is a connection between the payment withhold and the business system. If similar significant deficiencies are determined to exist for multiple contractor business systems according to the published criteria for those systems, then a withhold could apply for each business system required under the contract.

52. Corrective Action Plan (CAP)

Comment: A respondent suggested that the current business systems language be modified in the final regulation indicating that withholding not be required if an acceptable corrective action plan is in place.

Response: Payment withholds are applied when the contracting officer makes a final determination to disapprove a contractor's business system in accordance with the clause at DFARS 252.242–7005, Contractor Business Systems. Submission of a corrective action plan doesn't mean that the contractor has corrected all significant deficiencies identified in the final determination. Rather, the corrective action plan provides milestones and identifies actions that will eliminate the significant deficiencies. Until the contracting officer has evidence that the contractor has corrected the significant deficiencies, a payment withhold must remain in place in order to protect the interests of the Government.

53. Miscellaneous Editorial Comments

Comment: One respondent submitted a number of miscellaneous editorial comments.

Response: Miscellaneous editorial comments have been considered and incorporated into the final rule, as appropriate.

B. Summary of Rule Changes

As a result of public comments received in response to the interim rule, the following changes have been made:

1. DFARS 215.407–5–70(d) is removed. The criteria for maintaining an acceptable estimating system have been relocated to the clause at 252.215–7002, Cost Estimating System Requirements.

2. DFARS 232.503–15 has been revised to correct the reference to the system criteria at DFARS 252.242–7004(d)(7).

3. DFARS 242.302(a)(4) has been deleted and an additional contract administration function to approve or disapprove contractor business systems has been added at DFARS 242.302(a)(S–74).

4. The term ''cost'' has been replaced by ''cost-reimbursement,'' as appropriate, in DFARS 242.7000(b)(1) and DFARS 252.242–7005(e).

5. The phrase ''and are expected to correct the significant deficiencies'' has been added to the end of DFARS 242.7000(d)(2) for clarity.

6. Under DFARS 242.7001, Contract clause, University Associated Research Centers (UARCs) has been added to the list of entities to which the clause at DFARS 252.242–7005 does not apply.

7. DFARS 242.7502(g)(2)(ii) and (iv) are revised to remove specific examples of alternatives that contracting officers should consider to mitigate the risk of accounting system deficiencies on proposals where the deficiency impacts negotiations. These examples are removed so that contracting officers do not misinterpret these as being appropriate for mitigating all accounting system deficiencies.

8. The term ''cost or pricing data'' has been replaced by ''certified cost or pricing data,'' as appropriate, in DFARS 242.7502(g)(3)(ii), DFARS 244.305–70(f)(3)(ii), and DFARS 252.215–7002(c)(1) and (2).

9. The words ''fixed-price'' have been deleted from 242.7503(b) for clarity.

10. The words ''compliance with'' have been added at DFARS 252.215–7002(d)(4)(xii) for clarity, as well as numerous changes in punctuation have been made throughout 252.215–7002(d)(4).

11. The clause at 252.242–7005, Contractor Business Systems, has been amended to clarify that the clause is applicable only to contracts awarded that are subject to Cost Accounting Standards (CAS), since a contracting officer is not likely to know if the resulting contract will be subject to CAS when drafting the solicitation. As a result, paragraphs (a) through (e) have been redesignated as (b) through (f).

12. The clause at DFARS 252.242–7005, Contractor Business Systems, has been amended to clarify the language regarding Contracting Officer determinations made based on the evidence submitted by the Contractor, that there is a reasonable expectation that the Contractor's corrective actions have been implemented and are expected to correct the significant deficiencies. Additionally, the clause language has been amended to require that Contracting Officers reduce withholding directly related to the significant deficiencies by at least 50 percent if, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination. In amending this clause, paragraph (f)(iii) has been added and former paragraphs (f)(iii) and (iv) have been redesignated as (f)(iv) and (v).

13. The clause at DFARS 252.242–7006, Accounting System Administration, has been amended to delete the term ''periodic monitoring''

under paragraph (c)(8), and add additional language to clarify the intent of the system criterion.

14. The clause at DFARS 252.245–7003, Contractor Property Management System Administration, has been amended to delete from paragraph (f) the phrase ''leading to a potential risk of harm to the Government.''

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

The objective of the rule is to establish a definition for contractor business systems and implement compliance mechanisms to improve DoD oversight of those contractor business systems. The requirements of the rule will apply to solicitations and contracts that are subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix), other than in contracts with educational institutions, Federally Funded Research and Development Centers operated by educational institutions, or University Associated Research Centers, and include one or more of the defined contractor business systems.

No comments were submitted by the public or from the Chief Counsel for Advocacy of the Small Business Administration in response to the initial regulatory flexibility analysis published with the interim rule.

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because contracts and subcontracts with small businesses are exempt from Cost Accounting Standards (CAS) requirements.

The business systems clause in the proposed rule contains a requirement for contractors to respond to initial and final determinations of deficiencies. The information contractors will be required to submit to respond to deficiencies in the six business systems defined in this rule have been approved by the Office of Management and Budget as follows:

(1) Accounting Systems—OMB Clearance 9000–0011.

(2) Estimating Systems—OMB Clearance 0704–0232.

(3) Material Management and Accounting Systems (MMAS)—OMB Clearance 0704–0250.

(4) Purchasing Systems—OMB Clearance 0704–0253.

(5) Earned Value Management Systems—OMB Clearance 0704–0479.

(6) Property Management Systems—OMB Clearance 0704–0480.

Since contracts and subcontracts with small businesses are exempt from CAS requirements, DoD estimates that small entities will not be impacted by projected reporting, recordkeeping, and other compliance requirements of the rule.

There were no significant alternatives identified that would meet the requirements of the applicable statutes.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). The business systems clause in the proposed rule contains a requirement for contractors to respond to initial and final determinations of deficiencies. OMB has cleared this information collection requirement under OMB Control Numbers 0704–0479, Business Systems—Definition and Administration, DFARS 234, Earned Value Management Systems; and 0704–0480, Business Systems—Definition and Administration, DFARS 245, Contractors Property Management System.

The information contractors will be required to submit to respond to deficiencies in four of the six business systems defined in this rule were approved previously by the Office of Management and Budget as follows:

(1) Accounting Systems—OMB Clearance 9000–0011.

(2) Estimating Systems—OMB Clearance 0704–0232.

(3) MMAS—OMB Clearance 0704–0250.

(4) Purchasing Systems—OMB Clearance 0704–0253.

List of Subjects in 48 CFR Parts 215, 232, 234, 242, 244, 245, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 215, 234, 242, 244, 245, and 252, which was published in the **Federal Register** at 76 FR 28856 on May 18, 2011, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 215, 232, 242, and 244 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTACTING BY NEGOTIATION

215.407–5–70 [Amended]

■ 2. Amend section 215.407–5–70 by removing paragraph (d) and redesignating paragraphs (e) through (g) as paragraphs (d) through (f).

PART 232—CONTRACT FINANCING

232.503–15 [Amended]

■ 3. In section 232.503–15, in the introductory text of paragraph (d), remove ''conforms to the standard at 252.242–7004(e)(7)'' and add ''conforms to the system criteria at 252.242–7004(d)(7)'' in its place.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 4. In section 242.302, remove paragraph (a)(4) and add paragraph (a)(S–74) to read as follows:

242.302 Contract administration functions.

(a) * * *

(S–74) Approve or disapprove contractor business systems, as identified in the clause at 252.242–7005, Contractor Business Systems.

* * * * *

242.7000 [Amended]

■ 5. Amend section 242.7000 as follows:

■ a. In paragraph (a), in the definition for ''Covered contract'', add ''(10 U.S.C. 2302 note, as amended by section 816 of Pub. L. 112–81)'' at the end of the sentence;

■ b. In paragraph (b)(1), remove ''under cost, labor-hour, and time-and-materials contracts billed'' and add ''under cost-reimbursement, labor-hour, and time-and-materials contracts billed'' in its place each time it occurs.

■ c. In paragraph (d)(2), add ''and are expected to correct the significant deficiencies'' at the end of the sentence.

■ 6. In section 242.7001, revise the introductory text to read as follows:

242.7001 Contract clause.

Use the clause at 252.242–7005, Contractor Business Systems, in solicitations and contracts (other than in contracts with educational institutions, Federally Funded Research and Development Centers (FFRDCs), or University Associated Research Centers (UARCs) operated by educational institutions) when—

* * * * *

242.7502 [Amended]

■ 7. In section 242.7502, in paragraph (g)(2)(ii), remove ‘‘, e.g., a fixed-price incentive (firm target) contract instead of a firm-fixed-price’’, remove paragraph (g)(2)(iv) and redesignate paragraphs (g)(2)(v) and (g)(2)(vi) as paragraphs (g)(2)(iv) and (g)(2)(v), and in paragraph (g)(3)(ii), remove ‘‘including cost or pricing data’’ and add ‘‘including certified cost or pricing data’’ in its place.

242.7503 [Amended]

■ 8. In section 242.7503, in paragraph (b), remove ‘‘A fixed-price contract with progress payments’’ and add ‘‘A contract with progress payments’’ in its place.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.305–70 [Amended]

■ 9. In section 244.305–70, in paragraph (f)(3)(ii), remove ‘‘including cost or pricing data’’ and add ‘‘including certified cost or pricing data’’ in its place.

■ 10. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215–7002 [Amended]

■ 11. Amend section 252.215–7002 as follows:

■ a. Remove the clause date ‘‘(MAY 2011)’’ and add ‘‘(FEB 2012)’’ in its place.

■ b. In paragraph (a), in the definition for ‘‘Acceptable estimating system’’, remove ‘‘an estimating system complies with’’ and add ‘‘an estimating system that complies with’’ in its place.

■ c. In paragraphs (c)(1) and (c)(2)(i), remove ‘‘for which cost or pricing data were required’’ and add ‘‘for which certified cost or pricing data were required’’ in its place.

■ d. In paragraphs (d)(4)(i) through (d)(4)(xv), remove ‘‘;’’ at the end of the sentence and add ‘‘.’’ in its place and in paragraph (d)(4)(xvi), remove ‘‘; and’’ at the end of the sentence and add ‘‘.’’ in its place.

■ 12. Amend section 252.242–7005 as follows:

■ a. Remove the clause date ‘‘(MAY 2011)’’ and add ‘‘(FEB 2012)’’ in its place.

■ b. Redesignate paragraphs (a) through (e) as (b) through (f) and add new paragraph (a).

■ c. In newly redesignated paragraph (e)(1), remove ‘‘cost vouchers on cost, labor-hour, and time-and-materials contracts’’ and add ‘‘cost vouchers on cost-reimbursement, labor-hour, and time-and-materials contracts’’ in its place and remove ‘‘as directed by the contracting officer’s final determination’’ and add ‘‘as directed by the Contracting Officer’s final determination’’ in its place.

■ d. In newly redesignated paragraph (e)(3)(ii), remove ‘‘percentage limits in paragraph (d)(3)(i) of this clause’’ and add ‘‘percentage limits in paragraph (e)(3)(i) of this clause’’ in its place.

■ e. In newly redesignated paragraph (f)(2)(ii), remove ‘‘in accordance with paragraph (d) of this clause’’ and add ‘‘in accordance with paragraph (e) of this clause’’ in its place.

■ f. Further redesignate newly redesignated paragraphs (f)(2)(iii) and (f)(2)(iv) as paragraphs (f)(2)(iv) and (f)(2)(v), add new paragraph (f)(2)(iii), and revise newly redesignated paragraph (f)(2)(iv).

The additions and revisions read as follows:

252.242–7005 Contractor business systems.

* * * * *

(a) This clause only applies to covered contracts that are subject to the Cost Accounting Standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201–1 (see the FAR Appendix).

* * * * *

(f) * * *

(2) * * *

(iii) If the Contracting Officer determines, based on the evidence submitted by the Contractor, that there is a reasonable expectation that the corrective actions have been implemented and are expected to correct the significant deficiencies, the Contracting Officer will discontinue withholding payments, and release any payments previously withheld directly related to the significant deficiencies identified in the Contractor notification, and direct the Contractor, in writing, to discontinue the payment withholding from billings on interim cost vouchers associated with the Contracting Officer’s final determination, and authorize the Contractor to bill for any monies previously withheld.

(iv) If, within 90 days of receipt of the Contractor notification that the Contractor has corrected the significant deficiencies, the Contracting Officer has not made a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause, the Contracting Officer will reduce withholding directly related to the significant deficiencies identified in the Contractor notification by at least 50 percent of the amount being withheld from progress payments and performance-based payments, and direct the Contractor, in writing, to reduce the payment withholding from billings on interim cost vouchers directly related to the significant deficiencies identified in the Contractor notification by a specified percentage that is at least 50 percent, but not authorize the Contractor to bill for any monies previously withheld until the Contracting Officer makes a determination in accordance with paragraphs (f)(2)(i), (ii), or (iii) of this clause.

* * * * *

252.242–7006 [Amended]

■ 13. In section 252.242–7006, remove the clause date ‘‘(MAY 2011)’’ and add ‘‘(FEB 2012)’’ in its place and in paragraph (c)(8), remove ‘‘Periodic monitoring of the system’’ and add ‘‘Management reviews or internal audits of the system to ensure compliance with the Contractor’s established policies, procedures, and accounting practices’’ in its place.

252.245–7003 [Amended]

■ 14. In section 252.245–7003, remove the clause date ‘‘(MAY 2011)’’ and add ‘‘(FEB 2012)’’ in its place and in paragraph (f), remove ‘‘leading to a potential risk of harm to the Government,’’.

[FR Doc. 2012–4045 Filed 2–23–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219 and Appendix I to Chapter 2

RIN 0750–AH59

Defense Federal Acquisition Regulation Supplement; Extension of the Department of Defense Mentor-Protégé Pilot Program (DFARS Case 2012–D024)

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

ACTION: Final rule.

SUMMARY: DoD is issuing this final rule amending the Defense Federal Acquisition Regulation Supplement to extend the date for submittal of applications under the DoD Mentor-Protégé Pilot Program for new mentor-protégé agreements and the date mentors may incur costs and/or receive credit towards fulfilling their small business subcontracting goals through an approved mentor-protégé agreement.

DATES: *Effective Date:* February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Lee Renna, telephone 703–602–0764.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements section 867 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81). Section 867 amends the DoD Mentor-Protégé Pilot Program, section 831 of Public Law 101–510 (10 U.S.C. 2302, note), by changing the—

- Acceptance date for new program agreements from September 30, 2011, to September 30, 2015; and
- Eligibility date DoD mentors may incur costs for the purposes of receiving cost reimbursement or credit toward attainment of subcontracting goal, from September 30, 2014, to September 30, 2018.

This final rule implements these changes in the corresponding Defense Federal Acquisition Regulation Supplement (DFARS) sections: 219.704(b) and (d); and Appendix I–103 (a) and (b).

DoD has issued a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. This final rule merely extends the effective dates for an existing DoD program. These dates have already been extended by law.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision as defined within the meaning at FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

IV. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 219 and Appendix I to Chapter 2

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 and 48 CFR chapter 2 appendix I are amended as follows:

■ 1. The authority citation for 48 CFR part 219 and appendix I to chapter 2 is revised to read as follows:

Authority: 41 U.S.C. 1303 and CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.7104 [Amended]

■ 2. Section 219.7104 is amended—

■ (a) In paragraph (b), by removing the year ''2014'' and adding in its place ''2018''; and

■ (b) In paragraph (d), by removing the year ''2014'' and adding in its place ''2018''.

Appendix I to Chapter 2 [Amended]

■ 3. Section I–103 is amended—

■ (a) In paragraph (a), by removing the year ''2011'' and adding in its place ''2015''; and

■ (b) In paragraph (b) introductory text, by removing the year ''2014'' and adding in its place ''2018''.

[FR Doc. 2012–4066 Filed 2–23–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

RIN 0750–AH60

Defense Federal Acquisition Regulation Supplement; Extension of the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans (DFARS Case 2012–D026)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement to extend the program period for the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

DATES: *Effective Date:* February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Lee Renna, telephone 703–602–0764.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements section 866 of the National Defense Authorization Act for Fiscal Year 2012, (Pub. L. 112–81). Section 866 amends the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, section 834 of Public Law 101–189 (15 U.S.C. 637, note), by extending the duration of the test program for three years from December 31, 2011, through December 31, 2014. This change is implemented at Defense Federal Acquisition Regulation Supplement (DFARS) 219.702(3).

DoD is issuing a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. This final rule merely extends the effective dates for an

existing DoD Program. These dates have already been extended by law.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision as defined within the meaning at FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

IV. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 219

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 is amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 219 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. In section 219.702, paragraph (3) is added to read as follows:

219.702 Statutory requirements.

* * * * *

(3) The test program for negotiation of comprehensive small business subcontracting plans expires on December 31, 2014.

[FR Doc. 2012–4070 Filed 2–23–12; 8:45 am]

BILLING CODE 5001–06–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 37 February 24, 2012

Part V

The President

Memorandum of January 27, 2012—Delegation of Certain Function Under Section 308(a) of the Intelligence Authorization Act for Fiscal Year 2012

Memorandum of January 30, 2012—Delegation of Authority in Accordance With Sections 610 and 652 of the Foreign Assistance Act of 1961, as Amended and Section 7009(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010, as Carried Forward by the Department of Defense and Full-Year Continuing Appropriations Act, 2011

Memorandum of February 3, 2012—Delegation of Authority Pursuant to Sections 110(d)(4) and 110(f) of the Trafficking Victims Protection Act of 2000, as Amended

Federal Register
Vol. 77, No. 37
Friday, February 24, 2012

Presidential Documents

Title 3—

The President

Memorandum of January 27, 2012

Delegation of Certain Function Under Section 308(a) of the Intelligence Authorization Act for Fiscal Year 2012

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you, in consultation with the Secretary of Defense, the function to provide to the Congress the information specified in section 308(a) of the Intelligence Authorization Act for Fiscal Year 2012 (Public Law 112–87).

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 27, 2012

[FR Doc. 2012–4598
Filed 2–23–12; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of January 30, 2012

Delegation of Authority in Accordance With Sections 610 and 652 of the Foreign Assistance Act of 1961, as Amended and Section 7009(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010, as Carried Forward by the Department of Defense and Full-Year Continuing Appropriations Act, 2011

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 610 of the Foreign Assistance Act of 1961, as amended, (FAA) and section 301 of title 3 of the United States Code, I hereby delegate to you the authority, subject to the below condition, to transfer $12 million in the FY 2011 Nonproliferation, Antiterrorism, Demining, and Related Programs account to the Economic Support Funds account for programs to counter violent extremism.

Prior to exercising this authority, I hereby delegate to you the authority to fulfill the requirements of section 652 of the FAA and section 7009(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Public Law 111–117), as carried forward by the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Division B, Public Law 112–10).

You are hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,

Washington, January 30, 2012

[FR Doc. 2012–4599

Filed 2–23–12; 11:15 am]

Billing code 4710–10–P

Presidential Documents

Memorandum of February 3, 2012

Delegation of Authority Pursuant to Sections 110(d)(4) and 110(f) of the Trafficking Victims Protection Act of 2000, as Amended

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the authority conferred upon the President by the Trafficking Victims Protection Act of 2000 (Division A of Public Law 106–386), as amended (the ''Act''), to determine, consistent with sections 110(d)(4) and 110(f) of the Act, with respect to Burma for fiscal year 2012, that assistance described in section 110(d)(1)(B) of the Act would promote the purposes of the Act or is otherwise in the national interest of the United States.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, February 3, 2012

[FR Doc. 2012–4600
Filed 2–23–12; 11:15 am]
Billing code 4710–10–P

FEDERAL REGISTER

Vol. 77 Friday,

No. 37 February 24, 2012

Part VI

The President

Notice of February 23, 2012—Continuation of the National Emergency With Respect to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Notice of February 23, 2012—Continuation of the National Emergency With Respect to Libya

Federal Register
Vol. 77, No. 37
Friday, February 24, 2012

Presidential Documents

Title 3—

The President

Notice of February 23, 2012

Continuation of the National Emergency With Respect to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. On February 26, 2004, by Proclamation 7757, the national emergency was extended and its scope was expanded to deny monetary and material support to the Cuban government. The Cuban government has not demonstrated that it will refrain from the use of excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. In addition, the unauthorized entry of any U.S.-registered vessel into Cuban territorial waters continues to be detrimental to the foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended by Proclamation 7757.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
February 23, 2012.

[FR Doc. 2012–4614
Filed 2–23–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Notice of February 23, 2012

Continuation of the National Emergency With Respect to Libya

On February 25, 2011, by Executive Order 13566, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by Colonel Muammar Qadhafi, his government, and close associates who took extreme measures against the people of Libya, including by using weapons of war, mercenaries, and wanton violence against unarmed civilians. In addition, there was a serious risk that Libyan state assets would be misappropriated by Qadhafi, members of his government, members of his family, or his close associates if those assets were not protected. The foregoing circumstances, the prolonged attacks, and the increased numbers of Libyans seeking refuge in other countries caused a deterioration in the security of Libya and posed a serious risk to its stability.

We are in the process of winding down the sanctions in response to the many positive developments in Libya, including the fall of Qadhafi and his government. We are working closely with the new Libyan government and with the international community to effectively and appropriately ease restrictions on sanctioned entities, including by taking action consistent with the U.N. Security Council's decision to lift sanctions against the Central Bank of Libya and two other entities on December 16, 2011. However, the situation in Libya continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States and we need to protect against this threat and the diversion of assets or other abuse by certain members of Qadhafi's family and other former regime officials. Therefore, the national emergency declared on February 25, 2011, and the measures adopted on that date to deal with that emergency, must continue in effect beyond February 25, 2012. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13566.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
February 23, 2012.

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H.R. 588/P.L. 112–94
To redesignate the Noxubee National Wildlife Refuge as the Sam D. Hamilton Noxubee National Wildlife Refuge. (Feb. 14, 2012; 126 Stat. 10)

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