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Contents

Federal Register

Vol. 77, No. 115

Thursday, June 14, 2012

Agriculture Department
See Rural Utilities Service

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Bureau of Consumer Financial Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35658–35659
Request for Information Regarding Complaints from Private Education Loan Borrowers, 35659–35660

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Child Care Development Fund – Reporting Improper Payments – Instructions for States, 35682

Coast Guard
RULES
Safety Zones:
Keweenaw Waterway, Hancock, MI, 35621–35623
Old Fashion 4th July Fireworks, Presque Isle Bay, Erie, PA, 35619–35621
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35701–35704

Commerce Department
See National Oceanic and Atmospheric Administration

Community Development Financial Institutions Fund
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35754

Community Living Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Evaluation of Aging and Disability Resource Center Program, 35682–35683

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 35660

Copyright Office, Library of Congress
PROPOSED RULES
Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers, 35643–35652

Defense Department
See Engineers Corps
RULES
Federal Acquisition Regulations:
Justification and Approval of Sole Source 8a Contracts; Correction, 35624
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35660–35661
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Evaluation of Export Offers, 35661–35662

Drug Enforcement Administration
NOTICES
Importers of Controlled Substances; Applications, 35718

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Study of Strategies for Improving the Quality of Local Grantee Program Evaluation, 35665–35666
Applications for New Awards:
Teacher Incentive Fund, 35796–35806
Meetings:
The Fund for the Improvement of Postsecondary Education National Board, 35666–35667
Teacher Incentive Fund Program:
Final Priorities, Requirements, Definitions, and Selection Criteria, 35758–35794

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Greenup Locks and Dam, General Reevaluation Report, Greenup County, KY, 35662–35663
Requests for Applications:
Stakeholder Representative Members of the Missouri River Recovery Implementation Committee, 35663–35664

Environmental Protection Agency
PROPOSED RULES
Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes:
Tennessee: Bristol; Determination of Attainment for the 2008 Lead Standards, 35652–35656
NOTICES
Public Water System Supervision Program:
Texas; Revision, 35676–35677
Regulation of Fuel and Fuel Additives:
Modification to Octamix Waiver, 35677–35679

Export-Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35679–35680

Federal Aviation Administration
RULES
Amendments of Class C Airspace:
Colorado Springs, CO, 35617–35618

Establishments of Area Navigation (RNAV) Routes:
Southwestern United States, 35618–35619

Federal Communications Commission
RULES
Connect America Fund; A National Broadband Plan for Our Future:
Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support, 35623–35624

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 35680

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35667–35668
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:
AltaGas Renewable Energy Colorado LLC, 35669–35670
Minco Wind III, LLC, 35670–35671
RE McKenzie 1 LLC, 35670
RE McKenzie 2 LLC, 35670
RE McKenzie 3 LLC, 35668
RE McKenzie 4 LLC, 35669
RE McKenzie 5 LLC, 35671
RE McKenzie 6 LLC, 35669

Federal Maritime Commission
NOTICES
Agreements Filed, 35680

Federal Railroad Administration
NOTICES
Petitions for Waivers of Compliance, 35741–35742

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company, 35680–35681
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 35681
Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies, 35681

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Dietary Supplement Labeling Requirements and Recommendations, etc., 35687–35688
Health Service Guideline on Infectious Disease Issues in Xenotransplantation, 35683–35687
Draft and Revised Draft Guidances for Industry; Availability:
Describing Product-Specific Bioequivalence Recommendations, 35688–35689
Guidance for Industry; Availability:
Irritable Bowel Syndrome—Clinical Evaluation of Drugs for Treatment; Availability; Correction, 35689
Safety and Effectiveness Summaries for Premarket Approval Applications; Availability:
Medical Devices, 35690–35691
Update to Electronic Common Technical Document Module 1, 35691
Withdrawal of Certain Unapproved Abbreviated New Drug Applications, 35691–35698

General Services Administration
RULES
Federal Acquisition Regulations:
Justification and Approval of Sole Source 8a Contracts; Correction, 35624
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Evaluation of Export Offers, 35661–35662

Health and Human Services Department
See Children and Families Administration
See Community Living Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Indian Health Service
NOTICES
Interest Rate on Overdue Debts, 35681–35682

Health Resources and Services Administration
NOTICES
Requests for Nominations:
Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, 35698–35699

Homeland Security Department
See Coast Guard
See U.S. Immigration and Customs Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Protected Critical Infrastructure Information Program Survey, 35700–35701

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35705
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Builders Certification of Plans, Specifications, and Site, 35708–35709
FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, etc., 35707–35708
FHA-Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation, 35710
Home Equity Conversion Mortgage Counseling Standardization and Roster, 35708
Mark-to-Market Program; Requirements for Community-Based Non-Profit Organizations and Public Agencies, 35706–35707
Multifamily Housing Procedures for Projects Affected by Presidentially-Declared Disasters, 35711
Personal Financial and Credit Statement, 35709–35710
Supplement to Application for Federally Assisted Housing, 35705–35706
Strong Cities, Strong Communities National Resource Network Pilot Program, 35711–35718

Indian Health Service
See Indian Health Service

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions, 35699–35700

International Trade Commission
NOTICES
Termination of Investigations:
Certain Universal Serial Bus Portable Storage Devices Including USB Flash Drives and Components Thereof, 35718

Justice Department
See Drug Enforcement Administration

Legal Services Corporation
NOTICES
LSC Strategic Plan 2012–2016, 35718–35719

Library of Congress
See Copyright Office, Library of Congress

Maritime Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35742–35743
Requests for Administrative Waivers of the Coastwise Trade Laws:
Vessel Oriental Mystique, 35744
Vessel Reel Nauti, 35744–35745
Vessel S/V Shenanigans, 35743
Vessel Second Chance, 35743–35744
Vessel Smoke and Roses, 35745

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulations:
Justification and Approval of Sole Source 8a Contracts; Correction, 35624
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulation; Evaluation of Export Offers, 35661–35662

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
National Council on the Arts, 35719

National Highway Traffic Safety Administration
NOTICES
Highway Safety Programs:
Conforming Products List of Evidential Breath Alcohol Measurement Devices, 35747–35751
Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids, 35745–35747

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine Mammals; File Nos. 16163, 16160, and 15569, 35657–35658

Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35657

Securities and Exchange Commission
PROPOSED RULES
Sequencing of Compliance Dates for Final Rules Applicable to Security-Based Swaps, etc., 35625–35643
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 35719–35723, 35735–35738
Chicago Board Options Exchange, Inc., 35731–35732
Chicago Mercantile Exchange, Inc., 35738–35739
International Securities Exchange, LLC, 35723–35725, 35727–35731
NASDAQ OMX PHLX LLC, 35725–35727
NASDAQ Stock Market LLC, 35732–35735

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35739–35741

Surface Transportation Board
NOTICES
Abandonment Exemptions:
Wisconsin Central Ltd., Manitowoc County, WI, 35751
Acquisition of the Properties of Entertainment Tours, Inc. by Academy Express, LLC, 35751–35752
Senior Executive Service Performance Review Board, 35752–35753

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Community Development Financial Institutions Fund
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35753

U.S. Immigration and Customs Enforcement
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 35704

U.S.–China Economic and Security Review Commission
NOTICES
Public Hearings, 35754–35755

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Burial Benefits, 35755

Western Area Power Administration
NOTICES
Conformed Power Marketing Criteria or Regulations for the Boulder Canyon Project, 35671–35676

Separate Parts In This Issue

Part II
Education Department, 35758–35794

Part III
Education Department, 35796–35806

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
71 (2 documents) 35617, 35618

17 CFR
Proposed Rules:
240.....35625

33 CFR
165 (2 documents) 35619, 35621

37 CFR
Proposed Rules:
201.....35643

40 CFR
Proposed Rules:
52.....35652

47 CFR
51.....35623
54.....35623

48 CFR
6.....35624
15.....35624
19.....35624

Rules and Regulations

Federal Register
Vol. 77, No. 115
Thursday, June 14, 2012

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0564; Airspace Docket No. 12–AWA–4]

Amendment of Class C Airspace; Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Colorado Springs, CO, Class C airspace area by amending the legal description to reflect the current airport reference point (ARP) information for the City of Colorado Springs Municipal Airport. The operating requirements remain the same.

DATES: *Effective Date:* 0901 UTC, September 20, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

Class C airspace areas are designed to improve air safety by reducing the risk of midair collisions in high volume airport terminal areas and to enhance the management of air traffic operations in that area. The FAA recently attempted to modify the Class E airspace at City of Colorado Springs Municipal Airport (COS), CO, to ensure containment of new instrument procedures within controlled airspace. As a result of that effort, it was determined the COS ARP geographic position information contained in the Colorado Springs, CO, Class C legal description was no longer accurate due to an airfield survey accomplished previously and required updating. This amendment action ensures the COS ARP described in the Colorado Springs, CO, Class C and Class E legal descriptions match the FAA aeronautical database information so the airspace areas will chart correctly with a shared boundary depicted.

Accordingly, since this action merely reflects the geographic coordinates to be in concert with the FAA's current aeronautical database, and does not change the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class C airspace area at Colorado Springs, CO. Specifically, the ARP for the City of Colorado Springs Municipal Airport is changed to reflect ''lat. 38°48′21″ N., long. 104°42′03″ W.'' This minor correction amends the ARP geographic position coordinates to reflect the information currently contained in the FAA's aeronautical database.

Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9V, dated August 9, 2011 and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area amendment in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class C airspace at Colorado Springs, CO.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011 and

effective September 15, 2011, is amended as follows:

Paragraph 4000 Class C airspace.

* * * * *

ANM CO C Colorado Springs, CO

City of Colorado Springs Municipal Airport (Lat. 38°48′21″ N., long. 104°42′03″ W.)

That airspace within a 5-mile radius of the City of Colorado Springs Municipal Airport extending upward from the surface to and including 10,200 feet MSL; and that airspace extending upward from 8,500 feet MSL to 10,200 feet MSL between the 5- and 10-mile radius beginning at a line drawn from the 270° bearing from the airport at 5 miles direct to the 333° bearing from the airport at 10 miles clockwise to Colorado State Highway 94, excluding that airspace east of Meridian Road and north of Garret Road; and that airspace extending upward from 7,500 feet MSL to 10,200 feet MSL from Colorado State Highway 94 clockwise to a line drawn from the 188° bearing from the airport at 10 miles direct to the 197° bearing from the airport at 5 miles.

* * * * *

Issued in Washington, DC, on June 7, 2012.

Ellen Crum,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–14387 Filed 6–13–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0286; Airspace Docket No. 11–AWP–22]

RIN 2120–AA66

Establishment of Area Navigation (RNAV) Routes; Southwestern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes two new low-altitude RNAV routes, designated T–306 and T–310, in the southwestern United States. The new routes expand the availability of RNAV within the National Airspace System (NAS) and provide substitute route segments for portions of VOR Federal airways V–16 and V–202.

DATES: Effective date 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On April 23, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish two new RNAV routes in the southwestern United States (77 FR 24157).

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments objecting to the proposal were received.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 establishing two RNAV routes, designated T–306 and T–310, in the southwestern United States. T–306 extends between Los Angeles, CA, and El Paso, TX; and T–310 extends between Tucson, AZ, and Truth or Consequences, NM. The routes expand the availability of RNAV within the NAS and provides substitute route segments for portions of VOR Federal airways V–16 and V–202 that will be affected by the scheduled decommissioning of the Cochise, NM, VORTAC in the Fall of 2012.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes RNAV routes to enhance the safe and efficient flow of traffic in the southwestern United States.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6011 United States area navigation routes.

* * * * *

T–306 Los Angeles, CA (LAX) to El Paso, TX (ELP) [New]

Los Angeles, CA (LAX)	VORTAC	(Lat. 33°55′59″ N., long. 118°25′55″ W.)
PRADO, CA	INT	(Lat. 33°55′23″ N., long. 117°47′02″ W.)
Paradise, CA (PDZ)	VORTAC	(Lat. 33°55′06″ N., long. 117°31′48″ W.)
SETER, CA	INT	(Lat. 33°54′04″ N., long. 117°06′33″ W.)
BANDS, CA	INT	(Lat. 33°53′23″ N., long. 116°50′58″ W.)
Palm Springs, CA (PSP)	VORTAC	(Lat. 33°52′12″ N., long. 116°25′47″ W.)
Blythe, CA (BLH)	VORTAC	(Lat. 33°35′46″ N., long. 114°45′41″ W.)
Buckeye, AZ (BXK)	VORTAC	(Lat. 33°27′12″ N., long. 112°49′29″ W.)
PERKY, AZ	INT	(Lat. 33°26′45″ N., long. 112°28′23″ W.)
Phoenix, AZ (PXR)	VORTAC	(Lat. 33°25′59″ N., long. 111°58′13″ W.)
TOTEC, AZ	INT	(Lat. 32°49′36″ N., long. 111°38′32″ W.)
Tucson, AZ (TUS)	VORTAC	(Lat. 32°05′43″ N., long. 110°54′53″ W.)
NOCHI, AZ	WP	(Lat. 32°02′00″ N., long. 109°45′30″ W.)
ANIMA, AZ	INT	(Lat. 31°54′58″ N., long. 108°30′51″ W.)
DARCE, NM	INT	(Lat. 31°53′12″ N., long. 108°13′21″ W.)
Columbus, NM (CUS)	VOR/DME	(Lat. 31°49′09″ N., long. 107°34′28″ W.)
El Paso, TX (ELP)	VORTAC	(Lat. 31°48′57″ N., long. 106°16′55″ W.)

T–310 Tucson, AZ (TUS) to Truth or Consequences, NM (TCS) [New]

Tucson, AZ (TUS)	VORTAC	(Lat. 32°05′43″ N., long. 110°54′53″ W.)
SULLI, AZ	INT	(Lat. 31°56′04″ N., long. 110°34′16″ W.)
MESCA, AZ	INT	(Lat. 31°53′38″ N., long. 110°29′08″ W.)
NOCHI, AZ	WP	(Lat. 31°59′58″ N., long. 108°30′51″ W.)
San Simon, AZ (SSO)	VORTAC	(Lat. 32°16′09″ N., long. 109°15′47″ W.)
Silver City, NM (SVC)	VORTAC	(Lat. 32°38′16″ N., long. 108°09′40″ W.)
Truth or Consequences, NM (TCS)	VORTAC	(Lat. 33°16′57″ N., long. 107°16′50″ W.)

Issued in Washington, DC, on June 7, 2012.

Colby Abbott,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–14406 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0465]

RIN 1625–AA00

Safety Zone; Old Fashion 4th July Fireworks, Presque Isle Bay, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Presque Isle Bay, Erie, PA. This safety zone is intended to restrict vessels from a portion of Presque Isle Bay during the Old Fashion 4th July Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule will be effective between 9:15 p.m. until 10:45 p.m. on July 4, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2012–0465 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0465 in the ''Search'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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

Background and Purpose

Between 9:45 p.m. and 10:15 p.m. on July 4, 2012, a fireworks display will be held on Presque Isle Bay near Erie, PA. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Old Fashion 4th July Fireworks.

This zone will be effective and enforced from 9:15 p.m. until 10:45 p.m. on July 4, 2012. This zone will encompass all waters of Presque Isle Bay, Erie, PA within an 840 foot radius of position 42°08′12″ N and 80°05′59″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

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

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

This temporary final rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Presque Isle Bay, Erie, PA between 9:15 p.m. to 10:45 p.m. on July 4, 2012.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this 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.

If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

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 will not create an environmental risk to health or risk to safety that might 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 will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0465 to read as follows:

§ 165.T09–0465 Safety Zone; Old Fashion 4th July Fireworks, Presque Isle Bay, Erie, PA.

(a) *Location.* The safety zone will encompass all waters of the Presque Isle Bay, Erie, PA within a 840 foot radius of position 42°08′12″ N and 80°05′59″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 4, 2012 from 9:15 p.m. until 10:45 p.m.

(c) *Regulations.*

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

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

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 29, 2012.

S.M. Wischmann,

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

[FR Doc. 2012–14541 Filed 6–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0469]

RIN 1625–AA00

Safety Zone, Keweenaw Waterway, Hancock, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing a portion of the Keweenaw waterway on June 17, 2012. This safety zone is intended to help protect triathlon participants, as well as boaters and spectators of the event.

DATES: This rule will be effective from 10:00 a.m. to noon on June 17, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0469]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Judson A. Coleman, Marine Safety Unit Duluth, U.S. Coast Guard; telephone (218) 720–5286 ext 111, email *Judson.A.Coleman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call

Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and 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 doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect spectators, swimmers, and vessels from the hazards associated with open water swim races, which are discussed further below.

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

B. Basis and Purpose

On the morning of June 17, 2012, participants in the Yooper Sprint triathlon will swim across portions of the Keweenaw waterway, making them vulnerable to vessel traffic.

C. Discussion of the Final Rule

In recognition of the risk to swimmers identified above, the Captain of the Port Duluth has determined it necessary to create a temporary safety zone to prevent vessels from entering, transiting, or anchoring in the vicinity of the swimmers. The following area is a temporary safety zone: All waters of the Keweenaw Waterway encompassed by boundaries beginning at position 47′07′49.8 N 88′37′1.12 W, running west to 47′07′49.45 N 088′37′2.31 W, running northwest to 47′07′59.19 N 88′37′20.23 W, running northeast to 47′08′0.12 N 88′37′18.07 W and finally running southeast to the original position.

This safety zone is deemed necessary in order to ensure the protection of swimmers engaged in the Yooper Sprint Triathlon, vessel operators transiting the area, and spectators of the event. This safety zone will be in effect and enforced on June 17th, 2012 from 10:00 a.m. to noon.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule is believed to have minimal impact on any economic interests due to it being in effect for only two hours and taking place outside the navigable channel.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Keweenaw Waterway from 10:00 a.m. to noon on June 17, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only two hours early in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0469 to read as follows:

§ 165.T09–0469 Safety Zone; Keweenaw waterway, Hancock, MI

(a) *Location.* The following area is a temporary safety zone: All waters of the Keweenaw Waterway encompassed by boundaries beginning at position 47′07′49.8 N 88′37′1.12 W, running west to 47′07′49.45 N 088′37′2.31 W, running northwest to 47′07′59.19 N 88′37′20.23 W, running northeast to 47’08’0.12 N 88’37’18.07 W and finally running southeast to the original position.

(b) *Effective and enforcement period.* This rule will be in effect and enforced from 10:00 a.m. to 12:00 noon on June 17, 2012.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Marine Safety Unit Duluth, or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Marine Safety Duluth or his designated representative.

(3) The on-scene representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative will be aboard either a Coast Guard or Coast Guard auxiliary vessel. The Captain of the Port representative may be contacted via VHF channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Duluth or his on-scene representative to request permission to do so. Vessel operators must comply with all directions given to them by the Captain of the Port, Duluth or his on-scene representative.

Dated: May 21, 2012.

K.R. Bryan,

Commander, U.S. Coast Guard, Captain of the Port, Marine Safety Unit Duluth.

[FR Doc. 2012–14543 Filed 6–13–12; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 54

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161]

Connect America Fund; a National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of 3 years, revisions to an information collection associated with the Commission's *Connect America Fund,* Report and Order (*Order*). The Commission submitted revisions to this information collection under control number 3060–0400 to OMB for review and approval, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), 77 FR 20629, on April 5, 2012. OMB approved the revisions on May 17, 2012.

DATES: The rules amending 47 CFR 51.907(b)(1), (c)(1), and (d) through (h); 51.909(b)(1), and (c) through (k); 51.911(b) and (c); 51.915(e)(5) and (f)(7); 51.917(e)(6) and (f)(3); and 54.304 published November 29, 2011 (76 FR 73830) are effective June 14, 2012.

FOR FURTHER INFORMATION CONTACT: Belinda Nixon, Wireline Competition Bureau, (202) 418–1520 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This document announces that, on May 17, 2012, OMB approved, for a period of 3 years, information collection requirements contained in the Commission's *Order,* FCC 11–161, published at 76 FR 73830, November 29, 2011. The OMB Control Number is 3060–0400. The Commission publishes this notice as an announcement of the effective date of rules that required OMB approval. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on May 17, 2012, for the information collection requirements contained in the Commission's rules at §§ 51.907(b)(1), (c)(1), and (d) through (h); 51.909(b)(1), and (c) through (k); 51.911(b) and (c); 51.915(e)(5) and (f)(7); 51.917(e)(6) and (f)(3); and 54.304.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0400.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

Estimated Annual Burden: 8,554 responses; .5 hours to 53 hours; 121,656 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 201, 202, 203, and 251(b)(5) of the Communications Act of 1934, as amended.

Needs and Uses: On November 18, 2011, the Commission adopted the *Order,* FCC 11–161, published at 76 FR 73830, November 29, 2011, that requires or permits incumbent and competitive local exchange carriers, as part of transitioning regulation of interstate and intrastate switched access rates and reciprocal compensation rates to bill-and-keep under section 251(b)(5), to file tariffs with state commissions and the Commission. This transition affects different switched access rates at specified timeframes and establishes an Access Recovery Charge by which carriers will be able to assess end users a monthly charge to recover some or all of the revenues they are permitted to recover resulting from reductions in intercarrier compensation rates. The intrastate tariff filings may, depending on state requirements, require supporting materials to be filed that may also largely be satisfied by submitting the new information collection referenced above.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–14493 Filed 6–13–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 15, and 19

[FAC 2005–58; FAR Case 2009–038; Correction; Docket 2010–0095, Sequence 2]

RIN 9000–AL55

Federal Acquisition Regulation; Justification and Approval of Sole-Source 8(a) Contracts: Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: DoD, GSA, and NASA are issuing a correction to the summary statement of FAR Case 2009–038; Justification and Approval of Sole-Source 8(a) Contracts, which was published in the **Federal Register** at 77 FR 23369, April 18, 2012.

DATES: *Effective Date:* June 14, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–58; FAR Case 2009–038; Correction.

SUPPLEMENTARY INFORMATION:

Background

DoD, GSA, and NASA are issuing a correction to the summary statement of FAR Case 2009–038; Justification and Approval of Sole-Source 8(a) Contracts, which was published in the **Federal Register** at 77 FR 23369, April 18, 2012. The correction removes language indicating that the applicable section of the National Defense Authorization Act for Fiscal Year 2010 being implemented by FAR Case 2009–038 requires the head of an agency to make public, prior to award, the justification and approval for an 8(a) sole-source contract exceeding $20 million dollars.

Correction

In rule FR Doc. 2012–9204 published in the **Federal Register** at 77 FR 23369, April 18, 2012 make the following correction:

On page 23369, in the first column, in the **SUMMARY** remove the words ''and make public.''

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Dated: June 8, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–14523 Filed 6–13–12; 8:45 am]

BILLING CODE 6820–EP–P

Proposed Rules

Federal Register

Vol. 77, No. 115

Thursday, June 14, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–67177; File No. S7–05–12]

Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Securities and Exchange Commission.

ACTION: Notice of statement of general policy with request for public comment.

SUMMARY: We are requesting public comment on a statement of general policy (''Statement'') on the anticipated sequencing of the compliance dates of final rules to be adopted by the Securities and Exchange Commission pursuant to certain provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the Securities Exchange Act of 1934, as amended by those provisions (''Exchange Act''). These provisions establish a framework for the regulation of security-based swaps and security-based swap market participants under the Exchange Act. The Statement presents a sequencing of the compliance dates for these final rules by grouping the rules into five categories and describes the interconnectedness of the compliance dates for these rules, both within and among the five categories. The Statement also describes the timing of the expiration of the relief previously granted by the Commission that provided exemptions from certain provisions of the Exchange Act, the Securities Act of 1933, and the Trust Indenture Act of 1939.

DATES: Comments regarding the Statement should be received on or before August 13, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/policy.shtml*);
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–05–12 on the subject line; or
- Use the Federal Rulemaking portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–05–12. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (*http://www.sec.gov*). Comments also are available for Web site viewing and printing at the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Ann Parker McKeehan, Special Counsel, Office of Derivatives Policy, Division of Trading and Markets, at (202) 551–5797, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, or, with respect to the Securities Act of 1933, the Trust Indenture Act of 1939, and Exchange Act section 12, Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551–3860, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background and Overview of Statement

A. Background

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or ''Act'') into law.[1] The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] Title VII of the Dodd-Frank Act (''Title VII'') establishes a regulatory regime applicable to the over-the-counter (''OTC'') derivatives markets by providing the Securities and Exchange Commission (''Commission'' or ''we'') and the Commodity Futures Trading Commission (''CFTC'') with authority to oversee these heretofore largely unregulated markets.[3] Title VII provides that the CFTC will regulate ''swaps,'' the Commission will regulate ''security-based swaps,'' and the CFTC and the Commission will jointly regulate ''mixed swaps.''[4]

Title VII amends the Securities Act of 1933 (''Securities Act'')[5] and the

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See, e.g.,* Public Law 111–203, Preamble.

[3] Generally, Subtitle A of Title VII creates and relates to the regulatory regime for swaps, while Subtitle B of Title VII creates and relates to the regulatory regime for security-based swaps.

[4] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, shall further define the terms ''swap,'' ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement.'' These terms are defined in sections 721 and 761 of the Dodd-Frank Act and the Commission and the CFTC have proposed to further define these terms in joint rulemakings. *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* Release No. 34–63452 (Dec. 7, 2010), 75 FR 80174 (Dec. 21, 2010) (''Entity Definitions Proposing Release''); and *Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Release No. 33–9204 (Apr. 29, 2011), 76 FR 29818 (May 23, 2011), corrected in Release No. 33–9204A (June 1, 2011), 76 FR 32880 (June 7, 2011) (''Product Definitions Proposing Release''). The rules further defining the terms ''swap dealer,'' ''major swap participant,'' ''security-based swap dealer,'' ''major security-based swap participant,'' and ''eligible contract participant'' were adopted by the Commission on April 27, 2012 and published in the **Federal Register** on May 23, 2012. *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* Release No. 34–66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) (''Entity Definitions Adopting Release'').

[5] 15 U.S.C. 77a *et seq.*

Exchange Act[6] to substantially expand the regulation of the security-based swap (''SB swap'') market by establishing a new regulatory framework intended to make this market more transparent, efficient, fair, accessible, and competitive.[7] The Title VII amendments to the Exchange Act require, among other things, the following: (1) Registration and comprehensive oversight of security-based swap dealers (''SBSDs'') and major security-based swap participants (''MSBSPs'');[8] (2) reporting of SB swaps to a registered security-based swap data repository (''SDR''), or to the Commission (if the SB swap is uncleared and no SDR will accept the SB swap), and dissemination of SB swap information to the public;[9] (3) clearing of SB swaps at a registered clearing agency (or a clearing agency that is exempt from registration) if the Commission makes a determination that such SB swaps are required to be cleared, unless an exception from the mandatory clearing requirement applies;[10] and (4) if an SB swap is subject to the clearing requirement, execution of the SB swap transaction on an exchange, on a security-based swap execution facility (''SB SEF'') registered under the Exchange Act,[11] or on an SB SEF that has been exempted from registration by the Commission under the Exchange Act,[12] unless no SB SEF or exchange makes such SB swap available for trading.[13] Title VII also amends the Securities Act and the Exchange Act to include ''security-based swaps'' in the definition of ''security'' for the purposes of those statutes.[14] As a result, ''security-based swaps'' are subject to the provisions of the Securities Act and the Exchange Act and the rules thereunder applicable to ''securities.''

Since the Dodd-Frank Act was enacted, the Commission has adopted joint rules with the CFTC further defining the terms ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' and ''eligible contract participant''[15] and has proposed rules in the following twelve areas required by Title VII:

1. Rules prohibiting fraud and manipulation in connection with SB swaps;[16]

2. Rules regarding trade reporting and real-time public dissemination of trade information for SB swaps that would lay out who must report SB swaps, what information must be reported, and where and when such information must be reported;[17]

3. Rules regarding the SDR registration process and the obligations of SDRs, including confidentiality and other requirements with which they must comply;[18]

4. Rules relating to mandatory clearing of SB swaps that would specify the process for a registered clearing agency's submission for review of SB swaps that the clearing agency plans to accept for clearing and rules to establish a process for a registered clearing agency to file advance notices with the Commission pursuant to Title VIII of the Dodd-Frank Act;[19]

5. Rules regarding the steps that a party electing to use the end-user exception to the mandatory clearing requirement must follow to notify the Commission of how it generally meets its financial obligations associated with non-cleared SB swap transactions when it is using SB swaps to hedge or mitigate commercial risk;[20]

6. Rules regarding the confirmation of SB swap transactions that would govern the way in which certain of these transactions are acknowledged and verified by the parties who enter into them;[21]

7. Rules defining and regulating SB SEFs, which would specify their registration requirements, establish the duties, and implement the core principles for SB SEFs specified in Title VII;[22]

8. Rules regarding certain standards that clearing agencies would be required to maintain with respect to, among other things, their risk management and operations;[23]

9. Joint rules with the CFTC further defining the terms ''swap,'' ''security-based swap,'' and ''security-based swap agreement'' and regarding the regulation of mixed swaps and SB swap agreement recordkeeping;[24]

10. Rules regarding business conduct that would establish certain minimum standards of conduct for SBSDs and MSBSPs, including in connection with their dealings with ''special entities,'' which include municipalities, pension plans, endowments and similar entities;[25]

11. Rules regarding the registration process for SBSDs and MSBSPs;[26] and

12. Rules intended to mitigate conflicts of interest at SB swap clearing agencies, SB SEFs, and exchanges that trade SB swaps.[27]

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[6] 15 U.S.C. 78a *et seq.*

[7] *See generally* Subtitle B of Title VII.

[8] *See* section 15F of the Exchange Act, 15 U.S.C. 78o–10.

[9] *See* section 3(a)(75) of the Exchange Act, 15 U.S.C. 78c(a)(75) (defining the term ''security-based swap data repository''); section 13(m) of the Exchange Act (regarding public availability of SB swap data); section 13(n) of the Exchange Act (regarding requirements related to SDRs); and section 13A of the Exchange Act (regarding reporting and recordkeeping requirements for certain SB swaps). *See also Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Release No. 34–63347 (Nov. 19, 2010), 75 FR 77306 (Dec. 10, 2010); corrected at 75 FR 79320 (Dec. 20, 2010) and 76 FR 2287 (Jan. 13, 2011) (''SDR Proposing Release''); and *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Release No. 34–63346 (Nov. 19, 2010), 75 FR 75208 (Dec. 2, 2010) (''Regulation SBSR Proposing Release'').

[10] *See* section 3C(a)(1) of the Exchange Act, 15 U.S.C. 78c–3(a)(1). *See also Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations,* Release No. 34–63557 (Dec. 15, 2010), 75 FR 82490 (Dec. 30, 2010) (''Clearing Procedures Proposing Release'').

[11] 15 U.S.C. 78c–4.

[12] *Id.* at 78c–4(e).

[13] *See* section 3C(g) of the Exchange Act, 15 U.S.C. 78c–3(g) and section 3C(h) of the Exchange Act, 15 U.S.C. 78c–3(h). *See also* section 3(a)(77) of the Exchange Act, 15 U.S.C. 78c(77) (defining the term ''security-based swap execution facility''). *See also Registration and Regulation of Security-Based Swap Execution Facilities,* Release No. 34–63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) (''SB SEF Proposing Release'').

[14] *See* sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending sections 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10), and 2(a)(1) of the Securities Act, 15 U.S.C. 77b(a)(1), respectively). The Dodd-Frank Act also amended the Securities Act to provide that SB swaps could not be used by an issuer, its affiliates, or underwriters to circumvent the registration requirement of section 5 of the Securities Act with respect to the issuer's securities underlying the SB swap. *See* section 768(a) of the Dodd-Frank Act (amending section 2(a)(3) of the Securities Act, 15 U.S.C. 77b(a)(3)).

[15] *See* Entity Definitions Adopting Release.

[16] *See Prohibition Against Fraud, Manipulation, and Deception in Connection with Security-Based Swaps,* Release No. 34–63236 (Nov. 3, 2010), 75 FR 68560 (Nov. 8, 2010) (''SB Swap Antifraud Proposing Release'').

[17] *See* Regulation SBSR Proposing Release.

[18] *See* SDR Proposing Release.

[19] *See* Clearing Procedures Proposing Release.

[20] *See End-User Exception of Mandatory Clearing of Security-Based Swaps,* Release No. 34–63556 (Dec. 15, 2010), 75 FR 79992 (Dec. 21, 2010) (''End-User Exception Proposing Release'').

[21] *See Trade Acknowledgment and Verification on Security-Based Swap Transactions,* Release No. 34–63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011) (''Trade Documentation Proposing Release'').

[22] *See* SB SEF Proposing Release.

[23] *See Clearing Agency Standards for Operation and Governance,* Release No. 34–64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (''Clearing Agency Standards Proposing Release'').

[24] *See* Product Definitions Proposing Release.

[25] *See Business Conduct Standards for Security-Based Swaps Dealer and Major Security-Based Swap Participants,* Release No. 34–64766 (June 29, 2011), 76 FR 42396 (July 18, 2011) (''Business Conduct Standards Proposing Release'').

[26] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* Release No. 34–65543 (Oct. 12, 2011), 76 FR 65784 (Oct. 24, 2011) (''SB Swap Participant Registration Proposing Release'').

[27] *See Ownership Limitations and Governance Requirements for Security-Based Swap Clearing*

In addition, the Commission intends to propose rules establishing capital, margin, and segregation requirements applicable to SBSDs and MSBSPs pursuant to Exchange Act sections 3E [28] and 15F(e) [29] and rules regarding the reporting and recordkeeping requirements to which SBSDs and MSBSPs will be subject pursuant to Exchange Act section 15F(f).[30] The Commission also intends to address the international implications of Title VII in a single proposal that would present an approach to the registration and regulation of foreign entities engaged in cross-border SB swap transactions, among other areas.[31]

Moreover, while not mandated by Title VII, the Commission has adopted exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act of 1939 (''Trust Indenture Act'') for SB swaps issued by certain clearing agencies satisfying specified conditions to facilitate the intent of Title VII with respect to the clearing of SB swaps.[32]

The provisions of Title VII were generally effective on July 16, 2011 (360 days after the enactment of the Dodd-Frank Act, the ''Effective Date''), unless a provision required a rulemaking, in which case such provision would go into effect ''not less than'' 60 days after publication of the related final rules in the **Federal Register** or on July 16, 2011, whichever is later.[33] Because the Commission did not complete its rulemaking prior to the Effective Date, we took a number of actions intended to clarify which U.S. securities laws would apply to security-based swaps as of July 16, 2011 and to provide exemptions from certain provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act.

First, the Commission provided guidance as to which of the requirements of the Exchange Act, as amended by Title VII, would apply to SB swap transactions as of the Effective Date and granted temporary relief to market participants from compliance with certain of those requirements.[34] As a result, SB swap market participants were not required to comply with substantially all of Title VII's requirements applicable to SB swaps under the Exchange Act. The expiration dates of the temporary exemptions granted pursuant to the Effective Date Order are triggered by the effective or compliance dates for certain final rules required to be adopted by the Commission pursuant to Title VII.[35]

Second, the Commission approved an order granting temporary relief and providing interpretive guidance to make it clear that a substantial number of the requirements of the Exchange Act would not apply to SB swaps when the revised definition of ''security'' went into effect on July 16, 2011.[36] Additionally, this order provided temporary relief from provisions of the Exchange Act that allow the voiding of contracts made in violation of those laws.[37] The exemptions granted will expire upon the compliance dates of certain of the rules required to be promulgated pursuant to Title VII, including rules further defining the terms ''security-based swap'' and ''eligible contract participant'' [38] and the rules regarding the registration of SB SEFs.[39]

Third, the Commission provided, until the compliance date for the final rules to be adopted by the Commission further defining the terms ''security-based swap'' and ''eligible contract participant,'' [40] interim exemptions from all provisions of the Securities Act (other than the section 17(a) antifraud provisions), the registration requirements of the Exchange Act relating to classes of securities, and the indenture provisions of the Trust Indenture Act for those SB swaps that would have been, prior to the Effective Date, within the definition of ''security-based swap agreement'' under Securities Act section 2A [41] and Exchange Act section 3A [42] and are entered into solely between eligible contract participants (as defined prior to the Effective Date).[43] As a result, pursuant to the interim exemptions, the offer and sale of such SB swaps between eligible contract participants may be made pursuant to exemptions under the Securities Act without registration of the class under Exchange Act sections 12(a) and 12(g), and without qualification of an indenture under the Trust Indenture Act.[44]

As previously announced, the Commission has been considering how to implement the new requirements that will be applicable to SB swaps pursuant to the rules described above in a practical and efficient manner that avoids unnecessary disruption to the SB

Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges with Respect to Security-Based Swaps under Regulation MC, Release No. 34–63107, (Oct. 14, 2010), 75 FR 65882 (Oct. 26, 2010) (''Proposed Regulation MC'').

[28] 15 U.S.C. 78c–5.

[29] *Id.* at 78o–10(e).

[30] *Id.* at 78o–10(f).

[31] The Commission also adopted an interim final temporary rule that required counterparties to SB swaps entered into prior to the date of enactment of the Dodd-Frank Act, the terms of which had not expired as of that date, to report certain information relating to such SB swaps to a registered SDR, after such registered SDR is operational, or to the Commission and to report information relating to such SB swaps to the Commission upon request. The Commission also issued an interpretive note to the rule requiring counterparties to retain information relating to the terms of such SB swaps. *See Reporting of Security-Based Swap Transaction Data,* Release No. 34–63094 (Oct. 13, 2010), 75 FR 64643 (Oct. 20, 2010). This interim final temporary rule was to remain in effect until the earlier of the operative date of the permanent recordkeeping and reporting rules for SB swap transactions to be adopted by the Commission or January 12, 2012. Commission staff currently is considering what further action, if any, to recommend the Commission take with regard to the interim final temporary rule and interpretive note.

[32] *See Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies,* Release No. 33–9308 (Mar. 30, 2012), 77 FR 20536 (Apr. 5, 2012). These exemptions supplant the temporary exemptions the Commission adopted to facilitate the operation of clearing agencies as central counterparties for eligible credit default swaps. *See Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps,* Release No. 33–8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009). *See also Extension of Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps,* Release No. 33–9232 (Jul. 1, 2011), 76 FR 40223 (Jul. 8, 2011) (extending the expiration date of the temporary exemptions until April 16, 2012).

[33] *See* section 774 of the Dodd-Frank Act, 15 U.S.C. 77b note.

[34] *Order Pursuant to Sections 15F(b)(6) and 36 of the Securities Exchange Act of 1934 Granting Temporary Exemptions and Other Temporary Relief, Together With Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, and Request for Comment,* Release No. 34–64678 (June 15, 2011), 76 FR 36287 (June 22, 2011) (''Effective Date Order'').

[35] *See* Effective Date Order at 36306–7.

[36] *Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* Release No. 34–64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (''Exchange Act Exemptive Order'').

[37] *Id.* at 39930, 39940.

[38] *Id.* at 39938.

[39] *Id.* at 39939.

[40] Further definition of the term ''security-based swap'' was proposed in the Product Definitions Proposing Release and the term ''eligible contract participant'' was further defined in the Entity Definitions Adopting Release.

[41] 15 U.S.C. 77b(b)–1.

[42] *Id.* at 78c–1.

[43] *Exemptions for Security-Based Swaps,* Release No. 33–9231 (July 1, 2011), 76 FR 40605 (July 11, 2011) (''SB Swaps Interim Final Rule''). These interim exemptions will expire upon the compliance date for the final rules further defining the terms ''security-based swap'' and ''eligible contract participant.'' Further, the Division of Corporation Finance issued a no-action letter that addressed the availability of these interim exemptions to offers and sales of SB swaps that are based on or reference only loans or indexes only of loans. *See* Cleary Gottlieb Steen & Hamilton LLP (July 15, 2011) (''Clearly Gottlieb Letter''). We understand that Commission staff intends to withdraw the Cleary Gottlieb Letter upon the expiration of these interim exemptions.

[44] SB Swaps Interim Final Rule at 40611–2.

swap market.[45] As noted in the Effective Date Order, the Commission has the ability to establish effective dates and compliance dates—which may be later than the effective dates—for provisions of Title VII that are subject to rulemaking.[46] Given this ability, the Commission seeks to sequence the implementation of the final rules to be adopted pursuant to Title VII of the Dodd-Frank Act in an appropriate manner.

To engage the public on these issues, the staffs of the Commission and the CFTC held a two-day joint public roundtable on May 2–3, 2011, to discuss the sequencing of the implementation of the final rules to be adopted under Title VII.[47] In connection with this roundtable, the Commission and the CFTC solicited comment on issues pertaining to the phased implementation of Title VII's final rules.[48] Additionally, the Commission and the CFTC have received comment letters in response to specific rules proposed under and orders issued in connection with Title VII that address implementation issues pertaining to those rules, as well as implementation issues more generally.

Many commenters have noted that the Commission and the CFTC have the flexibility to phase in or sequence the issuance of final rules, as well as the compliance dates for those rules, in a manner that produces an orderly implementation plan,[49] as opposed to a ''big bang'' approach where all of the rules to be adopted under Title VII go into effect simultaneously.[50] Commenters have advocated that such an implementation plan should allow market participants enough time to come into compliance with rules to be adopted under Title VII[51] and be sequenced in some manner to provide for differing compliance dates depending upon the requirements involved.[52]

In September 2011, the CFTC published two notices of proposed rulemakings[53] that propose to phase in compliance with the swap clearing, trading, trade documentation, and margining requirements of Subtitle A of Title VII of the Dodd-Frank Act[54] by category of market participant in the following manner:

- Category 1 Entities, which would include swap dealers, SBSDs, major swap participants and MSBSPs that will be required to register with the CFTC or the Commission and ''active funds'' (defined as any private fund, as defined in section 202(a) of the Investment Advisers Act of 1940,[55] that is not a third-party subaccount and that executes 20 or more swaps per month based upon a monthly average over the 12 months preceding the CFTC issuing a mandatory clearing determination), would be required to comply with the clearing, trading, trade documentation and margining requirements for swaps entered into by Category 1 Entities within 90 days (1) after the CFTC issues any clearing determination or 30 days after a swap is made available to trade, whichever is later; and (2) after the adoption of the final trade documentation or margining rule, as relevant.
- Category 2 Entities, which would include commodity pools, a private fund as defined in section 202(a) of the Investment Advisers Act of 1940[56] other than an active fund, employee benefit plans as defined under the Employee Retirement Income Security Act (''ERISA''),[57] and persons predominantly engaged in activities that are financial in nature as defined under the Bank Holding Company Act,[58] provided that the entity is not a third-party subaccount, would be required to comply with the clearing, trading, trade

[45] *See Financial Regulatory Reform: The International Context:* Hearing Before the H. Comm. on Fin. Serv., 112th Cong. 18 (2011) (statement of Mary L. Schapiro, Chairman of the Commission).

[46] *See* Effective Date Order at 36289.

[47] *See* Joint Public Roundtable on Issues Related to the Schedule for Implementing Final Rules for Swaps and Security-Based Swaps Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 34–64314 (Apr. 20, 2011), 76 FR 23221 (Apr. 26, 2011) (Request for Comment; Notice of Roundtable Discussion).

[48] *See id.*

[49] *See, e.g.,* letter from Alternative Investment Management Association (June 10, 2011), 75 FR 80174, at 1 (CFTC only letter; stating that the CFTC ''should phase in the implementation of the Dodd-Frank Act rules over time''); letter from Edison Electric Institute (June 3, 2011), 76 FR 25274, at 7 (CFTC only letter); letter from Morgan Stanley (Nov. 1, 2010), File No. S7–16–10, at 6 (noting that ''Dodd-Frank does not require application of the various requirements across all over-the-counter products on a single effective date or a limited range of effective dates. To the contrary, the statute permits and even contemplates that implementation of the requirements will be phased in over time, as appropriate and necessary to the continued operation of the markets.''); letter from NextEra Energy Resources, LLC (Mar. 11, 2011), 75 FR 80174, at 4 (CFTC only letter; noting that ''[t]he market place is far better served if the [CFTC] considers all of the final rules in a comprehensively organized and logical fashion.'').

[50] *See, e.g.,* letter from Alternative Investment Management Association (June 10, 2011), 75 FR 80174, at 1 (CFTC only letter; ''we believe that market participants should be given sufficient time to properly understand and prepare themselves to comply with the new regulatory requirements.''); letter from Managed Funds Association, *MFA Recommended Timeline for Adoption and Implementation of Final Rules Pursuant to Title VII of the Dodd-Frank Act* (Mar. 24, 2011), 76 FR 3698, at 1 (CFTC only letter); letter from Tradeweb Markets LLC (June 3, 2011), 76 FR 25274, at 2 (CFTC only letter; ''[a]t the outset, we encourage the [CFTC] to implement the regulatory requirements over time rather than all at once because a 'big bang' approach to implementation would be too disruptive to the marketplace—particularly given the breadth and complexity of the new rules to be implemented and the varying states of readiness of market participants.'').

[51] *See, e.g.,* letter from American Bankers Association, ABA Securities Association, The Clearing House Association L.L.C., Financial Services Forum, Financial Services Roundtable, Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association, Investment Company Institute, Managed Funds Association, and Securities Industry and Financial Markets Association (Dec. 6, 2010) (''December Trade Association Letter''), Commission ''Other Comments'' file, at 3 (stating that ''[t]o implement a complex new regulatory structure without adequate time to adapt, prepare, and test systems also could lead to an ineffective or poorly designed reporting, clearing, and exchange infrastructure * * *''); letter from Alternative Investment Management Association (June 10, 2011), 75 FR 80174, at 1 (CFTC only letter; noting that ''market participants should be given sufficient time to properly understand and prepare themselves to comply with the new regulatory requirements.''); letter from Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (May 4, 2011), File No. S7–27–10, at 4–5; letter from Investment Company Institute (June 10, 2011), 75 FR 76139, at 6 (''[p]hasing in the rules will provide market participants with essential time to identify the cumulative impact of the rule changes, build upon the actions of other market participants, and manage the cumulative costs of the rule changes.'').

[52] *See, e.g.,* letter from Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (May 4, 2011), File No. S7–27–10, at 7–8 (recommending that Title VII's requirements be phased in by asset class and market participant type); letter from Investment Company Institute (June 10, 2011), 75 FR 76139, at 11; letter from Swaps & Derivatives Market Association (June 1, 2011), File No. S7–06–11, at 2, 5 (recommending that at each phase of implementation (namely, clearing, trading and data reporting), compliance should be further sequenced by market participant, with ''those with the highest volume share * * * lead[ing] the implementation, allowing less frequent users more time to comply.'').

[53] *Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements Under Section 2(h) of the CEA* (Sept. 8, 2011), 76 FR 58186 (Sept. 20, 2011) (''CFTC Clearing and Trade Execution Implementation Proposal''); *Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements Under Section 4s of the CEA* (Sept. 8, 2011), 76 FR 58176 (Sept. 20, 2011) (''CFTC Trading Documentation and Margining Implementation Proposal'').

[54] The analogues to the CFTC Clearing and Trade Execution Implementation Proposal and the trade documentation portion of the CFTC Trading Documentation and Margining Implementation Proposal are the Commission's rule proposals set forth in the Clearing Procedures Proposing Release, the SB SEF Proposing Release, and the Trade Documentation Proposing Release. The analogue to the margining proposals in the CFTC Trading Documentation and Margining Implementation Proposal is the Commission's forthcoming proposed rules on margin requirements for SBSDs and MSBSPs.

[55] 15 U.S.C. 80b–2(a).

[56] *Id.*

[57] Public Law 93–406, 88 Stat. 829 (1974).

[58] 12 U.S.C. 1841 *et seq.*

documentation and margining requirements for swaps entered into by Category 2 Entities within 180 days (1) after the CFTC issues any clearing determination or 30 days after a swap is made available to trade, whichever is later; and (2) after the adoption of the final trade documentation or margining rule, as relevant.

• Category 3 Entities, which would include third party sub-accounts and ''all other swap transactions not excepted from the mandatory clearing requirement,'' would be required to comply with the clearing, trading, trade documentation and margining requirements for swaps entered into by Category 3 Entities within 270 days (1) after the CFTC issues any clearing determination or 30 days after a swap is made available to trade, whichever is later; and (2) after the adoption of the final trade documentation or margining rule, as relevant.

• With regard to the trade documentation and margining requirements, the CFTC Trading Documentation and Margining Implementation Proposal adds an additional fourth category of entities—Category 4 Entities—for any persons not included in Categories 1 through 3. Under this proposal, Category 4 Entities would be subject to the same compliance date scheduling as Category 3 Entities.

In its Clearing and Trade Execution Implementation Proposal and its Trading Documentation and Margining Implementation Proposal, the CFTC did not propose specific adoption or compliance dates for rules, but did note that certain final rules must be adopted before compliance with others would be required. For example, the CFTC noted in its Clearing and Trade Execution Implementation Proposal that before the mandatory clearing of swaps begins, the final rules establishing the product and entity definitions, the end-user exception from mandatory clearing, and pertaining to the segregation of customer collateral must be adopted and that before swap market participants could be required to comply with a trade execution requirement, the CFTC must adopt final rules related to swap execution facilities and designated contract markets.[59]

B. Overview of Statement

In order to better effectuate the purposes of Title VII and to address the comments received from market participants, the Commission has developed, and is seeking public comment on, this Statement, which discusses issues pertaining to, and presents a general sequence for, the anticipated compliance dates of final rules to be adopted by the Commission under Subtitle B of Title VII. The issues discussed in this Statement are set out in relation to the following five categories of rules:[60] (1) The rules further defining the terms ''security-based swap,'' ''security-based swap agreement,'' ''mixed swap,'' ''security-based swap dealer,'' ''major security-based swap participant,'' and ''eligible contract participant,'' (the ''Definitional Rules'') and the rules concerning the treatment of cross-border SB swap transactions and non-U.S. persons acting in capacities regulated under Subtitle B of Title VII (the ''Cross-Border Rules''); (2) rules pertaining to the registration and regulation of SDRs, the reporting of SB swap transaction data to SDRs, and the public dissemination of SB swap transaction data; (3) rules pertaining to the mandatory clearing process of SB swap transactions, clearing agency standards, and the end-user exception from mandatory clearing; (4) rules pertaining to the registration and regulation of SBSDs and MSBSPs; and (5) rules pertaining to the mandatory trading of SB swap transactions, including the rules pertaining to the registration and regulation of SB SEFs.

The first category of rules affects compliance with rules in the other four categories. As a result, the Commission believes the Definitional Rules would need to be adopted and effective prior to requiring compliance with any of the other rules to be adopted under Title VII of the Dodd-Frank Act. The Definitional Rules would help inform market participants as to whether they will be subject to the requirements of Subtitle B of Title VII, section 12 of the Exchange Act, and the relevant provisions of the Securities Act and the Trust Indenture Act. Additionally, the Commission generally believes the Cross-Border Rules should be proposed before final rules with cross-border implications are adopted. We believe the Commission would benefit by being able to take into account comments on its proposed approach to cross-border issues before final rules with cross-border implications are adopted.[61]

With regard to the rules in the remaining four categories, the Statement describes the interconnectedness of the compliance dates of the final rules within one category, and where applicable, the impact of compliance dates of final rules within one category upon those of another category. The Statement also discusses the dependencies that exist between the categories of rules. The Statement does not provide specific compliance dates for the final rules to be adopted under Subtitle B of Title VII, nor does it provide a conclusive sequencing of compliance dates. However, the Statement does explain how such dates could be sequenced in relative terms and, in this way, seeks to give SB swap market participants clarity into and an opportunity to comment upon the general order in which they might expect to consider and prepare for compliance with these final rules. The Statement also discusses the relief the Commission has previously granted by providing exemptions from certain provisions of the Securities Act, the Exchange Act, and the Trust Indenture Act for certain SB swaps and when these exemptions will expire.

In general, in formulating the sequencing of compliance dates described herein, the Commission has taken into consideration four principles in addition to the primacy of the Definitional Rules and Cross-Border Rules described above: (1) Compliance with the final rules establishing the registration process and duties of SDRs and the rules governing the reporting of SB swap transaction data should be the next step in the implementation process, following the adoption and effectiveness of the Definitional Rules and the proposal of the Cross-Border Rules, so that the Commission would be able to begin utilizing comprehensive SB swap transaction data reported to registered SDRs in making certain determinations required by Subtitle B of Title VII;[62] (2) before SB swaps are

[59] *See* CFTC Clearing and Trade Execution Implementation Proposal at 58188–9.

[60] For the purposes of this Statement, the Commission has categorized the twelve rule proposals and one adopting release the Commission has published pursuant to Title VII (other than the SB Swap Antifraud Proposing Release, compliance with which will be addressed in the release adopting the final rules contemplated therein) along with the proposals the Commission has yet to publish, as described above, into five categories.

[61] For example, before requiring compliance with the registration requirements for SBSDs, the Commission believes the proposed applicability of such registration requirements to non-U.S. persons should be addressed and subject to public comment.

[62] *See* Letter from Managed Funds Association, *MFA Recommended Timeline for Adoption and Implementation of Final Rules Pursuant to Title VII of the Dodd-Frank Act* (Mar. 24, 2011), 76 FR 3698, at 1 (CFTC only letter; noting that certain rules should be delayed ''in favor of obtaining market data or allowing time for the build out of necessary systems prior to adoption (*e.g.,* position limits and real-time reporting).''); *but cf.,* letter from Swaps & Derivatives Market Association (June 1, 2011), File

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required to be cleared, the Commission intends to determine whether to propose amendments to its rules regarding net capital and customer protection specifically with regard to SB swap clearing activity in a broker-dealer and whether margin for SB swaps that are required to be cleared can be calculated on a portfolio margining basis with swaps;[63] (3) the Dodd-Frank Act establishes a sequencing of the mandatory clearing and mandatory trading requirements of Subtitle B of Title VII, as only SB swaps that the Commission requires to be cleared will be required to be traded on an exchange or SB SEF, provided that an exchange or SB SEF makes such SB swaps available to trade, and the implementation process should take this sequencing into account;[64] and (4) without unnecessarily delaying the implementation of Title VII's reforms of the SB swap market, at all stages of the implementation process, persons regulated pursuant to Subtitle B of Title VII should be given adequate, but not excessive, time to come into compliance with the final rules applicable to them, which includes (a) having an appropriate amount of time to analyze and understand the final rules to be adopted pursuant to Title VII, (b) having an appropriate amount of time to develop and test new systems required as a result of the new regulatory requirements for SB swaps, and (c) being subject to a phasing in of the requirements arising from the final rules to be adopted pursuant to Title VII, as appropriate.[65]

The Commission is seeking public comment on all aspects of this Statement. The Commission appreciates the importance of SB swap market participants having the opportunity to comment upon the sequencing discussed herein.[66] Comments received will be addressed in the relevant final rulemakings to which they pertain.

II. Statement on the Sequencing of the Compliance Dates for Final Rules Applicable to Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act

A. Definitional and Cross-Border Rules

(i) Definitional Rules

The Commission believes the Definitional Rules, the rules further defining the terms ''security-based swap,'' ''security-based swap agreement,'' and ''mixed swap'' and the rules further defining ''security-based swap dealer,'' and ''major security-based swap participant,'' should be the earliest of the final rules of Subtitle B of Title VII that are adopted and effective. As noted above, the Commission already has adopted joint rules with the CFTC further defining the terms ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' and ''eligible contract participant.''[67]

Many commenters have noted the importance of the early finalization of the these definitional rules, as they provide the foundation for the remainder of Title VII's rules by providing further guidance as to what products constitute SB swaps and which participants constitute SBSDs and MSBSPs.[68] Once adopted and effective, the Definitional Rules should help provide certainty to market participants with regard to whether the products in which they transact and the activities they undertake will be subject to the regulatory regime to be established through Subtitle B of Title VII and the rules to be adopted by the Commission pursuant to it. Except as otherwise noted below with regard to section 6(l) of the Exchange Act, upon their effectiveness, the Definitional Rules will not, on their own, impose upon market participants engaged in SB swaps any of the new requirements to be adopted under Subtitle B of Title VII.[69]

Upon the compliance date of the final rules further defining the term ''security-based swap'' and ''eligible contract participant,'' two of the temporary exemptions granted by the Commission pursuant to the Exchange Act Exemptive Order will expire:[70]

- The exemption for any person meeting the definition of ''eligible contract participant'' that was in effect prior to the enactment of the Dodd-Frank Act, other than a registered broker-dealer or a self-regulatory organization, from the provisions of the Exchange Act and the rules and regulations thereunder (other than those provisions expressly excluded pursuant to the Exchange Act Exemptive Order), in connection with a person's activities involving SB swaps;[71] and
- The exemption for a broker or dealer registered under section 15(b) of the Exchange Act[72] from certain provisions of the Exchange Act and the

No. S7–06–11, at 2 (stating that ''[c]entral clearing paves the way for electronic trading, which facilitates trade reporting and data gathering.'').

[63] *See infra* note 138.

[64] *See, e.g.,* letter from Wholesale Market Brokers' Association (June 3, 2011), 76 FR 1214, at 5 (noting that ''upon the plain language of the Dodd-Frank Act, the mandatory trade execution requirement will become effective at the time that swaps are deemed 'clearable' by the appropriate Commission.'').

[65] Any potential phasing in of any such requirements could take a variety of forms, including, for example, the further sequencing of the compliances dates of a particular final rule by SB swap asset class, SB swap market participant type, and/or the specific requirements arising from such rule.

[66] *See, e.g.,* letter from Investment Company Institute (June 10, 2011), 75 FR 76139, at 2 (requesting that the Commission and the CFTC ''publish for comment their proposed timelines to phase in implementation of the new swaps rules.''); letter from International Swaps and Derivatives Association, Inc. (June 2, 2011), 76 FR 25274, at 4 (CFTC only letter; recommending that the CFTC ''propose a step-by-step implementation schedule upon which the public may comment that builds on the discussions currently underway between the financial regulators and the industry.''); letter from BlackRock, Inc. (June 3, 2011), 76 FR 25274, at 1–2 (CFTC only letter; noting that ''[a] proper sequencing of the [CFTC's] consideration of final rules and a phased, publicly-vetted schedule for implementation of compliance with such final rules will promote a more orderly transition from the current OTC bilateral market and will allow for the development of a new market structure for cleared derivatives where the interdependent and interoperable relationships among the various entities and market participants (including some new participants) is well thought through so as to preserve and even enhance liquidity.''); letter from Bloomberg L.P. (Apr. 4, 2011), File No. S7–06–11, at 7.

[67] *See* Entity Definitions Adopting Release.

[68] *See, e.g.,* December Trade Association letter at 2; letter from American Gas Association (June 3, 2011), 76 FR 25274, at 2 (CFTC only letter; stating that ''any sequencing of final rules must begin with the foundational definitions of 'swap,' 'swap dealer', and 'major swap participant.' '' Industry participants must understand whether and to what extent their activities will be regulated before they can assess how those activities should be regulated.''); letter from Edison Electric Institute (June 3, 2011), 76 FR 25274, at 7 (CFTC only letter; advocating that the implementation process ''start with basic definitions of 'swap,' 'swap dealer,' and 'major swap participant' ''); letter from Managed Funds Association, *MFA Recommended Timeline for Adoption and Implementation of Final Rules Pursuant to Title VII of the Dodd-Frank Act* (Mar. 24, 2011), 76 FR 3698, at 3 (CFTC only letter); letter from NextEra Energy Resources, LLC (Mar. 11, 2011), 75 FR 80174, at 6 (CFTC only letter); letter from Alternative Investment Management Association (June 10, 2011), 75 FR 80174, at 3 (CFTC only letter; ''[i]t is essential that the definitions of products and the categories of firms to whom final rules will apply are finalised before implementation of any of the other final rules.''); letter from CME Group, Inc. (June 3, 2011), 76 FR 25274, at 3 (CFTC only letter).

[69] As of the Effective Date of the Dodd-Frank Act, SB swaps, as securities, were subject to the general antifraud and anti-manipulation provisions of the federal securities laws and the regulations thereunder. *See, e.g.,* Exchange Act section 10(b), 15 U.S.C. 78j, and Securities Act section 17(a), 15 U.S.C. 77q(a).

[70] The Commission has subsequently received and is considering a request for certain permanent exemptions upon the expiration of the temporary exemptions contained in the Exchange Act Exemptive Order. *See SIFMA SBS Exemptive Relief Request* (Dec. 5, 2011), *http://www.sec.gov/comments/s7-27-11/s72711-10.pdf.*

[71] Exchange Act Exemptive Order at 39938–40.

[72] 15 U.S.C. 78o(a).

rules and regulations thereunder with respect to SB swaps.[73]

At the same time, the following exemptions granted pursuant to the SB Swaps Interim Final Rule[74] will expire, unless the Commission extends or modifies the exemptions or adopts other exemptions:[75]

- The exemption pursuant to Securities Act rule 240 (''Rule 240'') from all provisions of the Securities Act, except the anti-fraud provisions of section 17(a), subject to certain conditions, of the offer and sale of those SB swaps that under pre-Dodd-Frank Act law were ''security-based swap agreements'' (which, under that definition, must be entered into between eligible contract participants and subject to individual negotiation) and that were defined as ''securities'' under the Securities Act on the Effective Date solely due to the provisions of Title VII;[76]
- The exemptions from the provisions of Exchange Act sections 12(a)[77] and 12(g)[78] for any SB swaps offered and sold in reliance on Rule 240;[79] and
- The exemption from the provisions of the Trust Indenture Act for any SB swaps offered and sold in reliance on Rule 240.[80]

In light of the fact that these exemptions expire upon the compliance date of the final rules further defining the term ''security-based swap'' and ''eligible contract participant,'' the Commission is considering what the appropriate compliance date for the rules further defining the term ''security-based swap'' should be.

Additionally, upon the effective date of the final rules further defining the term ''eligible contract participant,'' the limited exemption granted pursuant to the Effective Date Order permitting compliance with section 6(l) using the definition of ''eligible contract participant'' as set forth in section 1a(12) of the Commodity Exchange Act (as in effect on July 20, 2010),[81] as opposed to the definition of ''eligible contract participant'' as amended by the Dodd-Frank Act, will expire.[82] Section 6(l) of the Exchange Act makes it unlawful for any person to effect a transaction in an SB swap with or for a person that is not an ''eligible contract participant,'' unless such transaction is effected on a national securities exchange registered pursuant to section 6(b) of the Exchange Act.[83] Upon the effective date of the final rules further defining the term ''eligible contract participant,'' which will be 60 days after the rule's publication in the **Federal Register**, or July 23, 2012,[84] section 6(l) of the Exchange Act will apply to persons in connection with SB swap transactions with counterparties that do not meet the ''eligible contract participant'' definition, as amended by the Dodd-Frank Act and as further defined by such rules.

(ii) Cross-Border Rules

The Commission expects to propose the Cross-Border Rules as a single release addressing the application of the requirements of Subtitle B of Title VII to cross-border SB swap transactions and non-U.S. persons acting in capacities regulated under Subtitle B of Title VII. The Cross-Border Rules, which the Commission expects to propose prior to adopting any rules other than the Definitional Rules (except as otherwise noted in sections II.C.(i) and (ii) below), generally would not propose to impose additional requirements or obligations upon SB swap market participants, but rather would propose to address the extent to which non-U.S. SB swap market participants would be subject to the requirements arising from Subtitle B of Title VII by defining the scope of Title VII as it applies to these market participants and their SB swap transactions involving the U.S. market. Because the Cross-Border Rules are expected to be directly related to, among other things, SB swap data reporting, clearing and trading, as well as various registration categories under Title VII, the Commission anticipates that certain rulemakings that are affected by the Cross-Border Rules would address comments received on the relevant proposals in the Cross-Border Rules. In other substantive areas, the Commission could address comments received by adopting final rules addressing cross-border issues in a complementary separate rulemaking. In either case, the Commission does not expect to require compliance by participants in the U.S. SB swap market with the final rules arising under the Exchange Act before addressing the cross-border aspects of such rules.[85]

(iii) Request for Comment

- In addition to the Definitional Rules and the Cross-Border Rules, are there any other rules arising under Title VII that should be proposed or adopted before all other Title VII rules? If so, which ones, and why?
- Are there any sets of rules included in this first category that should not be? If so, which ones, and why?

B. SDR Registration and SB Swap Transaction Reporting

Following the adoption and effectiveness of the Definitional Rules and the proposal of the Cross-Border Rules, the Commission believes the next step in the implementation process should be requiring SDRs to register with the Commission and comply with applicable duties and core principles. Compliance earlier in the implementation process should facilitate the development and utilization of SDRs in a regulated manner and facilitate the reporting of SB swap transaction data by SB swap market participants to registered SDRs, as well as the public dissemination of SB swap data by registered SDRs. Because the Regulation SBSR Proposing Release links the timeframes for reporting and publicly disseminating SB swap transaction data to the registration of SDRs,[86] the Commission anticipates that the sooner SDRs are required to register with the Commission and comply with applicable duties and core principles, the sooner SB swap transaction data on all SB swaps can be promptly reported to such SDRs and disseminated to the public. The Commission also believes it should require the reporting of SB swap transactions to registered SDRs earlier in the implementation process, as has been suggested by commenters, to enable the Commission to utilize the data reported to registered SDRs to inform other aspects of the Commission's efforts with respect to Title VII.[87]

[73] *Id.* at 39939–40.

[74] *See supra* note 43.

[75] The interim exemptions provide that upon their expiration, the Commission must publish a rule to remove the interim exemptions from the Code of Federal Regulations. *See, e.g.,* 17 CFR 230.240. Further, we understand that Commission staff intends to withdraw the Cleary Gottlieb Letter upon the expiration of these interim exemptions.

[76] SB Swaps Interim Final Rule at 40611.

[77] 15 U.S.C. 78l(a).

[78] 15 U.S.C. 78l(g).

[79] *Id.* at 40612.

[80] *Id.*

[81] 7 U.S.C. 1a(12).

[82] Effective Date Order at 36307.

[83] 15 U.S.C. 78f(l).

[84] *See supra* note 4.

[85] For example and as noted above, before requiring compliance with the registration requirements for SBSDs, the Commission believes the applicability of such registration requirements to non-U.S. persons should be addressed.

[86] Regulation SBSR Proposing Release at 75187–8.

[87] *See, e.g.,* letter from MarkitSERV (June 10, 2011), 75 FR 63113, at 2–3 (CFTC only letter; noting that ''[d]ata reporting to the Commission will provide the Commission with the significant amount of market data needed before it can determine which swaps should be subject to the clearing mandate, which ones are 'available to trade', and what are the appropriate thresholds for block trade sizes.''); letter from Financial Services

Continued

The Commission further believes compliance with final rules resulting from the SDR Proposing Release should be required as soon as practicable after the effectiveness of the Definitional Rules and proposal of the Cross-Border Rules, taking into account the necessity of SB swap market participants having an appropriate amount of time to analyze and understand the final rules and develop and test new policies and systems required as a result of them, to facilitate the establishment and utilization of registered SDRs. Furthermore, the Commission believes compliance with final rules resulting from the Regulation SBSR Proposing Release should be required at approximately the same time as compliance with final rules resulting from the SDR Proposing Release, also taking into account the necessity of SB swap market participants having an appropriate amount of time to analyze and understand the final rules and develop and test new policies and systems required as a result of them. As a result, the requirement to report SB swap transactions to registered SDRs would facilitate the comprehensiveness of SB swap data contained in SDRs. Accordingly, except as otherwise noted in sections II.C.(i) and (ii) below, the final rules resulting from the SDR Proposing Release and the Regulation SBSR Proposing Release would be the first sets of rules with which compliance would be required by the Commission, following the effectiveness of the Definitional Rules and the proposal of the Cross-Border Rules.

The following subsections discuss certain additional issues concerning the compliance dates for final rules resulting from (i) the SDR Proposing Release and (ii) the Regulation SBSR Proposing Release.

(i) SDR Proposing Release

In accordance with section 763(i) of Title VII, the Commission issued the SDR Proposing Release, which proposed new rules under the Exchange Act governing the SDR registration process, duties, and core principles. This subsection discusses issues surrounding the timing of the SDR registration process and compliance with the duties, core principles, and other requirements resulting from these proposed rules, as well as the relationship of certain of the proposed rules in the Regulation SBSR Proposing Release to those in the SDR Proposing Release.

a. Registration and Compliance With Regulatory Requirements

The Regulation SBSR Proposing Release would require that an entity registered with the Commission as an SDR also register with the Commission as a securities information processor (''SIP'') on existing Form SIP.[88] The Commission anticipates that the timeframe within which persons seeking to operate as SDRs will be required to register with the Commission would be established in the release adopting final rules resulting from the SDR Proposing Release. As noted above, the Commission believes compliance with final rules resulting from the SDR Proposing Release should be required as soon as practicable after the effectiveness of the Definitional Rules and the proposal of the Cross-Border Rules, taking into account the necessity of SB swap market participants having an appropriate amount of time to analyze and understand the final rules and develop and test new policies and systems required as a result of them. Accordingly, the Commission anticipates that the final rules governing the SDR registration process and applicable duties, core principles, and other requirements, as explained immediately below, would be one component of the two sets of rules with which compliance would be required first.

Proposed rules 13n–4 through 13n–11 are intended to implement the duties and core principles established by section 763(i) of the Dodd-Frank Act, which amended the Exchange Act to add Exchange Act section 13(n).[89] An SDR would be required to comply with the final rules establishing the duties and core principles resulting from proposed rules 13n–4 through 13n–11 as soon as the Commission approves the SDR's application for registration.[90]

b. Expiration of Exemptions Granted Pursuant to the Effective Date Order

The Effective Date Order granted temporary exemptions from compliance with a number of provisions of section 13(n) of the Exchange Act that apply to SDRs generally, as they do not require a rulemaking or other Commission action or do not apply only to registered SDRs. Specifically, the Effective Date Order provided temporary exemptions from compliance with the following sections:

- Section 13(n)(5)(D)(i) of the Exchange Act,[91] which would require an SDR to provide direct electronic access to the Commission or any designee of the Commission;
- Section 13(n)(5)(F) of the Exchange Act,[92] which would require an SDR to maintain the privacy of any and all SB swap transaction information that the SDR receives from an SBSD, counterparty, or other registered entity;
- Section 13(n)(5)(G) of the Exchange Act,[93] which would require an SDR, on a confidential basis and after notifying the Commission of the request, to make available all data obtained by the SDR, including individual counterparty trade and position data, to certain enumerated entities;
- Section 13(n)(5)(H) of the Exchange Act,[94] which would require an SDR, before sharing information with certain enumerated entities, to (1) receive a written agreement from each such entity that the entity will abide by certain confidentiality provisions relating to the information on SB swap transactions that is provided and (2) have each such entity agree to indemnify the SDR and the Commission for any expenses arising from litigation relating to the information provided;
- Section 13(n)(7)(A) of the Exchange Act,[95] which would prohibit an SDR from adopting any rule or taking any action that results in any unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions;
- Section 13(n)(7)(B) of the Exchange Act,[96] which would require an SDR to establish transparent governance arrangements for certain enumerated reasons; and
- Section 13(n)(7)(C),[97] which would require an SDR to establish rules to minimize conflicts of interest and

Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (May 4, 2011), File No. S7–27–10, at 2, 5–6 (noting that ''the Commissions will be in a better position to adopt rules that achieve Dodd-Frank's goals while maintaining active and viable [SB swap] markets'' if SDRs are required to register and data reporting is enabled).

[88] Regulation SBSR Proposing Release at 75211.

[89] SDR Proposing Release at 77367–9.

[90] 15 U.S.C. 78m(n). Proposed rule 13n–1(c) provides that the Commission shall grant the registration of an SDR if the Commission finds that such SDR is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provision of the federal securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Exchange Act section 13(n) and the rules and regulations thereunder. *See* SDR Proposing Release at 77313.

[91] 15 U.S.C. 78m(n)(5)(D)(i).

[92] *Id.* at 78m(n)(5)(F).

[93] *Id.* at 78m(n)(5)(G).

[94] *Id.* at 78m(n)(5)(H).

[95] *Id.* at 78m(n)(7)(A).

[96] *Id.* at 78m(n)(7)(B).

[97] *Id.* at 78m(n)(7)(C).

establish a process for resolving conflicts of interest.

These temporary exemptions will expire upon the earlier of: (1) The date the Commission grants registration to the SDR; and (2) the earliest compliance date set forth in any of the final rules regarding the registration of SDRs. In setting the compliance dates of final rules resulting from the SDR Proposing Release, the Commission intends to consider whether it is necessary or appropriate in the public interest, and consistent with the protection of investors, to take further action with regard to any of the above-described exemptions.

(ii) Regulation SBSR Proposing Release

In accordance with sections 763 and 766 of the Dodd-Frank Act, the Commission issued the Regulation SBSR Proposing Release, which, among other things, proposed timeframes for the reporting of SB swap information to registered SDRs or to the Commission and for the public dissemination of SB swap transaction, volume, and pricing information.[98] As noted in the Regulation SBSR Proposing Release, the Commission understands that market participants would need a reasonable period of time in which to acquire or configure the necessary systems, engage and train the necessary staff, and develop and implement the necessary policies and procedures that would be required by the final rules regarding SB swap transaction reporting.[99] Accordingly, through proposed rule 910, as set forth in the Regulation SBSR Proposing Release, the Commission aimed to provide clarity as to SB swap reporting and public dissemination timelines by establishing a phased-in compliance schedule for those requirements.[100] The following section discusses certain issues concerning the timing-related aspects of the Regulation SBSR Proposing Release.

A. Reporting Requirements for Pre-Enactment SB Swaps

Proposed rule 910(a) would have required reporting parties to report any pre-enactment SB swaps required to be reported pursuant to proposed rule 901(i) to a registered SDR no later than January 12, 2012 (180 days after the effective date of the Dodd-Frank Act), pursuant to the requirement of section 3C(e)(1) of the Exchange Act.[101] However, as acknowledged by the Commission in the Effective Date Order, ''even after an SDR is registered, market participants will need additional time to establish connectivity and develop appropriate policies and procedures to be able to deliver information to the registered SDR.'' [102] Accordingly, pursuant to the Effective Date Order, the Commission granted temporary exemptive relief such that no person would be required to report pre-enactment SB swaps pursuant to section 3C(e)(1) of the Exchange Act to a registered SDR until six months after the SDR that is capable of accepting the asset class of the pre-enactment SB swap is registered by the Commission.[103] The Regulation SBSR Proposing Release proposed to define pre-enactment SB swaps as those entered into before July 21, 2010 the terms of which had not expired as of that date.[104]

B. Compliance With Other Reporting Requirements

As discussed in section B.(i) above, the Commission believes SDRs should be required to register with the Commission and comply with the duties, core principles and other requirements applicable to SDRs, as soon as practicable after the effectiveness of the Definitional Rules and the proposal of the Cross-Border Rules, taking into account the necessity of SB swap market participants having an appropriate amount of time to analyze and understand the final rules and develop and test new policies and systems required as a result of them. The Commission also believes compliance with final rules resulting from the Regulation SBSR Proposing Release should be required as soon as practicable after the effectiveness of the Definitional Rules and the proposal of the Cross-Border Rules. Accordingly, the reporting of SB swap transaction information to registered SDRs and the dissemination of SB swap transaction information to the public pursuant to the implementation timeframes that would be set forth by the Commission final rules resulting from the Regulation SBSR Proposing Release would begin as soon as practicable after the registration of SDRs, also taking into account the necessity of SB swap market participants having an appropriate amount of time to analyze and understand the final rules and develop and test new policies and systems required as a result of them, which would be the triggering event for the reporting obligations contemplated by the Regulation SBSR Proposing Release.[105]

C. Establishment of Block Trade Thresholds

With respect to defining block trade thresholds for SB swaps, the Commission stated in the Regulation SBSR Proposing Release that ''it would be appropriate to seek additional comment from the public, as well as to collect and analyze additional data on the [SB swap] market, in the coming months'' before proposing specific block trade thresholds.[106] The Commission further noted its intent to propose specific block trade thresholds simultaneously with the adoption of final rules resulting from the Regulation SBSR Proposing Release.[107]

The Commission recognizes that current data on the nature and size of SB swap transactions reflects a market that is not yet subject to any of the requirements to be adopted under Title VII, including the requirement that such SB swap transaction data be disseminated to the public. Data collected after these requirements are implemented may provide additional insight into the SB swap market, including whether these requirements are associated with a change in the nature and size of SB swap transactions. The Commission therefore is considering various means of how to approach establishing block trade thresholds, including, for example, establishing an initial period during which information regarding SB swaps would be reported (and subsequently disseminated publicly) on a delayed basis, while giving reporting parties the option of reporting their trades on a shorter timeframe.

The Commission continues to analyze the comments it received relating to block trade issues, and to consider how to implement the reporting and dissemination requirements of sections 763 and 766 of the Dodd-Frank Act in an appropriate manner. The Commission notes that it already has proposed a staged implementation schedule for the final rules resulting from the Regulation SBSR Proposing Release via proposed rule 910.[108] The

[98] *See* Regulation SBSR Proposing Release at 75287–8.

[99] *Id.* at 75242.

[100] *Id.* at 75242–4.

[101] *Id.* at 75243. Section 3C(e)(1) of the Exchange Act requires SB swaps entered into before the date of enactment of section 3C to be reported to a registered SDR or the Commission no later than 180 days after the effective date of section 3C (*i.e.,* no later than January 12, 2012). 15 U.S.C. 78c–3(e)(1).

[102] Effective Date Order at 36291.

[103] *Id.* at 36291.

[104] Regulation SBSR Proposing Release at 75209, 75223–4.

[105] *Id.* at 75243 n.156.

[106] *Id.* at 75228.

[107] *Id.*

[108] *See id.* at 75243–4.

Commission also is considering whether and how it might revise that schedule in light of comments received, and whether certain issues relating to block trades—such as the required time delays—should be reopened for comment in connection with the future Commission proposal regarding how to define block thresholds.

(iii) Request for Comment

• Should the Commission adopt a phase-in of the SDR duties, core principles and other requirements resulting from the SDR Proposing Release that includes sequenced effective and compliance dates aimed at providing time for SDRs to complete their analysis of the final rules, develop and test systems, submit a completed Form SDR, and be in a position to demonstrate compliance with the federal securities laws and the rules and regulations thereunder? How would such a phase-in period affect the goals of Title VII's reforms of the SB swap market? Would there be potential advantages or disadvantages of such a phase-in period? If so, what would they be? If there are potential disadvantages, what steps could be taken to mitigate them?

• Should the Commission offer SDRs an avenue to secure a grace period to defer compliance with some or all requirements of section 13(n) of the Exchange Act and the SDR duties, core principles and other requirements resulting from the SDR Proposing Release, in order for SDRs to obtain additional time to demonstrate compliance with the SDR duties, core principles and other requirements and to obtain registration with the Commission? If so, for which requirements should a grace period be made available and how long should such a grace period be? Should such a grace period be conditioned on any steps taken by the SDR, such as submission of a complete Form SDR within a certain time-frame? Would there be potential advantages or disadvantages of such a grace period? If so, what would they be? If there are potential disadvantages, what steps could be taken to mitigate them?

• Should SDRs be in compliance with all duties, core principles and other requirements resulting from the SDR Proposing Release at the time they seek to register with the Commission? Why or why not? Should compliance with some of these requirements be delayed until a later point in time? If so, for which requirements, until what point, and why should compliance be delayed? How would such delayed compliance affect the goals of Title VII's reforms of the SB swap market? Would there be potential advantages and disadvantages of such delayed compliance? If so, what would they be? If there are potential disadvantages, what steps could be taken to mitigate them?

• Is it appropriate for the final rules pertaining to the registration and regulation of SDRs resulting from the SDR Proposing Release and the final rules pertaining to the reporting and dissemination of SB swap transaction data resulting from the Regulation SBSR Proposing Release to be the first rules (except as otherwise noted in sections II.C.(i) and (ii) below) after the effectiveness of the Definitional Rules and the proposal of the Cross-Border Rules with which compliance is required? Why or why not?

• In determining when SDRs should be required to register with the Commission, should the Commission take into account other authorities', including the CFTC's, timing for a parallel or similar requirement? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

• In determining when SB swap transaction data should be reported to registered SDRs, should the Commission take into account other authorities', including the CFTC's, timing for a parallel or similar requirement? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

• Should the Commission defer its proposed rulemaking regarding block thresholds until after SDRs register with the Commission and the Commission begins to receive and analyze data required to be reported under final rules resulting from the Regulation SBSR Proposing Release? Why or why not? If yes, how many months of data would be sufficient? How would such a deferral affect the goals of Title VII's reforms of the SB swap market? Would there be potential advantages and disadvantages of such a deferral? If so, what would they be? If there are potential disadvantages, what steps could be taken to mitigate them?

• Should the Commission defer its proposed rulemaking regarding block thresholds until after SB swap transaction information begins to be publicly disseminated? Why or why not? If yes, how many months of public dissemination would be sufficient? How would such a deferral affect the goals of Title VII's reforms of the SB swap market? Would there be potential disadvantages of such a deferral? If so, what would they be and what steps could be taken to mitigate them?

• In the absence of the definition of any block trade thresholds by the Commission, what form could SB swap transaction data dissemination take? For example, should all trades be disseminated with a delay? If so, how long should that delay be? Furthermore, could the public dissemination of SB swap transaction data be phased such that initially, public dissemination is limited only to certain SB swap instruments? If so, which instruments? If not, why not? Alternatively, should the Commission set initial block thresholds based upon data currently available about the SB swap market and undertake a study to determine whether the thresholds should be modified as a result of how the market develops? How would each of these approaches affect the goals of Title VII's reforms of the SB swap market? What are the potential advantages and disadvantages of each of these approaches? If there are potential disadvantages, what steps could be taken to mitigate them?

• Can the impact of post-trade transparency on market behavior be inferred from data collected before post-trade transparency is required? Why or why not?

• In determining when SB swap transaction data should be disseminated to the public, should the Commission take into account other authorities', including the CFTC's, timing for a parallel or similar requirement? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

C. Mandatory Clearing

The following discussion explains the sequencing of compliance dates of the final rules regarding mandatory clearing of SB swaps pursuant to section 3C of the Exchange Act.[109] These rules include the process for submitting SB swaps for mandatory clearing determinations, the standards with which clearing agencies must comply, and the end-user exception to

[109] 15 U.S.C. 78c–3.

mandatory clearing. As explained below, the Commission believes it may be appropriate for the procedural rules related to mandatory clearing determinations to be adopted before the rules further defining the terms ''swap,'' ''security-based swap,'' ''security-based swap agreement,'' and ''mixed swap'' are adopted and/or effective or before the Cross-Border Rules are proposed. However, given the dependency of the SB swap mandatory clearing regime upon other Title VII final rules yet to be adopted, the Commission believes SB swaps should not be required to be cleared until after the later of: (1) The compliance date of certain of the final rules resulting from the Clearing Agency Standards Proposing Release; (2) the compliance date of final rules resulting from the End-User Clearing Exception Proposing Release; and (3) the Commission determining whether to propose amendments to the existing net capital and customer protection requirements applicable to broker-dealers with regard to SB swap clearing through such broker-dealers and whether to address portfolio margining with swaps.

(i) Clearing Procedures Proposing Release

The Commission believes it may be appropriate for final rules resulting from the Clearing Procedures Proposing Release to be adopted before the rules further defining the terms ''swap,'' ''security-based swap,'' ''security-based swap agreement,'' and ''mixed swap'' are adopted and/or effective or before the Cross-Border Rules are proposed. The Commission, in the Clearing Procedures Proposing Release, also proposed rule and form amendments to implement the requirement that any financial market utility (''FMU''), which may include registered clearing agencies, that is designated as systemically important by the Financial Stability Oversight Council (''FSOC'') pursuant to Title VIII of the Dodd-Frank Act provide 60 days advance notice to the Commission of changes to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the FMU.[110] These final rule and form amendments would need to be effective for registered clearing agencies designated by the FSOC as systemically important because such clearing agencies would be required to begin complying with the advance notice requirement as soon as they are designated as systemically important.[111] To fully capture the efficiencies contemplated by this effort to produce a single package of clearing procedural rules, it therefore might be appropriate to adopt the mandatory clearing submission process rules earlier in the implementation process.

However, given the number of final rules the Commission contemplates would need to be in place before the first SB swap mandatory clearing determination can be made, the Commission is considering bifurcating the effectiveness of final rules resulting from the Clearing Procedures Proposing Release for the purposes of Titles VII and VIII of the Dodd-Frank Act such that the mandatory clearing process for the purposes of Title VII would be effective upon a date later than the rules relating to advance notice under Title VIII. Under such an approach, the Commission would not begin reviewing SB swaps to determine whether such SB swaps are required to be cleared until such later date.

(ii) Clearing Agency Standards

The Commission appreciates the views of commenters who have suggested that market participants that perform central clearing services, like clearing agencies, be required to be in compliance with the rules resulting from the Clearing Agency Standards Proposing Release pertaining to their governance and operation before compliance is required with mandatory clearing requirements.[112] As discussed in the Clearing Agency Standards Proposing Release, the rules proposed in that release are aimed at reducing risk within the financial system by facilitating prompt and accurate clearance and settlement of all securities transactions and the safety and soundness of clearing agencies.[113] Given that, the Commission believes clearing agencies should be required to be in compliance with certain key requirements resulting from the Clearing Agency Standards Proposing Release before counterparties are required to clear any SB swaps.

To facilitate this ordering, the Commission believes the compliance dates of final rules resulting from the Clearing Agency Standards Proposing Release should be tranched and broadly sequenced by rule type. Taking into consideration comments received to date by the Commission, we believe the first subset of final rules with which compliance should be required are those resulting from proposed rule 17Ad–22 of the Clearing Agency Standards Proposing Release because this rule would address issues central to clearing agency governance, operation, participation standards, and risk management practices.[114] The Commission anticipates that compliance with this subset of final rules would be necessary before any SB swaps are required to be cleared.

Additionally, the Commission understands that the final rules resulting from proposed rule 17Ad–22 should be effective at the time, or soon after, registered clearing agencies are designated by the FSOC as systemically important.[115] Under such an approach, these rules, together with the final rules resulting from the Clearing Procedures Proposing Release that relate to the advance notice requirement of Title VIII of the Dodd-Frank Act, might need to be adopted before the rules further defining the terms ''swap,'' ''security-based swap,'' ''security-based swap agreement,'' and ''mixed swap'' are adopted and/or effective or before the Cross-Border Rules are proposed.

We believe compliance with a second subset of rules for clearing agencies—those focusing more specifically on matters of governance and mitigation of conflicts of interest—should be complied with subsequently, followed by compliance with a third subset composed of the requirements that address more specific components of a clearing agency's internal operations and administrative practices and other rules concerning clearance and settlement services. The Commission preliminarily believes the clearing of SB swaps could commence before compliance is required with these two subsets of rules.

[110] *See* Clearing Procedures Proposing Release at 82501–3.

[111] The Commission understands that the FSOC currently is in the process of considering which FMUs to designate as systemically important in accordance with Title VIII of the Dodd-Frank Act and the rules of the FSOC adopted in July 2011. *See Authority to Designate Financial Market Utilities as Systemically Important,* 76 FR 44763 (July 27, 2011).

[112] *See, e.g.,* letter from Committee on Capital Markets Regulation (June 24, 2011), 76 FR 25274, at 2 (CFTC only letter; recommending that before requiring ''mandatory central clearing, the CFTC first needs to finalize the rules for clearinghouses, including margin, governance, financial resources, and conflicts of interest. This will enable clearinghouses to be in compliance before mandatory clearing begins.'').

[113] Clearing Agency Standards Proposing Release at 14474.

[114] Proposed rule 17Ad–22 would augment the existing statutory requirements for clearing agencies under the Exchange Act by establishing minimum requirements regarding how clearing agencies must maintain effective risk management procedures and controls as well as meet the statutory requirements under the Exchange Act on an ongoing basis. *See* Clearing Agency Standards Proposing Release at 14476–14492, 14537–14539.

[115] *See* Dodd-Frank Act section 805, 12 U.S.C. 5464.

The Commission understands the views of those commenters that indicate that clearing agencies will need sufficient time to adjust their current practices and establish new policies, procedures, and processes necessary to comply with final rules resulting from the Clearing Agency Standards Proposing Release.[116] Accordingly, the Commission anticipates that the compliance dates set forth in such final rules would reflect these considerations by providing clearing agencies with an appropriate amount of time to comply with these final rules.

(iii) End-User Exception From Mandatory Clearing

Before SB swaps are required to be cleared, the Commission believes compliance with final rules resulting from the End-User Clearing Exception Proposing Release should be required.[117] Section 3C(g)(1)(C) requires that a counterparty electing the end-user exception notify the Commission as to how it generally meets its financial obligations associated with non-cleared SB swaps.[118] The End-User Exception Proposing Release proposed that a counterparty that invokes the clearing exception under section 3C(g)(1) of the Exchange Act would satisfy the notice requirement of section 3C(g)(1)(C) by delivering or causing such notice to be delivered to a registered SDR (or to the Commission if no SDR is available) in the form and manner required by final rules resulting from the Regulation SBSR Proposing Release [119] together with additional information that is intended to affirm compliance with particular requirements of the Exchange Act and to aid the Commission in its efforts to prevent abuse of the end-user exception.[120]

As described in section B above, the Commission anticipates that final rules establishing the SDR registration and regulation regime resulting from the SDR Proposing Release and final rules resulting from the Regulation SBSR Proposing Release would be the first sets of final rules under Title VII with which compliance would be required, following the effectiveness of the Definitional Rules and the proposal of the Cross-Border Rules. Given this, compliance with final rules resulting from the Regulation SBSR Proposing Release likely would be required before SB swaps are required to be cleared and before the compliance date of final rules resulting from the End-User Clearing Exception Proposing Release. The Commission believes an appropriate amount of time should be provided between the compliance dates of final rules resulting from the Regulation SBSR Proposing Release and the compliance date of final rules resulting from the End-User Clearing Exception Proposing Release so that SB swap counterparties that seek to avail themselves of the end-user clearing exception would already be submitting SB swap transaction information to registered SDRs.

(iv) Mandatory Clearing Determinations

As described above, upon the compliance date of the mandatory clearing submission process rules for SB swap submissions under Title VII of the Dodd-Frank Act, the Commission would begin reviewing SB swaps submitted by clearing agencies to determine whether such SB swaps would be required to be cleared. Pursuant to section 3C(b)(3) of the Exchange Act,[121] the Commission is required to make such determinations not later than 90 days after the submission has been made, or has been considered to have been made,[122] unless the submitting clearing agency agrees to an extension.

Section 3C(b)(2) of the Exchange Act requires that a clearing agency submit to the Commission the SB swaps it plans to accept for clearing in order for the Commission to determine whether the SB swaps described in the submission are required to be cleared.[123] Additionally, pursuant to section 3C(b)(1) of the Exchange Act, on an ongoing basis, the Commission shall review SB swaps to make a determination of whether such SB swaps should be required to be cleared.[124]

The Commission recognizes the importance of communicating clearly and in a timely fashion to SB swap market participants which SB swaps will be required to be cleared.[125] One way in which the Commission could help facilitate such communication is to require the mandatory clearing of SB swaps only some specified amount of time after publishing its determination that such SB swaps are required to be cleared so that SB swap market participants are given appropriate notice of the Commission's SB swap clearing determinations. This approach would afford the clearing agency and its members time to prepare to accommodate the SB swaps that will be required to be cleared. Doing so also would allow SB swap market participants time to establish appropriate clearing arrangements with the clearing agency or indirect clearing arrangements with members of the clearing agency.[126] Furthermore, the Commission believes early designation of the SB swaps that will be required to be cleared would facilitate the voluntary clearing of such products prior to the compliance date of the clearing requirement.

(v) Expiration of Exemptions Granted Pursuant to the Effective Date Order

The Effective Date Order granted a temporary exemption from compliance with Exchange Act section 3C(g)(5)(B), which would permit a counterparty to an SB swap that is not subject to the mandatory clearing requirement to elect to require the clearing of such SB swap in certain circumstances.[127] In granting this exemption, the Commission noted the exemption was needed because there currently are no central counterparties offering customer

[116] *See, e.g.,* letter from The Options Clearing Corporation (Apr. 29, 2011), 76 FR 14472, at 17 (noting that Subtitle B of Title VII of the Dodd-Frank Act will require clearing agencies, at a minimum, to ''develop[] extensive new policies and procedures, draft[], propos[e] and obtain[] approval of necessary rules and rules changes, execut[e] plans to raise additional financial resources, conduct[] extensive internal training, hir[e] additional compliance personnel, and many other tasks.'').

[117] Section 3C(g)(1) of the Exchange Act, 15 U.S.C. 78c–3(g)(1).

[118] 15 U.S.C. 78c–3(g)(1)(C).

[119] *See* End-User Exception Proposing Release at 80011.

[120] *See id.* at 79995.

[121] 15 U.S.C. 78c–3(b)(3).

[122] Section 3C(b)(2)(B) of the Exchange Act provides that any security-based swap or group, category, type, or class of security-based swaps listed for clearing by a clearing agency as of the enactment of section 3C(b)(2)(B) shall be considered submitted to the Commission. 15 U.S.C. 78c3(b)(2)(B).

[123] *Id.* at 78c–3(b)(2). As provided in Exchange Act section 3C(b)(2), such submissions and determinations can be made on an individual basis or by group, category, type, or class of SB swaps. *Id.*

[124] *Id.* at 78c–3(b)(1). As provided in Exchange Act section 3C(b)(1), such determinations can be made on an individual basis or by group, category, type, or class of SB swaps. *Id.*

[125] *See, e.g.,* letter from the International Swaps and Derivatives Association, Inc. (Feb. 14, 2011), File No. S7–44–10, at 10–11 (recommending that the Commission consider an extended period between a determination being made that a SB swap is required to be cleared and clearing becoming mandatory on that product, as ''[t]his period would provide market participants the opportunity to make themselves appropriately ready to clear mandated transactions without risking either (i) disruption to their use of derivatives for hedging or (ii) noncompliance with the law.'').

[126] *See, e.g.,* letter from Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (May 4, 2011), File No. S7–27–10, at 5; letter from The Financial Services Roundtable (May 12, 2011), File No. 4–625, at 8–10.

[127] Effective Date Order at 36291.

clearing of SB swaps and because additional action by the Commission would be necessary to address segregation and other customer protection issues.[128] The exemption from compliance with the requirements of section 3C(g)(5)(B) will expire upon the earliest compliance date set forth in any of the final rules regarding section 3C(b) of the Exchange Act,[129] which pertains to the mandatory clearing submission process.[130] In setting the compliance date for the final rules pertaining to the mandatory clearing submission process, the Commission intends to consider whether it is necessary or appropriate in the public interest, and consistent with the protection of investors, to take further action with regard to this temporary exemption.

The Effective Date Order also granted a temporary exemption from compliance by registered clearing agencies with Exchange Act section 3C(j) until the earliest compliance date set forth in any of the final rules regarding section 3C(j)(2) of the Exchange Act.[131] Exchange Act section 3C(j) requires registered clearing agencies to designate a chief compliance officer and establishes the duties of the chief compliance officer.[132] The Clearing Agency Standards Proposing Release contained proposed rules regarding section 3C(j)(2) of the Exchange Act.[133] In setting the compliance date for the final rules regarding section 3C(j)(2), the Commission intends to consider whether it is necessary or appropriate in the public interest, and consistent with the protection of investors, to take further action with regard to this temporary exemption.

(vi) Request for Comment

- Are there other final rules or sets of final rules beyond those resulting from the SDR Proposing Release and the Regulation SBSR Proposing Release with which compliance should be required before compliance is required with final rules resulting from the End-User Clearing Exception Proposing Release? If so, which ones, and why? Alternatively, should compliance with final rules resulting from the End-User Clearing Exception Proposing Release be accelerated to allow for the use of the exception to be established by those rules before compliance with final rules resulting from the SDR Proposing Release and the Regulation SBSR Proposing Release is required? For example, should the Commission consider temporarily de-linking the notice requirement of the end-user clearing exception from certain of the final rules resulting from the SDR Proposing Release and the Regulation SBSR Proposing Release, such that it could be utilized earlier in the implementation process? Why or why not? What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?
- Would there be positive or negative consequences of the Commission determining what SB swaps will be subject to mandatory clearing and allowing a period of time prior to requiring the clearing of such SB swaps? If so, what are the consequences, why would they occur, and if there are negative consequences, what steps could be taken to mitigate them? How would the allowance of such a period of time affect the goals of Title VII's reforms of the SB swap market?
- Has the Commission appropriately identified in the discussion above those rules with which compliance should be required before SB swaps are required to be cleared? Why or why not?
- Are there other rules or sets of rules with which compliance should be required before SB swaps are required to be cleared? If so, which ones, and why?
- Should the Commission require the mandatory clearing of SB swaps for a subset of SB swap market participants, such as SBSDs and their affiliates, before all of the final rules regarding the SBSD registration and regulation regime are in place? If so, which subset of SB swap market participants and why? Would doing so affect the goals of the Title VII reforms of the SB swap market?
- Should the Commission consider further phasing in such submissions and determinations by type of SB swap? If so, what further phasing in should occur? For example, should the Commission implement the mandatory clearing submission process for credit-related SB swaps, then for other SB swaps?[134] Would such phasing in affect the goals of the Title VII reforms of the SB swap market? Would there be potential advantages and disadvantages of such phasing in? If so, what would they be? If there are potential disadvantages, what steps could be taken to mitigate them?
- Should the Commission phase in mandatory clearing by type of market participant? For example, should the Commission phase these requirements in the manner proposed by the CFTC in its Clearing and Trade Execution Implementation Proposal?[135] What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?
- In determining when SB swaps would be required to be cleared, should the Commission take into account the mandatory clearing timelines of other authorities? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

D. SBSD and MSBSP Registration and Regulation

Pursuant to sections 3E[136] and 15F[137] of the Exchange Act, the Commission must adopt rules pertaining to the regulation of SBSDs and MSBSPs in the following areas:

- Registration of SBSDs and MSBSPs;
- Business conduct standards for SBSDs and MSBSPs;
- Trade acknowledgment and verification of SB swap transactions by SBSDs and MSBSPs;
- Capital, margin and segregation requirements applicable to SBSDs and MSBSPs;[138] and

[128] *Id.*

[129] *Id.*

[130] 15 U.S.C. 78c–3(b).

[131] Effective Date Order at 36291–2.

[132] 15 U.S.C. 78c–3(j).

[133] Clearing Agency Standards Proposing Release at 14499–14500.

[134] ''Credit-related SB swaps'' means any SB swap that is based, in whole or in part, on one or more instruments of indebtedness (including loans), or on a credit event relating to one or more issuers or securities, including but not limited to any SB swap that is a credit default swap, total return swap on one or more debt instruments, debt swaps, debt index swaps, or credit spread. ''Other SB swaps'' means any SB swap not described in the preceding sentence.

[135] *See supra* note 53 and the accompanying text for a discussion of the CFTC Clearing and Trade Execution Implementation Proposal.

[136] 15 U.S.C. 78c–5.

[137] 15 U.S.C. 78o–10.

[138] In addition, the Commission intends to determine whether to propose amendments to its rules regarding net capital and customer protection requirements, Exchange Act Rule 15c3–1 and Rule 15c3–3, respectively, specifically with regard to SB swap activity in a broker-dealer. The Commission understands that many members of clearing agencies are dually-registered broker-dealers and futures commission merchants and that much of the clearing of SB swaps may occur through such dually-registered entities. *See, e.g.,* letter to the Commission from ICE Clear Credit LLC, dated November 7, 2011 (''ICE Clear Credit Letter''), available at: *http://www.sec.gov/rules/petitions/2011/petn4-641.pdf* (requesting exemptive relief from the application of section 15(c)(3) of the Exchange Act and Rule 15c3–3 thereunder to allow ICE Clear Credit, and its members that are dually-registered broker-dealers and futures commission merchants, to, among other things: (1) Hold customer assets used to margin, secure, or guarantee customer positions consisting of cleared credit

Continued

• Reporting and recordkeeping requirements applicable to SBSDs and MSBSPs.

The Commission understands that SBSDs and MSBSPs would need an appropriate amount of time to determine whether they are required to register with the Commission and if so, to put into place the necessary infrastructure and documentation to comply with requirements ultimately applicable to such entities.[139] The following section discusses the timing of the implementation of these requirements, the proposed registration process set forth in the SB Swap Participant Registration Proposing Release, and other related issues.

(i) SBSD and MSBSP Registration and Regulatory Requirements

In the SB Swap Participant Registration Proposing Release, the Commission proposed that SBSDs and MSBSPs conditionally register with the Commission, and then convert such conditional registration to ''ongoing registration'' by filing a certification on or before the ''last compliance date.'' [140] The SB Swap Participant Registration Proposing Release also requested comment as to whether the Commission should delay requiring registration until after the last compliance date, rather than adopting a conditional registration process.[141]

A number of sequencing issues arise in relation to compliance with the requirements applicable to SBSDs and MSBSPs pursuant to sections 3E and 15F of the Exchange Act that are relevant to both conditional and non-conditional registration processes. Specifically, the Commission understands that some of the requirements that would be applicable to SBSDs and MSBSPs could be complied with by SBSDs and MSBSPs in a relatively shorter amount of time, while others would require more time. This, in turn, counsels against imposing all of the compliance dates for these requirements at once and instead suggests phasing in compliance by considering the amount of time estimated to be required for compliance with the relevant provisions. For example, the Commission understands from commenters that SBSDs and MSBSPs might need a shorter amount of time to come into compliance with certain recordkeeping rules applicable to such persons, as these rules likely may not necessitate extensive modifications to SBSDs' and MSBSPs' business practices.[142]

Some commenters have indicated that SBSDs and MSBSPs might need more time to come into compliance with final rules resulting from the Business Conduct Standards Proposing Release, as adherence to these standards and duties could involve changes to the practices, policies, and procedures of SBSDs and MSBSPs.[143] Among other things, these proposed rules would require SBSDs and MSBSPs to communicate with their SB swap counterparties in a fair and balanced manner [144] and to make certain disclosures to such counterparties,[145] and would impose additional requirements for dealings with ''special entities.'' [146]

In addition, the Commission understands from commenters that compliance with documentation standards resulting from the Trade Documentation Proposing Release, which include standards relating to confirmation, processing, netting, documentation, and valuation of all SB swap transactions,[147] may require more time for full implementation. Documentation would need to be developed and processes would need to be established to enable SBSDs and MSBSPs to document, implement, and monitor these new requirements as applied to all SB swap transactions.[148] However, the Commission believes that some of these documentation standards may require less time for compliance than others.[149]

The Commission also understands that capital, margin, and segregation requirements could have a significant impact upon the business structure of SBSDs and MSBSPs and this impact could influence the decision of whether a person registers with the Commission as such or whether it restructures its SB swap business such that registration is not required. Commenters have noted that the capital and margin requirements required to be adopted by Title VII may result in significant changes to the financial arrangements of the impacted persons and, as a result, should be sequenced in a manner that

default swaps that include swaps and SB swaps in a commingled customer omnibus account subject to section 4d(f) of the Commodity Exchange Act; and (2) calculate margin for this commingled customer account on a portfolio margin basis); *see also* Commodity Exchange Act section 4d(F)(1) (making it unlawful for any person to, among other things, accept money and securities from a swaps customer for a cleared swap unless such person has registered with the CFTC as a futures commission merchant). In light of the role broker-dealers perform in clearing SB swaps, the Commission recognizes the importance of considering net capital and customer protection requirements with regard to SB swap clearing through a broker-dealer prior to requiring that SB swaps be cleared.

The Commission also recognizes the importance of determining whether margin for SB swaps that are required to be cleared can be calculated on a portfolio margining basis, as there might be customer capital-related efficiencies that result from holding SB swap and swap positions in a single account as opposed to multiple accounts. *See* ICE Clear Credit Letter at 6, 13–14. Commission staff currently is evaluating the separate statutory and bankruptcy regimes that apply to SB swaps and swap, and is working with the CFTC staff to develop recommendations on any next steps.

[139] *See, e.g.,* letter from Financial Services Roundtable (May 12, 2011), File No. 4–625, at 7–8, 11; letter from Financial Services Forum, Future Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (May 4, 2011), File No. S7–27–10, at 9; letter from International Swaps and Derivatives Association, Inc. (Jan. 24, 2011), 75 FR 71379, at 2 (CFTC only letter).

[140] The term ''last compliance date'' is defined, in proposed rule 15Fb2–1(e), to mean the latest date, designated by the Commission, by which SBSDs and MSBSPs must comply with any of the initial rules promulgated under section 15F of the Securities Exchange Act of 1934, 15 U.S.C. 78o–10.

[141] *See* SB Swap Participant Registration Release at 65788, question #4.

[142] *See, e.g.,* letter from The Financial Services Roundtable (May 12, 2011), File No. 4–625, at 5 (stating that ''recordkeeping may rely on internal resources, and therefore may be able to be implemented more quickly * * *.'').

[143] *See, e.g.,* letter from the Futures Industry Association, the International Swaps and Derivatives Association, and the Securities Industry and Financial Markets Association (Aug. 26, 2011), 76 FR 42396; letter from Managed Funds Association (Aug. 29, 2011), 76 FR 42396, at 6–7 (noting that the requirements proposed in the Business Conduct Standards Proposing Release would require MSBSPs to implement new processes and procedures, which could result in ''substantial costs'' and expenditure of ''substantial resources'').

[144] *See* proposed rule 15Fh–3(g), Business Conduct Standards Proposing Release at 42418–19, 42455 (proposing to require SBSDs and MSBSPs to communicate with counterparties in a fair and balanced manner based on principles of fair dealing and good faith).

[145] *See, e.g.,* proposed rule 15Fh–3(b), *id.* at 42405–10, 42454 (proposing rules that would require disclosures by SBSDs and MSBSPs to counterparties of information related to material risks and characteristics the SB swap and material incentives or conflicts of interest that an SBSD or MSBSP may have in connection with the SB swap).

[146] *See, e.g.,* proposed rule 15Fh–5(a), *id.* at 42425–26, 42457 (proposing to require any SBSD or MSBSP that offers to enter into or enters into an SB swap with a special entity to have a reasonable basis to believe that the special entity has an ''independent representative'' that meets certain specified requirements).

[147] *See supra* note 21.

[148] *See, e.g.,* letter from the International Swaps and Derivatives Association (Feb. 22, 2011), 76 FR 3859 (noting, for example, the ''heavy documentation burden'' that would be placed upon the inception of transactions by the proposed rules); letter from MarkitSERV (Feb. 22, 2011), 76 FR 3859, at 11 (noting that ''the proposed requirements regarding the confirmation process and time periods for such confirmations would be demanding in many cases.'').

[149] As one commenter has noted, there are aspects of SB swap transaction documentation that are easier to implement, and thus could be implemented earlier, and others that may require a longer implementation window, as ''aspects of the trade documentation rules * * * would represent a significant shift from current industry best practices.'' Letter from The Financial Services Roundtable (May 12, 2011), File No. 4–625, at 4.

allows impacted persons enough time to plan to accommodate such changes.[150] Commenters also have noted that ample time would be needed to adhere to the segregation requirements applicable to customer collateral collected for cleared and uncleared SB swaps because these requirements would necessitate the establishment of policies and procedures related to the collection and maintenance of collateral.[151] Accordingly, the Commission preliminarily believes the compliance date of these rules should reflect the amount of time that SBSDs and MSBSPs might need to come into compliance with these new requirements and plans to address this issue in the relevant final rules.

Moreover, in the Cross-Border Rules, the Commission intends to address the extent to which non-U.S. SB swap market participants would be subject to the SBSD and MSBSP registration and regulatory requirements. Such market participants would need time to consider the extent to which these requirements apply to their SB swap business.

(ii) Other Timing Issues and Expiration of the Exemption Granted Pursuant to the Effective Date Order

There are additional timing issues that are relevant regardless of whether a conditional registration process is employed. Upon registration, SBSDs and MSBSPs would be required to adhere to certain self-operating provisions of section 15F of the Exchange Act,[152] specifically, the requirement to designate a chief compliance officer pursuant to section 15F(k)(1) of the Exchange Act [153] and the obligation of the chief compliance officer to adhere to the duties set forth in section 15F(k)(2) of the Exchange Act.[154] However, the chief compliance officer may not be required to prepare and submit annual reports to the Commission pursuant to section 15F(k)(3) of the Exchange Act, as the process for doing so is subject to rulemaking by the Commission [155] and such rules may not have been adopted by the Commission and/or require compliance at that time.[156]

The Effective Date Order granted a temporary exemption from compliance with section 3E(f) of the Exchange Act, which requires SBSDs and MSBSPs to segregate initial margin amounts delivered by their counterparties in uncleared SB swaps if requested to do so by such counterparties.[157] This temporary exemption will expire on the date upon which the rules adopted by the Commission to register SBSDs and MSBSPs become effective.[158]

If the Commission adopts a conditional SBSD and MSBSP registration process and this temporary exemption expires, SBSDs and MSBSPs would be required to segregate initial margin amounts delivered by their counterparties in uncleared SB swaps before the capital, margin, and segregation rules are adopted or before compliance with such rules is required. However, the Commission believes it would not be appropriate to require SBSDs and MSBSPs to comply with Exchange Act section 3E(f) before the Commission adopts and requires compliance with the rules pertaining to the segregation of margin pursuant to section 3E of the Exchange Act.[159] Given this, if the Commission determines to adopt a conditional registration regime, the Commission will consider whether it is necessary or appropriate in the public interest, and consistent with the protection of investors, to extend the exemption from compliance with section 3E(f) of the Exchange Act until the later of: (1) The date upon which SBSDs and MSBSPs are required to register with the Commission; and (2) the last compliance date of any of the final rules to be adopted under sections 3E and 15F of the Exchange Act.

(iii) Request for Comment

- Should the registration of SBSDs and MSBSPs be required before compliance with some, but not all, of the rules to be adopted under sections 3E and 15F of the Exchange Act is required? Why or why not? If yes, what would the impact of doing so be upon the goals of Title VII's reforms of the SB swap market?
- What would be the advantages and disadvantages of requiring SBSDs and MSBSPs to register with the Commission prior to the compliance date of the capital, margin, and segregation requirements? If there are potential disadvantages, what steps could be taken to mitigate them? Would SBSDs and MSBSPs be subject to additional costs or other burdens if the Commission were to require such persons to register with the Commission prior to the compliance date for the capital, margin, and segregation requirements? Why or why not? What would the impact of doing so be upon the goals of Title VII's reforms of the SB swap market?
- In determining when SBSDs and MSBPs should be required to register with the Commission, should the Commission take into account the CFTC's timing for its parallel requirement and/or the timing of other jurisdictions? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?
- What would be the advantages and disadvantages of requiring SBSDs and MSBSPs to comply with final rules resulting from the Business Conduct Standards Proposing Release prior to the compliance date of the capital, margin, and segregation requirements and vice versa? If there are potential disadvantages, what steps could be taken to mitigate them? Would SBSDs and MSBSPs be subject to additional costs or other burdens if the Commission were to require compliance with final rules resulting from the Business Conduct Standards Proposing Release prior to the compliance date of the capital, margin, and segregation requirements? Why or why not? What would the impact of doing so be upon the goals of Title VII's reforms of the SB swap market?
- Would SBSDs and MSBSPs be subject to additional costs or other burdens if the Commission were to require compliance with the capital, margin, and segregation requirements prior to the compliance date of the business conduct standards? Why or why not? What would the impact of doing so be upon the goals of Title VII's reforms of the SB swap market?
- Should compliance with the final rules to be adopted under sections 3E and 15F of the Exchange Act be further sequenced in some manner beyond the

[150] *See, e.g., id.* at 11 (noting that ''capital and margin changes may lead to significant changes in available cash resources that will have broader financial repercussions for affected organizations, including end-users'' and recommending that the Commission ''recognize the significance of these issues and allow market participants sufficient time to revise their financial planning to accommodate them.'').

[151] *See, e.g.,* letter from the Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association (May 4, 2011), File No. S7–27–10, at 5 (noting that ''[l]egal documentation, treatment of collateral, margin requirements, account setup, and fee negotiations * * * between Swap clearing houses and their clearing members will take significant time.'').

[152] SB Swap Participant Registration Proposing Release at 65787.

[153] 15 U.S.C. 78o–10(k)(1).

[154] *Id.* at 78o–10(k)(2).

[155] *See id.* at 78o–10(k)(3)(A).

[156] These rules have been proposed as part of the Business Conduct Standards Proposing Release. *See* proposed rule 15Fk–1(c), Business Conduct Standards Proposing Release at 42459.

[157] 15 U.S.C. 78c–5(f).

[158] Effective Date Order at 36294.

[159] 15 U.S.C. 78c–5.

estimated amount of time needed for compliance, such as by SB swap market participant type (*i.e.,* SBSD or MSBSP)? If so, how? Are there other factors that should be considered in establishing the compliance dates for these rules?

• In determining when SBSDs and MSBPs should be subject to the final rules to be adopted under sections 3E and 15F of the Exchange Act, should the Commission take into account the CFTC's timing for its parallel requirements and/or the timing of other jurisdictions? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

• Should the Commission phase the introduction of the SB swap trade documentation and margining requirements by type of SB swap market participant? For example, should the Commission phase these requirements in the manner proposed by the CFTC in its Trading Documentation and Margining Implementation Proposal? [160] What would the potential advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

E. SB SEF Registration and Regulation and the Mandatory Trade Execution Requirement

The following section discusses timing issues pertaining to the implementation of the registration requirements and core principles applicable to SB SEFs as set forth in section 3D of the Exchange Act [161] and the mandatory trade execution requirement as set forth in section 3C(h) of the Exchange Act.[162] This section also discusses the timing of the compliance dates of final rules resulting from Proposed Regulation MC that would be applicable to SB SEFs and the sequencing of the mandatory trade execution requirement as it relates to both the mandatory clearing requirement and the exception from the mandatory trade execution requirement for any SB swap that is not made available to trade by an exchange or SB SEF. Finally, this section discusses the timing of the expiration of the temporary exemptions granted in the Effective Date Order [163] and the Exchange Act Exemptive Order [164] that permit certain persons that engage in SB swap activities to continue to do so until the earliest compliance date set forth in any final rules regarding the registration of SB SEFs.

(i) SB SEF Registration and Core Principles

The Dodd-Frank Act amended the Exchange Act to add new section 3D.[165] Section 3D(a)(1) provides that no person may operate a facility for the trading or processing of SB swaps, unless the facility is registered as an SB SEF or as a national securities exchange.[166] Section 3(a)(77) of the Exchange Act defines ''security-based swap execution facility'' as a trading system or platform in which multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that (A) facilitates the execution of SB swaps between persons; and (B) is not a national securities exchange. Thus, the Commission has proposed to interpret these two provisions, taken together, to require registration as a SB SEF or a national securities exchange for any entity that meets the definition of SB SEF in section 3(a)(77) of the Exchange Act.[167]

To facilitate the start of organized trading of SB swaps, the Commission proposed rule 801(c) of proposed Regulation SB SEF, which would provide a method for the Commission to grant temporary registration to an applicant to become a registered SB SEF.[168] For any application for registration as a SB SEF filed with the Commission on or before July 31, 2014, for which the applicant indicates that it would like to be considered for temporary registration, the Commission proposed to grant such temporary registration as long as certain requirements were met. The Commission believes a temporary (or similar) registration process for prospective SB SEFs would serve as a useful tool during the initial implementation period to allow an applicant to operate as a SB SEF for a period of time while the Commission reviews its SB SEF registration application.

In the SB SEF Proposing Release, the Commission stated that when considering whether to grant a request for temporary registration, the Commission would review the information provided by the applicant that the Commission believes to be relevant, including, but not limited to: whether the applicant's trading system satisfies the definition of a ''security-based swap execution facility'' in section 3(a)(77) of the Exchange Act and any Commission rules, interpretations or guidelines regarding such definition; any access requirements or limitations imposed by the SB SEF; the ownership and voting structure of the applicant; and any certifications made by the applicant, including with respect to its capacity to function as a SB SEF and its compliance with the Exchange Act and the rules and regulations thereunder.[169] Temporary registration would expire on the earlier of: (1) The date that the Commission grants or denies the applicant's registration as a SB SEF; or (2) the date that the Commission rescinds the applicant's temporary registration.

As discussed further below, the Commission has exempted entities that meet the definition of ''security-based swap execution facility'' from having to comply with the registration requirements set forth in section 3D(a)(1) of the Exchange Act until the compliance date set forth in the final rules pertaining to the registration of SB SEFs. The Commission expects to set forth in any future release adopting final SB SEF rules the timing for compliance with the registration requirements (including any temporary registration requirements), the core principles and the rules thereunder.

(ii) Proposed Regulation MC

Proposed Regulation MC would apply governance requirements and ownership and voting limitations to SB SEFs as a means to mitigate conflicts of interest for SB SEFs.[170] The Commission may, taking into account comments received, consider taking final action on the conflicts of interest proposals relating to SB SEFs that are set forth in proposed Regulation MC as part of any final rules the Commission may adopt that relate to the regulation and registration of SB SEFs. The Commission preliminarily believes the

[160] *See supra* note 53 and the accompanying text for a discussion of the CFTC Clearing and Trade Execution Implementation Proposal.

[161] 15 U.S.C. 78c–4.

[162] *Id.* at 78c–3(h). *See* section II.E.(iii) *infra* for a discussion of the mandatory trade execution requirement set forth in section 3C(h) of the Exchange Act.

[163] *See supra* note 34.

[164] *See supra* note 36.

[165] *See* Public Law 111–203, section 763(c) (adding section 3D of the Exchange Act).

[166] *Id.*

[167] *See* SB SEF Proposing Release at 10959 n.62.

[168] *See* proposed rule 801(c) of proposed Regulation SB SEF, SB SEF Proposing Release at 11054.

[169] SB SEF Proposing Release at 10999.

[170] *See* Proposed Regulation MC, *supra* note 27. Proposed Regulation MC also would apply governance requirements and ownership and voting limitations on national securities exchanges that post or make available for trading SB swaps.

proposed rules for SB SEFs contained in Proposed Regulation MC[171] align in scope with proposed Rule 820 implementing Core Principle 11, as set forth in proposed Regulation SB SEF,[172] because both proposals include rules that are designed to minimize and resolve conflicts of interest with respect to SB SEFs.

(iii) Statutory Sequencing of the SB Swap Mandatory Trade Execution Requirement

Section 3C(h) of the Exchange Act requires that transactions in SB swaps that are subject to the clearing requirement of section 3C(a)(1) of the Exchange Act must be executed on an exchange or on a SB SEF registered with the Commission (or a SB SEF exempt from registration), unless no exchange or SB SEF makes the SB swap available to trade (referred to as the ''mandatory trade execution requirement'') or the SB swap transaction is subject to the clearing exception in section 3C(g) of the Exchange Act.[173] The Commission believes this section provides a certain sequencing of the SB swap mandatory trade execution requirement, as it states that only a SB swap that has been determined by the Commission to be required to be cleared, and that has been made available to trade on an exchange or registered SB SEF, must be executed on an exchange or registered SB SEF.[174]

As discussed in section II.C above, the Commission anticipates that SB swap transactions that the Commission determines are subject to mandatory clearing would not be required to be cleared until the later of: (1) The compliance date of certain of the final rules to be adopted pursuant to the Clearing Agency Standards Proposing Release; (2) the compliance date of the final rules adopted pursuant to the End-User Exception Proposing Release; and (3) the Commission determining whether to propose amendments to the existing net capital and customer protection requirements applicable to broker-dealers with regard to SB swap clearing through such broker-dealers and whether to address portfolio margining with swaps. The Commission expects there would be no mandatory exchange or SB SEF trading of SB swap transactions (thus allowing such SB swap transactions to continue to trade OTC) before compliance is required with any final rules adopted pursuant to the Clearing Agency Standards Proposing Release and the End-User Exception Proposing Release and before the Commission considers appropriate steps to address potential issues relating to the existing broker-dealer net capital and customer protection requirements and portfolio margining with swaps, as SB swaps would not be required to be cleared until the Commission has determined that SB swaps are required to be cleared and the clearing requirement has become operative.

The Dodd-Frank Act additionally provides that SB swaps that are subject to mandatory clearing but that have not been made available to trade by an exchange or SB SEF would not be subject to the mandatory trade execution requirement.[175] In the SB SEF Proposing Release, the Commission proposed to interpret the phrase ''made available to trade'' to mean something more than the decision to simply trade an SB swap on a SB SEF or an exchange, and that SB swaps subject to mandatory clearing would not be subject to mandatory exchange or SB SEF trading simply because they are listed on a SB SEF or exchange.[176] The Commission further proposed that the determination as to when a SB swap would be considered to be ''made available to trade'' on an exchange or a SB SEF be made pursuant to objective measures established by the Commission, rather than by one or a group of SB SEFs.[177] The Commission further noted that it did not, at that time, have sufficient data to propose standards pursuant to which a determination of whether an SB swap is ''made available to trade'' should be made, and requested that commenters provide suggestions as to those objective standards that would be appropriate.[178] The Commission is reviewing comments received on its proposal relating to the determination of when a SB swap should be ''made available to trade''. If the Commission adopts its interpretation of ''made available to trade'' as proposed, the Commission anticipates that it would ultimately adopt standards for determining when a SB swap has been ''made available to trade.'' Thus, if the Commission adopts the proposed interpretation, the Commission expects that there would be no mandatory exchange or SB SEF trading of SB swaps (and thus such SB swaps may continue to trade OTC) before: (1) Any such standards have been finalized; (2) a SB swap has been determined to be ''made available to trade'' pursuant to such standards; and (3) such ''made available to trade'' determination has become effective.

As discussed above, the specific compliance dates for the core principles applicable to SB SEFs as set forth in the Exchange Act, and any final rules relating to SB SEFs that are adopted by the Commission, including registration rules, will be addressed in any release adopting such final rules. The Commission understands that some entities that intend to seek to register with the Commission as an SB SEF or to be exempt from such registration would do so as soon as possible, which likely would be, as discussed above, before the mandatory trade execution requirement becomes operational.[179]

Based upon Commission staff conversations with industry participants, the Commission believes that some entities that meet the definition of an SB SEF may seek to register with the Commission (or be exempt from such registration) before the mandatory trade execution requirement becomes operational.

(iv) Expiration of Exemptions and Exceptions Granted Pursuant to the Effective Date Order and the Exchange Act Exemptive Order

The compliance dates of certain of the rules pertaining to SB SEFs will result in the expiration of certain of the temporary exemptions and exceptions granted pursuant to the Effective Date Order and the Exchange Act Exemptive Order. Specifically, the following temporary exemptions granted pursuant to the Effective Date Order will expire upon the earliest compliance date set forth in any of the final rules pertaining to the registration of SB SEFs:

- The exemption from compliance with section 3D(a)(1) of the Exchange Act's prohibition against any person operating a facility for the trading or processing of SB swaps unless the facility is registered as a SB SEF or as a national securities exchange;[180] and
- The exemption from compliance with section 3D(c) of the Exchange Act's requirement that a national securities exchange (to the extent that it also operates a SB SEF and uses the same electronic trade execution system for listing and executing trades of SB swaps on or through the exchange and the facility) identify whether electronic trading of SB swaps is taking place on

[171] Proposed Regulation MC at 65890–12, 65931–2.

[172] SB SEF Proposing Release at 11064.

[173] 15 U.S.C. 78c–3(h).

[174] *See id.*

[175] Exchange Act section 3C(h)(2), 15 U.S.C. 78c–3(h)(2).

[176] SB SEF Proposing Release at 10969.

[177] *Id.*

[178] *Id.*

[179] *See, e.g.,* letter from Tradeweb Markets LLC (Apr. 4, 2011), File No. S7–06–11, at 1; letter from MarketAxess Corporation (Apr. 4, 2011), File No. S7–06–11, at 1.

[180] Effective Date Order at 36306.

or through the national securities exchange or the SB SEF.[181]

Also upon the earliest compliance date set forth in the any of the final rules pertaining to the registration of SB SEFs, the temporary exceptions from the following Exchange Act requirements will expire:

- The temporary exemption from Exchange Act sections 5 and 6;[182]
- The exemption applicable to any person other than a clearing agency acting as a central counterparty in SB swaps from the requirements to register as a national securities exchange under sections 5 and 6 of the Exchange Act and the rules and regulations thereunder solely in connection with the person's activities involving SB swaps;[183]
- The exemption applicable to broker-dealers from section 5 of the Exchange Act solely in connection with the broker's or dealer's activities involving SB swaps that it effects or reports on an exchange that is exempted from registration pursuant to the Exchange Act Exemptive Order's temporary exemption from Exchange Act sections 5 and 6;[184]
- The exemption applicable to credit default swap central counterparties from the requirements of sections 5 and 6 of the Exchange Act and the rules and regulations thereunder solely in connection with their calculation of mark-to-market prices for opened positions in cleared credit default swaps;[185]
- The exemption applicable to any member of a credit default swap central counterparty from the requirements of section 5 of the Exchange Act solely to the extent such member uses any transactions in cleared credit default swaps to effect any transaction in cleared credit default swaps, or to report any such transaction, in connection with the credit default swap central counterparty's clearance and risk management process for cleared credit default swaps.[186]

The Commission granted the foregoing exemptions in the Exchange Act Exemptive Order because certain persons, particularly those that would meet the statutory definition of ''security-based swap execution facility,'' may be engaging in activities that would subject them to the restrictions and requirements of Sections 5 and 6 of the Exchange Act as of the Effective Date. In setting the compliance dates for the final rules pertaining to the registration and regulation of SB SEFs, the Commission intends to consider whether it is necessary or appropriate in the public interest, and consistent with the protection of investors, to take further action with regard to any of the above-described temporary exemptions.

(v) Request for Comment

- Pursuant to the sequencing described herein, rules implementing the regulation and registration of SB SEFs would be sequenced later in the process than other rules implementing SB swap provisions of the Dodd-Frank Act. Do commenters believe this sequencing is appropriate or should any final rules governing SB SEFs be considered at an earlier point in time? Why or why not? How would this sequencing affect the goals of Title VII's reforms of the SB swap market?
- Should an SB SEF be required to comply with all duties, core principles and other requirements upon receiving approval of its registration with the Commission or should compliance with some of these requirements be delayed until a later point in time? Why or why not? If so, for which requirements and until what point in time should compliance be delayed? What factors, if any, should be considered in establishing the compliance dates for any SB SEF requirements that should be subject to delayed or phased-in compliance, and why should such factors be considered? How would such a delay or phasing in affect the goals of Title VII's reforms of the SB swap market? Would there be potential advantages and disadvantages of such a delay or phasing in? If so, what would they be? If there are potential disadvantages, what steps could be taken to mitigate them?
- In the SB SEF Proposing Release, the Commission proposed a rule that would permit applicants to apply for temporary registration as a SB SEF.[187] The Commission believes temporary registration for SB SEFs could serve as a useful tool during the initial implementation period and should provide the Commission sufficient time to review an application more thoroughly when considering an application for registration that is not limited in duration.[188] Should the Commission consider granting an exemption from section 3D of the Exchange Act or extending the current exemption from section 3D in the Effective Date Order for any entity that submits an application for temporary SB SEF registration to permit it to operate as a SB SEF pending submission of an application for permanent SB SEF registration, or pending Commission approval or disapproval of its permanent application? If so, should the Commission condition such extension or granting of an exemption on the prospective SB SEF complying with certain conditions such as, for example, meeting the Commission's interpretation of the definition of SB SEF, satisfying any requirements relating to fair access, and providing the Commission with access to its books and records? Why or why not? If so, which conditions should the Commission impose on the SB SEF's operations prior to the Commission taking action on its application for registration, and why?
- If the Commission were to permit entities to submit applications for temporary SB SEF registration prior to their permanent SB SEF applications, how soon after an entity submitted its application for temporary SB SEF registration should it be required to submit its application for permanent SB SEF registration? For example, would 360 days be sufficient? Should a shorter or longer time period be applied? If so, what is an appropriate time period and why?
- In the SB SEF Proposing Release, the Commission proposed an initial implementation phase for the registration of SB SEFs, which phase would begin on the date of Regulation SB SEF's effectiveness and end on July 31, 2014.[189] Based upon the sequencing of the compliance dates of the final rules described herein that would result in the regulation and registration of SB SEFs later in the implementation process, is this time period initially proposed to implement the registration of SB SEFs appropriate? Why or why not? If not, what would be a more appropriate time period?
- In determining when to require SB SEFs to register with the Commission, should the Commission take into account the CFTC's timing for its parallel requirement and/or the timing of other jurisdictions? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

[181] *Id.* at 36306.

[182] Exchange Act Exemptive Order at 39939.

[183] *Id.*

[184] *Id.*

[185] *Id.* at 39939–40.

[186] *Id.* at 39940.

[187] *See* SB SEF Proposing Release at 10999–11000; *see also* section II.E.(i) *supra.*

[188] *See* SB SEF Proposing Release at 11000.

[189] *See id.* at 10998.

• Should the Commission consider a delayed implementation schedule for any conflicts of interest rules that it may adopt for SB SEFs? Why or why not? How would such a delayed implementation schedule affect the goals of Title VII's reforms of the SB swap market? Would there be potential advantages and disadvantages of doing so? If so, what would they be? If there are potential disadvantages, what steps could be taken to mitigate them?

• Are there other rules or sets of rules with which compliance should be required, or which must be effective, before SB swaps subject to the mandatory trade execution requirement are required to be traded? If so, which ones, and why?

• Should the Commission phase in compliance with the mandatory trade execution requirement by type of market participant? For example, should the Commission phase in this requirement by market participant type in the manner proposed by the CFTC in its Clearing and Trade Execution Implementation Proposal? [190] Why or why not? What would the advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

• In determining when to require compliance with the mandatory trade execution requirement, should the Commission take into account the CFTC's timing for its parallel requirement and/or the timing of other jurisdictions? Why or why not? If so, what is the most appropriate manner of sequencing in relation to those potentially differing timelines? What would the advantages and disadvantages of doing so be? If there are potential disadvantages, what steps could be taken to mitigate them?

III. Solicitation of Comments

The Commission intends to monitor closely the imposition of the new regulatory regime upon SB swaps and SB swap market participants to determine to what extent, if any, additional regulatory action may be necessary. The Commission is soliciting comment on all aspects of this Statement and the guidance it provides regarding compliance dates for the rules to be adopted under Subtitle B of Title VII. Comments received will be addressed in the relevant final rulemakings to which they pertain.

By the Commission.

Dated: June 11, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–14576 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

[190] *See supra* note 53 and accompanying text for a discussion of the CFTC's proposals to phase in compliance with the swap clearing, trading, trade documentation, and margining requirements arising under Subtitle A of Title VII of the Dodd-Frank Act by category of market participant. *See also supra* note 59 and accompanying text noting that, in the CFTC Clearing and Trade Execution Implementation Proposal, the CFTC stated that before the mandatory clearing of swaps begins, the product and entity definitions, the end-user exception from mandatory clearing, and the rules pertaining to the segregation of customer collateral must be adopted and that before swap market participants could be required to comply with a trade execution requirement, the CFTC must adopt final rules related to swap execution facilities and designated contract markets.

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2012–5]

Verification of Statements of Account Submitted by Cable Operators and Satellite Carriers

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Copyright Office is proposing a new regulation to implement provisions in the Satellite Television Extension and Localism Act of 2010 (''STELA'') that will allow copyright owners to audit certain Statements of Account filed with the Copyright Office. Cable operators and satellite carriers pay royalties to and file Statements of Account with the Copyright Office every six months as required by law for the use of the statutory licenses that allow for the retransmission of programming carried on over-the-air broadcast signals. However, until the passage of STELA the licenses did not authorize the copyright owners, who are the beneficiaries of the royalties collected, to audit the information on Statements of Account and the amounts paid for use of the statutory licenses.

DATES: Comments on the proposed regulation must be received in the Office of the General Counsel of the Copyright Office no later than 5 p.m. Eastern Daylight Time (EDT) on August 13, 2012. Reply comments must be received in the Office of the General Counsel no later than 5 p.m. EDT on September 12, 2012.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/soaaudit/.* The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, or Erik Bertin, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Every five years Congress considers legislation to reauthorize the statutory license that allows satellite carriers to retransmit television programs that are embodied in distant broadcast transmissions, provided that the satellite carrier files a Statement of Account and pays royalties to the Copyright Office. 17 U.S.C. 119. In May 2010, Congress passed the Satellite Television Extension and Localism Act of 2010 (''STELA''), Public Law 111–175, 124 Stat. 1218, for this purpose. STELA reauthorized the Section 119 statutory license for satellite carriers and, in addition, it made certain amendments to the Section 119 license and a second statutory license, set forth in Section 111 of title 17 of the United States Code, that allows cable systems to retransmit television and radio programs that are embodied in local and distant broadcast transmissions.

A significant change to the law is the addition of new provisions directing the Register of Copyrights to develop procedures for the verification of the Statements of Account and royalty fees that cable operators and satellite carriers deposit with the Copyright Office under Sections 111 and 119. Specifically, Section 119(b)(2) directs the Register to

''issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under [that] subsection.'' Similarly, Section 111(d)(6) directs the Register to ''issue regulations to provide for the confidential verification by copyright owners whose works were embodied in the secondary transmissions of primary transmissions pursuant to [section 111] of the information reported on the semiannual statements of account filed under this subsection for accounting periods beginning on or after January 1, 2010, in order that the auditor designated under subparagraph [111(d)(6)(A)] is able to confirm the correctness of the calculations and royalty payments reported therein.''

These provisions authorize the implementation of a process by which copyright owners, whose works are retransmitted under the statutory licenses, can for the first time verify the accuracy of the royalty payments made by cable operators and satellite carriers. They also make clear that the Register should consider the interests of the parties who will be subject to this verification procedure. For example, Section 111(d)(6) directs the Register to give cable operators an opportunity to review the auditor's conclusions, to remedy any errors identified in the auditor's report, and to correct any underpayments that the auditor may discover. Congress indicated that a single auditor should conduct the verification procedure on behalf of all copyright owners and that the Register should limit the number of times that a party may be subjected to an audit. Congress also directed the Register to establish procedures for protecting the confidentiality of non-public financial and business information that may be provided to the auditor during the course of his or her investigation.

Generally speaking, the proposed regulation is based on similar regulations that the Office has adopted for the verification of Statements of Account and royalty payments that are made under the statutory licenses for the use of ephemeral recordings and the digital performance of sound recordings under 17 U.S.C. sections 112(e) and 114(f), and for the importation and distribution of or the manufacture and distribution of digital audio recording devices under 17 U.S.C. chapter 10. *See* generally 37 CFR 201.30, 260.5, 260.6, 261.6, 261.7, 262.6, and 262.7. The Office also considered a Petition for Rulemaking [*http://www.copyright.gov/docs/soaaudit/soa-audit-petition.pdf*] which was filed on behalf of the copyright owners who are the beneficiaries of the royalties that are paid under the Section 111 and 119 statutory licenses.[1] The copyright owners asked the Office to adopt separate regulations for Statements of Account that are filed by cable operators and satellite carriers and provided the Office with proposed language for each regulation. Separate regulations, however, do not appear to be necessary because the basic elements for verifying and auditing Statements of Account filed under Section 111 and 119 should be the same. Therefore, the Office is proposing a single regulation setting forth a process for verifying Statements of Account that would apply to cable operators and to satellite carriers. In formulating this regulation, the Office has adopted some of the suggestions included in the Petition for Rulemaking and welcomes comments on the proposed regulation from copyright owners, cable operators, satellite carriers, accounting professionals, and other interested parties.

II. Verification Procedures

A. Cable Operators and Satellite Carriers Would Be Subject to the Same Verification Procedure

As discussed above, Section 119(b)(2) directs the Register to issue regulations to allow ''interested parties'' to verify the Statements of Account and royalty fees that are filed with the Copyright Office under Section 119. The term ''interested parties'' was not defined, and the statute does not provide any guidance on the nature and extent of this verification procedure. For example, Section 119(b)(2) does not indicate whether satellite carriers should be allowed to review the auditor's conclusions or to correct any underpayments that the auditor may discover. Nor does it provide for the confidential treatment of information that the satellite carrier may provide to the auditor. Section 111(d)(6), on the other hand, contains detailed instructions regarding the verification of Statements of Account and royalty payments filed by cable operators, including the number of times that a cable system may be audited, the qualifications of the auditor, and the deadline for initiating an audit, among other requirements.

However, the differences between the two provisions do not preclude the Register from adopting a single regulation for verification procedures conducted under Section 111(d)(6) and 119(b)(2). Nor is there anything in Section 111(d)(6) that directly contradicts the requirements of 119(b)(2) (or vice versa). Section 119(b)(2) allows ''interested parties'' to verify and audit Statements of Account and royalty payments filed by a satellite carrier. By contrast, Section 111(d)(6) only allows ''copyright owners whose works were embodied in the secondary transmission of primary transmissions'' to audit Statements of Account and royalty payments filed by a cable operator. While the statutory language in Section 111(d)(6) is more precise and identifies who may request an audit, it is nonetheless reasonable to assume that the only parties who would have an interest in verifying Statements of Account and royalty payments filed under Section 119 would be copyright owners whose works were embodied in a secondary transmission made by the party that filed that Statement. Moreover, virtually the same set of copyright owners participates in proceedings before the Copyright Royalty Board concerning the distribution of royalties under the cable and satellite licenses.

Consequently, because Congress provided a blueprint for the verification of Statements of Account in Section 111(d)(6) and because those requirements are similar to verification procedures that the Office has adopted in the past, the Office is inclined to use this provision as the framework for the regulations governing the verification of Statements of Account and royalty fees filed by both cable operators and satellite carriers.[2] Adoption of the same procedures for both statutory licenses has advantages. It will reduce regulatory complexity for copyright owners, it will promote fairness among statutory licensees, and it will encourage auditors to develop best practices that could be used regardless of whether an audit involves Statements of Account filed by a cable operator or a satellite carrier. The copyright owners apparently agree with this approach. Although they proposed separate regulations for cable operators and satellite carriers their drafts are essentially identical, except

[1] Representatives of Program Suppliers (commercial entertainment programming); Joint Sports Claimants (professional and college sports programming); Commercial Television Claimants (local commercial television programming); Music Claimants (musical works included in television programming); Public Television Claimants (noncommercial television programming); Canadian Claimants (Canadian television programming); National Public Radio (noncommercial radio programming); Broadcaster Claimants Group (U.S. commercial television stations), and Devotional Claimants (religious television programming) filed the petition jointly.

[2] As the proposed regulation applies to both cable operators and satellite carriers, they are collectively referred to as ''statutory licensees.''

for one difference which is discussed in more detail in the next section.

The Office invites comments on whether Section 111(d)(6) should be used as the framework for the verification of Statements of Account filed under Sections 119(b)(2) or whether there are policy or administrative reasons for adopting a different approach for the verification of Statements and royalties filed by cable operators and satellite carriers.

B. Retroactivity

As discussed above, the copyright owners have asked the Office to adopt separate regulations for cable operators and satellite carriers and they have provided the Office with a proposed draft for each regulation. The primary difference between the two suggested regulations is that the copyright owners' draft regulation for satellite carriers would apply retroactively, while their draft regulation for cable operators would apply on a prospective basis only. Specifically, the copyright owners' draft regulation for cable operators would apply to Statements of Account for accounting periods beginning on or after January 1, 2010 (*i.e.,* the semiannual accounting period that was in effect when the President signed STELA into law on May 27, 2010). By contrast, the copyright owners' draft for satellite carriers would apply to any Statement of Account, even if the Statement was filed with the Office before STELA was enacted.

In support of this distinction, copyright owners argue that Section 119(b)(2) of ''STELA permits verification of Statements of Account filed by satellite carriers prior to the 2010–1 accounting period.'' Petition for Rulemaking at 4. However, Section 119(b)(2) does not contain any language that expressly permits copyright owners to audit a Statement of Account for an accounting period that predated the enactment of STELA. Nor does it contain any language that expressly permits the Office to adopt regulations providing for the verification of Statements of Account on a retroactive basis. On the contrary, when STELA does address this issue, it clearly states that copyright owners may audit a cable operator's Statements of Account, but only with respect to ''accounting periods beginning on or after January 1, 2010 * * *.'' Section 111(b)(6). The fact that the verification procedure for cable operators only applies to the accounting period that was in effect when STELA was enacted and any subsequent accounting period is clear evidence that Congress did not intend to impose a retroactive verification requirement on cable operators. On the other hand, the lack of similar language in Section 119 is not an indication that Congress intended to allow retroactive verification of Statements of Account filed by satellite carriers.

''Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.'' *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204, 208 (1988) (citations omitted). *See also Motion Picture Association of America, Inc.* v. *Oman,* 969 F.2d 1154, 1156 (D.C. Cir. 1992) (explaining that the Register of Copyrights does ''not have authority to promulgate retroactive rules unless Congress gives [her] that authority in express terms'').

Because the copyright owners are asking ''for something the Office could not give as a matter of law,'' *Motion Picture Association of America,* 969 F.2d at 1156, *i.e.,* allowing copyright owners to audit Statements of Account for accounting periods that preceded the 2010/1 accounting period, the Office has not adopted the draft language that they proposed for the verification of Statements of Account filed by satellite carriers.

C. Initiation of an Audit

The proposed regulation follows the same approach that is used to initiate audit and verification procedures for examining Statements of Account filed under the Section 112 and 114 licenses and under Chapter 10. In keeping with this approach, a copyright owner would have to notify the Copyright Office in writing in order to initiate an audit procedure, and at the same time, it would have to serve a copy of that notice on the statutory licensee that would be subject to the audit. The Office does not intend to create a form for this notice, but at a minimum, the proposed regulation requires the copyright owner to identify the Statement(s) of Account and accounting period(s) that would be included in the audit and the statutory licensee that filed those Statement(s) with the Office. In addition, the notice of intent to audit would have to provide specific information about the copyright owner filing the notice, including its name, address, telephone number, facsimile number, and email address (if any), and the copyright owner would have to provide a brief statement establishing that it owns at least one work that was embodied in a secondary transmission made by that licensee.

Under the proposed regulation a notice of intent to audit filed by one copyright owner would preserve the right of all interested copyright owners to participate in the audit procedure. This would mean that once the Office has received a notice of intent to audit a particular semiannual Statement of Account, it would not accept another notice of intent to audit that same Statement. As discussed in Section G below, a satellite carrier or cable operator that owns one cable system would be subject to no more than one audit per year, while a cable operator that owns multiple cable systems would be subject to no more than three audits per year. This would mean that once the Office has received a notice of intent to audit a particular satellite carrier or a particular cable system that owns a single cable system, the Office would not accept another notice of intent to audit that licensee until January 1st of the following year. Likewise, once the Office has received three notices of intent to audit a particular multiple cable system operator within a specific calendar year, it would not accept another notice of intent to audit that same licensee until January 1st of the following year.[3]

The filing of the notice would then require the Office to publish a notice in the **Federal Register** within 30 days after receiving the notice of intent to audit. The **Federal Register** notice would identify the Statement(s) of Account and statutory licensee that would be subject to audit, it would identify the copyright owner that filed the notice of intent to audit, and it would provide appropriate contact information for that party. Any other copyright owner that wishes to participate in the audit of the Statement(s) of Account identified in the **Federal Register** notice would have to contact the copyright owner that filed the notice of intent to audit. Copyright owners that join in the audit would be entitled to participate in the selection of the auditor, and they would be entitled to participate in the selection of additional cable systems that may be included in an expanded audit, if the audit involves a multiple cable system operator which has been shown to have

[3] However, if a copyright owner filed a notice of intent to audit a particular Statement of Account or a particular statutory licensee in calendar year 2013 and if that audit was still ongoing as of January 1, 2014, the Office would accept a notice of intent to audit filed in calendar year 2014 concerning other Statements filed by that same licensee.

underpaid its royalties during the initial examination. In addition, copyright owners that join in the audit would be entitled to receive a copy of the auditor's report and they would be required to pay for the auditor for his or her work in connection with the audit.

Conversely, a copyright owner that failed to join the audit within 30 days would not be permitted to participate in the selection of the auditor or the selection of cable systems that would be included in an audit of a multiple system operator. Nor would they be entitled to receive a copy of the auditor's report. Moreover, a copyright owner that failed to join the audit within the time allowed would not be permitted to conduct its own audit of the semiannual Statement(s) of Account identified in the **Federal Register** notice at a later time. If the licensee identified in the **Federal Register** notice is a satellite carrier or a single cable system operator, a copyright owner that failed to join the audit within 30 days would not be permitted to conduct another audit of that same licensee until the following year because under the proposed regulations these systems shall be subject only to a single audit during a given calendar year. *See* Section G, Frequency of the Audit Procedure. Likewise, if the Office already published three **Federal Register** notices involving a multiple cable system operator, a copyright owner that failed to join any of these audits within the time allowed would not be permitted to conduct another audit of Statements filed by that same licensee for additional accounting periods until the following year.

D. Designation of the Auditor

Under the copyright owners' proposal, the Office would be responsible for selecting a qualified and independent person to conduct the audit, and copyright owners and statutory licensees would be given an opportunity to comment on the proposed auditor before the final selection is made. Copyright owners who wished to participate in the audit and to receive a copy of the auditor's final report would have 15 days after the selection of the auditor to notify the Office of their intention to join the audit process, and the Office would be responsible for posting the names of these copyright owners on its Web site.

The Office has considered the copyright owners' approach but can see little justification for this degree of involvement by the Copyright Office. Section 111(d)(6)(A) directs the Office to ''establish procedures for the designation of a qualified independent auditor,'' but it does not require the Office to make this designation. The Office does not have the knowledge, experience, or resources needed to select an appropriate auditor or to manage the selection process beyond the initial notification step, and doing so would be a dramatic departure from the audit regulations that the Office has adopted in the past. *See* 37 CFR 201.30(d)(2), 260.5(c), 260.6(c), 261.6(c), 261.7(c). Therefore, the Office is not inclined to adopt the copyright owners' proposal. Moreover, the Office is unaware of any problems with this initiation practice as used in the verification process for auditing statements of account filed under the Section 112 and 114 licenses or under Chapter 10.

The Office believes that the copyright owners should be responsible for designating an auditor who will verify the Statement(s) of Account and royalty payments on their behalf and for resolving any disputes amongst themselves over the selection of the auditor. Likewise, the Office believes that the copyright owners who join in the audit should be responsible for paying the auditor for his or her work in connection with the audit, and for resolving any disputes amongst themselves concerning the allocation of those costs.[4] The Office can establish regulatory guidelines for the verification process, but it strongly believes that the copyright owners are better situated to assume the costs and the responsibility for selecting the auditor and coordinating the verification procedure, including the identification of those copyright owners who wish to participate in the verification process.

To this end, the proposed regulation would establish clear guidelines for the process, such as defining what constitutes a ''qualified'' and ''independent'' auditor. Specifically, an auditor would be considered ''qualified'' if he or she is a certified public accountant. Consistent with Section 111(d)(6)(A)(ii), an auditor would be considered ''independent'' if he or she is not an officer, employee, or agent of a copyright owner for any purpose other than the audit. In addition, an auditor would be considered ''independent'' for purposes of this procedure if that person is considered to be ''independent'' as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants (''AICPA''), in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA, and in the Interpretations thereof issued by the Auditing Standards Division of the AICPA. *See, e.g.,* AICPA Code of Professional Conduct, ET Section 101 (Independence), 102 (Integrity and Objectivity), 191 (Ethics Rulings on Independence, Integrity, and Objectivity), available at *http://www.aicpa.org/interestareas/professionalethics/resources/codeofconduct/pages/default.aspx.* However, the Office does agree with the copyright owners that an auditor should be disqualified if there is any conflict of interest that would prevent him or her from participating in the verification procedure, and notes that conflicts of interest are prohibited under AICPA Code of Professional Conduct Section 102–2.

The standard for evaluating an auditor's independence is based on the Office's audit regulation for digital audio recording technology, which has been in effect since 1996. *See* 37 CFR 201.30(j)(3). The Office welcomes comments from accounting professionals and other interested parties as to whether accountants currently use this standard to evaluate their independence or whether the standard has changed over the past 16 years.

If a statutory licensee has reason to believe that an auditor is not qualified or independent, it would have to raise those concerns with the copyright owner(s) who selected the auditor before the audit begins. If the parties are unable to resolve the matter, the cable operator or satellite carrier could raise its concerns with AICPA's Professional Ethics Division or with the State Board of Accountancy that licensed the auditor. Consistent with the verification procedures that the Office has adopted for other statutory licenses, the auditor would be allowed to proceed with the audit while his or her qualifications were under review. *See* 37 CFR 201.30(j)(1).

E. Time Period for Conducting an Audit

Section 111(d)(6) allows copyright owners to audit Statements of Account and royalty payments filed with the Copyright Office for any accounting period beginning on or after January 1, 2010. In order to provide cable operators with a measure of certainty and to encourage copyright owners to exercise their audit rights in a prompt manner, Congress directed the Register to set a deadline for initiating an audit

[4] The copyright owners' proposal states that the copyright owners that join in the audit ''shall pay the costs of the Qualified Independent Auditor.'' However, they did not indicate whether those costs should be split evenly among the copyright owners or whether those costs should be divided in some other manner.

procedure. Specifically, Section 111(d)(6)(D) states that the Register shall ''permit requests for verification of a statement of account to be made only within 3 years after the last day of the year in which the statement of account is filed.''

Taking its cue from the statutory text, the proposed regulation would provide that the deadline for initiating a verification procedure would be calculated from the last day of the year in which the Statement of Account was filed. Thus, the final date for filing a notice of intent to audit a particular Statement would be December 31, regardless of whether the Statement was filed by a cable operator or a satellite carrier, whether the Statement covers the first or second half of the year, or whether the Statement was filed before or after the filing deadline. If the copyright owner intends to audit more than one Statement of Account, the notice of intent to audit would have to be filed within three years after the last day of the year that the earliest Statement was filed with the Office. For example, a notice of intent to audit three Statements of Account filed by a satellite carrier on July 30, 2010, January 30, 2011, and July 30, 2011 would have to be received in the Office on or before December 31, 2013.

The copyright owners' draft regulation would require the Office to designate an auditor within 60 days after the notice of intent to audit was published in the **Federal Register**. The auditor would be required to contact the statutory licensee within 30 days thereafter, and the statutory licensee would be required to make its records available to the auditor 30 days later. The Office assumes that the amount of time required for an audit will vary depending on the number and complexity of the Statements of Account that will be subject to review. The only statutory requirement is that the request for verification must be made ''within 3 years after the last day of the year in which the statement of account is filed.'' 17 U.S.C. 111(d)(6)(E). Therefore, the Office is not inclined to set a precise deadline for when the auditor should be selected, when the audit should begin, or when the audit should be completed. Nor is it aware that failure to establish a regulatory timeline for completing these tasks has been a problem with the verification of Statements of Accounts filed under other statutory licenses.

F. Retention of Records

The copyright owners' draft regulation would require statutory licensees to keep records that may be necessary to confirm the correctness of the calculations and royalty payments reported in a Statement of Account for at least five years after the Statement has been filed. While the Office agrees that statutory licensees should be required to retain their records until the deadline for auditing a Statement of Account has passed, it is not clear that such records need to be maintained for five years. *See, e.g.,* 37 CFR 260.4(f) and 261.5(f) (requiring books and records relating to the payment of statutory licensing fees to be kept for three years).

Under the proposed regulation, a statutory licensee would be required to retain such records for a minimum of three and a half years (*e.g.,* 42 months) after the last day of the year in which the Statement of Account was filed with the Office. Should the Office announce the receipt of a notice of intent to audit a particular Statement, the statutory licensee would be required to retain its records concerning the calculations and royalty payments reported in that Statement for at least three years after the date that the auditor delivers his or her final report to the copyright owner(s). This will preserve the records for the benefit of all parties in the event that the copyright owner(s) decide to take legal action based on the facts and conclusions set forth in the auditor's report. Conversely, if the Office does not announce the receipt of a notice of intent to audit within three and a half years (*e.g.,* 42 months) after the last day of the year in which a particular Statement of Account was filed, the statutory licensee would no longer be required to retain its records concerning that Statement, at least for the purpose of verifying the Statement of Account under this regulation.

G. Frequency of the Audit Procedure

Section 111(d)(6)(A)(i) appears to provide copyright owners with a single opportunity to verify a particular Statement of Account. This provision directs the Register to ''establish procedures for the designation of a qualified independent auditor with exclusive authority to request verification of such a statement of account on behalf of all copyright owners. * * *'' Once an auditor has been selected, he or she would conduct that audit on behalf of ''all'' copyright owners, regardless of whether they decide to join the audit or not. Once the auditor has completed his or her review of that Statement, there is no apparent need for additional audits, because all copyright owners would have been given an opportunity to audit that Statement already. In light of this reading, the proposed regulation explains that a Statement of Account may be audited no more than once.

However, this basic limitation to a single audit for each Statement of Account does not address Congress's directive to ''limit the frequency of requests for verification for a particular cable system and the number of audits that a multiple system operator can be required to undergo in a single year.'' 17 U.S.C. 111(d)(6)(D). The statute does not indicate what those limits should be and there is no legislative history for STELA. It is clear that Congress did not intend to overburden cable operators that own and operate multiple systems, but striking an appropriate balance is not an easy question.

Under the copyright owners' proposal, it appears that a satellite carrier or a cable operator that owns one cable system would be subject to no more than one audit per year. However, a cable operator that owns more than one system would be subject to as many as three audits per year.

The Office included the copyright owners' proposal in the initial draft of the regulation, because the statute does not provide any meaningful guidance concerning the phrase ''limit the frequency of requests for verification.'' However, this is merely a starting point for further discussion on this issue. The Office welcomes comment from interested parties concerning the limit on the total number of audits that a satellite carrier, a cable system operator that owns a single cable system, or a multiple system operator can be required to undergo in a single year, and in particular, whether there is a legitimate reason for treating cable operators differently depending on whether they own one cable system or more than one system (*i.e.,* whether the multiple system operator should be subject to a single audit or up to three audits per year).

By contrast, the proposed regulation does not fully embrace the copyright owners' proposal concerning multiple system cable operators, because it does not appear to place any meaningful limit on the number of cable systems that can be included within each audit. Allowing the auditor to evaluate all of the cable systems owned by a multiple system operator may be unduly burdensome for the operator—depending on the number of systems within its portfolio. In order to protect the interests of a multiple system operator, the proposed regulation directs the auditor to study a sampling of the cable systems owned by that operator. At the same time, the regulation protects the interests of copyright owners by allowing them to

maximize their opportunity by including more than one Statement of Account in each audit.

According to the AICPA, ''the basic concept of sampling is well established in auditing practice.'' American Institute of CPAs, Statement on Auditing Standards § 350.06 at 516, available at *http://www.aicpa.org/Research/Standards/AuditAttest/DownloadableDocuments/AU-00350.pdf*. It involves ''the application of an audit procedure to less than 100 percent of the items within * * * [a] class of transactions for the purposes of evaluating some characteristic of the * * * class.'' *Id.* at 515. ''The size of a sample necessary to provide sufficient audit evidence depends on both the objectives and the efficiency of the sample.'' *Id.*

The proposed regulation does not require the auditor to review a specific number of cable systems, because the number of systems owned by each multiple system operator will vary. On the one hand, an audit involving five or six cable systems may impose an undue burden on the operator if it owns only a half dozen systems. On the other hand, if a multiple system operator owns dozens of cable systems, *e.g.,* Time Warner, an audit involving only five of those systems may not be statistically significant given the size of the company.

To address this conundrum, the Office believes that the interests of multiple system cable operators, copyright owners, and the auditor would be better served by allowing the auditor to study a percentage of the cable systems owned by a multiple system operator. The proposed regulation states that, in the case where there are two or more systems under common ownership, audits should involve no more than fifty percent of those systems. However, if the auditor discovers an underpayment of five percent or more in any Statement of Account filed by that operator, the size of the sample could be expanded to include any and all of the systems owned by that operator. The specific cable systems that would be included within the sample of the expanded audit would be selected by the copyright owner(s) who elected to participate in the audit. Setting the trigger at five percent would be generally consistent with the copyright owners' proposal for allocating the cost of the audit, which would require the auditor's fee to be paid by the statutory licensee if the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account that was included in the audit. However, this is merely a preliminary suggestion, and the Office solicits comments from all interested parties.

The Office invites comments on whether a sampling approach should be used for audits involving a multiple system operator, and if so, whether an audit involving up to fifty percent of the systems owned by a particular operator is likely to produce a statistically significant result or whether this threshold would be unduly burdensome for the operator and, if so, what percentage would be appropriate. The Office also invites comments on whether copyright owners should be allowed to increase the number of systems subject to audit if the auditor discovers an underpayment of royalties, and if so, whether the underpayment should be higher or lower than five percent in order to trigger this requirement.

H. Proposed Remedies for Cable Operators and Satellite Carriers

STELA directed the Register to ''require a consultation period for the independent auditor to review its conclusions with a designee of the cable system.'' In addition, Congress directed the Register to ''establish a mechanism for the cable system to remedy any errors identified in the auditor's report and to cure any underpayment identified,'' and to ''provide an opportunity to remedy any disputed facts or conclusions.'' *See* 17 U.S.C. 111(d)(6)(C)(i)–(ii). Congress did not indicate whether the regulation should provide these remedies to satellite carriers, but as discussed above there is nothing in Sections 111(d)(6)(C)(i)–(ii) or 119(b)(2) that prevents the Office from taking this approach and the Office can think of no good reason to adopt different approaches for the two licenses. Therefore, the Office is proposing a single regulation for both cable operators and satellite carriers which would allow any statutory licensee to review the auditor's conclusions before the auditor delivers his or her report to the copyright owner(s), to correct errors and underpayments identified in the auditor's report, and to dispute any of the facts and conclusions set forth in that report. Each of these remedies is discussed below.

1. Consultation With the Statutory Licensee

Once the auditor has completed his or her review of the Statements of Account, the proposed regulation directs the auditor to prepare a written report setting forth his or her conclusions. The proposed regulation explains that the auditor should deliver a copy of that report to the statutory licensee before it is delivered to any of the copyright owner(s) that are participating in the audit. However, there is one exception to this rule. The auditor may deliver a copy of his or her report directly to the copyright owner(s) without sharing it with the statutory licensee if the auditor has reason to suspect that the statutory licensee has committed fraud and that disclosing his or her conclusions to the statutory licensee would prejudice further investigation of that fraud. The Office has taken a similar approach in other audit regulations. *See* 37 CFR 261.6(g), 261.7(f), 262.6(f), 262.7(f).

Consistent with Section 111(d)(6)(C)(i), the auditor would be required to review his or her report with a designee of the statutory licensee before it is delivered to the copyright owner(s). Specifically, the auditor would be required to consult with a designee of the statutory licensee within 30 days after the auditor has delivered his or her report to the licensee. The Office assumes that the consultation would take place at a time and place that is mutually convenient for both parties, and that it would be conducted in person, by telephone, or video conference as the parties may agree. Because the issues presented in each audit will be unique, the regulation does not provide specific topics that the parties should review. But as discussed in Section H.3 below, if the statutory licensee discovers any factual errors or erroneous conclusions in the auditor's report, the designee must bring those issues to the auditor's attention during the consultation.

The Office invites comment on whether the regulation should provide a precise amount of time for the auditor to meet and confer with the statutory licensee's designee, and if so, whether 30 days would be a sufficient amount of time for the consultation period.

2. Correcting Errors and Curing Underpayments Identified in the Auditor's Report

STELA directed the Register to ''establish a mechanism for the cable system to remedy any errors identified in the auditor's report and to cure any underpayment identified.'' The Office already has a process that allows cable operators and satellite carriers to amend their Statements of Account and to make additional royalty payments that may be due. *See* 37 CFR 201.11(h) and 201.17(m). The Office is inclined to use the same approach here.

If the auditor concludes that any of the information in a Statement of

Account is incorrect or incomplete, that the calculation of the royalty fee was incorrect, or that the statutory licensee failed to deposit the royalties owed with the Office, the statutory licensee may correct those errors by filing an amended Statement of Account or by submitting supplemental royalty payments to the Office. To do so, the licensee must comply with the procedures set forth in 37 CFR 201.11(h)(1) and 201.17(m)(3), including the obligation to pay interest on any underpayment that may be due and the requisite filing fee set forth in 37 CFR 201.3.

The copyright owners apparently agree with this approach. Their proposed regulation states that the statutory licensee ''may * * * remedy any errors identified in the [auditor's] report * * * and cure any underpayment identified (subject to the filing fee and interest requirements generally applicable to late, corrected, or supplemental Statements of Account and royalty fees).'' Petition for Rulemaking at 10. However, the copyright owners' proposal would give licensees only a brief opportunity to correct errors or underpayments identified in the auditor's report. Specifically, corrections and underpayments would have to be made during a 30-day consultation period when the auditor would be required to discuss his or her tentative findings with a representative of the licensee.

The statute directs the Office to establish a mechanism for correcting errors identified in the auditor's report and for curing underpayments, but it does not specify a deadline for making these adjustments. The proposed regulation would allow the Office to accept corrected Statements of Account and supplemental royalty payments before, during, or after a verification procedure. Certainly, it would be in the best interest of the licensee to file an amended Statement of Account and any royalties fees owed as soon as possible to avoid accruing additional interest payments and possible exposure to an infringement suit.

The Office welcomes comment on whether the proposed regulation provides statutory licensees with an adequate opportunity to ''remedy any errors identified in the auditor's report and to cure any underpayments identified,'' as required by Section 111(d)(6)(C)(ii). The Office also welcomes comment on whether it would be beneficial to give statutory licensees a specific deadline for correcting errors in their Statements of Account and for making supplemental royalty payments. If so, would 30 days be a sufficient amount of time, and should the deadline be based on the date that the auditor delivers his or her preliminary report to the statutory licensee or the date that the auditor delivers his or her final report to the copyright owner(s)?

3. Disputing the Facts and Conclusions Set Forth in the Auditor's Report

If the statutory licensee disagrees with any of the facts or conclusions set forth in the auditor's report, the licensee's designee must raise those issues during the initial consultation with the auditor. If the auditor agrees that a mistake has been made, he or she should correct those errors before the report is delivered to the copyright owner(s). If facts or conclusions set forth in the report remain in dispute after the consultation, the licensee may provide the auditor with a written response setting forth its views. The licensee's deadline for providing this response would be two weeks (e.g., 14 calendar days) after the date of the initial consultation between the auditor and the licensee's representative.

Within 60 days after the auditor delivers his or her report to the statutory licensee, the auditor would be required to prepare a final report setting forth his or her conclusions and would be required to deliver that report to the copyright owner(s) that participated in the audit process. At the same time, the auditor would be required to provide the statutory licensee with a copy of the final report. (The copyright owners made a similar suggestion in their draft regulation, but they did not specify a deadline for the delivery of the final report nor did they offer to share the final report with the statutory licensee.) If the statutory licensee prepared a written response contesting the facts or conclusions set forth in the auditor's report, the auditor would be required to include that response as an attachment to his or her final report to the copyright owner(s).

The Office invites comment on whether the proposed regulation provides statutory licensees with an adequate ''opportunity to remedy any disputed facts or conclusions'' as required by Section 111(d)(6)(C)(iii). The Office also welcomes comment on whether two weeks would be a sufficient amount of time for the statutory licensee to prepare a written response to the auditor's report (if any), and whether 60 days would be a sufficient amount of time for the auditor to prepare his or her final report for the copyright owners.

I. Cost of the Audit Procedure

The statute does not indicate whether the costs of the audit should be paid by the copyright owners or by the statutory licensee. The Office has, however, considered this same issue in its regulations concerning the audit of Statements of Account and royalty payments made under Section 112, Section 114, and Chapter 10, and it is inclined to use the same approach in this regulation. *See* 37 CFR 201.30(i), 260.5(f), 260.6(f), 261.6(g), 261.7(g), 262.6(g), 262.7(g).[5]

As a general rule, the copyright owner(s) who selected the auditor would be expected to pay for the auditor's work in connection with the audit. Copyright owner(s) who do not participate in the verification procedure would not be required to pay for the auditor's services, and consequently they would not be entitled to receive a copy of the auditor's report, although they would benefit from the payment of any additional royalty fees made as a result of the audit. However, if the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account that was included in the audit, the proposed regulation would require the auditor's fee to be paid by the statutory licensee that filed that Statement with the Office with the proviso that if a court, in a final judgment (*i.e.,* after all appeals have been exhausted) rejects that determination, the copyright owners would have to reimburse the licensee for its payment of the auditor's services. The copyright owners included a similar proposal in their draft regulation.

The Office invites comment on whether the regulation should include a cost-shifting provision, and if so, whether the percentage of underpayment needed to trigger a cost shifting to the statutory licensee should be more or less than five percent.

J. Confidentiality

STELA directed the Register to issue regulations ''to provide for the confidential verification'' of Statements of Account and royalty payments, and to ''establish procedures for safeguarding all non-public financial

[5] There is no legislative history for STELA, although a prior iteration of the legislation contained language concerning the verification of Statements of Account. The House Report for the earlier bill stated that ''[t]he rules adopted by the Office shall include procedures allocating responsibility for the cost of audits consistent with such procedures in other audit provisions in its rules.'' *See* Satellite Home Viewer Update and Reauthorization Act of 2009, H. Rep. No. 111–319, 111th Cong., 1st Sess., at 10 (2009).

and business information'' that may be provided during the course of the investigation. The proposed regulation explains that confidential information should be made available for use in the audit procedure, and that access to that information should be limited to the auditor who conducts the procedure. The auditor may share confidential information with his or her employees, agents, consultants, and independent contractors who need access to the information in order to perform their duties in connection with the audit. However, the auditor's employees, agents, consultants, and independent contractors would be required to enter into an appropriate confidentiality agreement governing the use of the confidential information and they could not be employees, officers, or agents of a copyright owner for any purpose other than the audit. In addition, the auditor and any other person that receives confidential information would have to implement procedures to safeguard that information, using at least the same level of security that they would use to protect his or her own confidential information.

The Office also seeks comment on whether there are situations where copyright owner(s) would have a legitimate need to review the confidential information that may be provided by the licensee and, if so, whether the licensee's legitimate interest in safeguarding that information would be adequately protected by adopting a regulation requiring the copyright owner(s) to enter into an appropriate non-disclosure agreement with the statutory license. Under most of the audit regulations adopted by the Office, access to confidential information has been limited to the auditor and his or her employees and agents. *See* 37 CFR 260.4(d)(2), 261.5(d)(2), 262.5(d)(2). The Office's regulations concerning digital audio recording technology allow copyright owners to access confidential information ''for verification purposes,'' but only if the copyright owner is neither owned nor controlled by another manufacturing or importing party that is subject to royalty obligations under Chapter 10. *See* 37 CFR 201.29(d)(1), 201.29(f)(2). By contrast, the regulations concerning ephemeral recordings allow the copyright owners and their attorneys, consultants, and other authorized agents to access confidential information ''[i]n connection with bona fide royalty disputes or claims * * * and under an appropriate confidentiality agreement or protective order * * *''. 37 CFR 262.5(d)(e). The statute provides no guidance on the issue and the copyright owners did not address this issue in their draft regulation. Therefore, the Office seeks comment on whether and, if so, the circumstances under which access to confidential information by copyright owner(s) is appropriate and the best approach for protecting the information from unauthorized disclosure in such situations.

III. Conclusion

The Office seeks comment from the public on the subjects discussed above related to the implementation of the audit provisions adopted by Congress with the passage of the Satellite Television Extension and Localism Act of 2010.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR Chapter II, as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 reads as follows:

Authority: 17 U.S.C. 702, 17 U.S.C. 111(d)(6), and 17 U.S.C. 119(b)(2).

2. Add new § 201.16 to read as follows:

§ 201.16 Verification of a Statement of Account and royalty fee payments for secondary transmissions made by cable systems and satellite carriers.

(a) *General.* This section prescribes general rules pertaining to the verification of a Statement of Account and royalty fees filed with the Copyright Office pursuant to sections 111(d)(1) and 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175.

(b) *Definitions.* (1) *Auditor* means a qualified and independent accountant who is not an officer, employee or agent of a copyright owner, but has been selected to audit a Statement of Account on behalf of copyright owners under sections 111(d)(6) and 119(b)(2) of title 17 of the United States Code, as amended by Public Law 111–175.

(2) The term *cable system* has the meaning set forth in § 201.17(b)(2) of this chapter.

(3) *Copyright owner* means the copyright owner of a work embodied in a secondary transmission made by a statutory licensee that filed a Statement of Account with the Copyright Office for an accounting period beginning on or after January 1, 2010.

(4) *Generally accepted auditing standards (GAAS)* means the auditing standards promulgated by the American Institute of Certified Public Accountants.

(5) The term *satellite carrier* has the meaning set forth in section 119(d)(6) of title 17 of the United States Code.

(6) The term *secondary transmission* has the meaning set forth in section 111(f)(2) of title 17 of the United States Code, as amended by Public Law 111–175.

(7) *Statement of Account* or *Statement* means a semiannual Statement of Account filed with the Copyright Office for an accounting period beginning on or after January 1, 2010 under sections 111(d)(1) or 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175.

(8) *Statutory licensee* or *licensee* means a cable system or satellite carrier that filed a Statement of Account with the Office under sections 111(d)(1) or 119(b)(1) of title 17 of the United States Code, as amended by Public Law 111–175.

(c) *Notice of intent to audit.* Any copyright owner that intends to audit a semiannual Statement of Account must notify the Register of Copyrights no later than three years after the last day of the year in which the Statement was filed with the Office. The notice shall identify the statutory licensee that filed the Statement(s) with the Copyright Office, the Statement(s) and accounting period(s) that will be subject to the audit, and the copyright owner that filed the notice, including its name, address, telephone number, facsimile number, and email address, if any. In addition, the notice shall include a statement establishing that the copyright owner owns a work that was embodied in a secondary transmission made by the statutory licensee during the accounting period(s) specified in the Statement(s) of Account that will be subject to the audit. The copyright owner shall serve the notice of intent to audit on the statutory licensee at the same time that the notice is filed with the Copyright Office. Within 30 days after the notice has been received in the Office, the Office will publish a notice in the **Federal Register** announcing the receipt of the notice of intent to audit.

(d) *Selection of the auditor.* Any other copyright owner who wishes to participate in the audit of the Statement(s) of Account identified in a notice of intent to audit must notify the copyright owner that filed the notice of intent to audit within 30 days of the publication of the notice in the **Federal Register**. Those copyright owner(s) who have agreed to participate in the audit

shall designate an independent and qualified auditor to audit the Statement(s) on behalf of all copyright owners who own a work that was embodied in a secondary transmission made by the statutory licensee during the accounting period(s) specified in those Statement(s). Any dispute about the selection of the auditor shall be resolved by these copyright owner(s). Promptly after the auditor has been selected, these copyright owner(s) shall provide the statutory licensee with the auditor's name, address, telephone number, facsimile number, and email address, if any.

(e) *Independence and qualifications of the auditor.* (1) The auditor shall be qualified and independent as defined in this subsection. If the statutory licensee has reason to believe that the auditor is not qualified or independent, it shall raise the matter with the copyright owner(s) who selected the auditor before the commencement of the audit. If the matter is not resolved, the statutory licensee may raise the issue with the American Institute of Certified Public Accountants' Professional Ethics Division and/or the auditor's State Board of Accountancy while the audit is being performed.

(2) An auditor shall be considered qualified if:

(i) He or she is a certified public accountant,

(ii) He or she is not an officer, employee, or agent of a copyright owner for any purpose other than the audit;

(iii) He or she is independent as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants, including the Principles, Rules, and Interpretations of such Code applicable generally to attest engagements; and

(iv) He or she is independent as that term is used in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA and Interpretations thereof issued by the Auditing Standards Division of the AICPA.

(f) *Scope of the audit.* The audit shall be performed in accordance with generally accepted auditing standards (GAAS).

(g) *Consultation.* Before delivering a report to any copyright owner(s), except where the auditor has a reasonable basis to suspect fraud and that disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall deliver a copy of that report to the statutory licensee and shall review his or her conclusions with a designee of the licensee within 30 days thereafter. If the statutory licensee disagrees with any of the facts or conclusions set forth in the report, the licensee may provide the auditor with a written response setting forth its views within two weeks after the date of the initial consultation between the auditor and the licensee's designee. If the auditor agrees that there are errors in the report, he or she shall correct those errors before the report is delivered to the copyright owner(s). The auditor shall include the licensee's written response, if any, as an attachment to his or her report before it is delivered to any copyright owner(s).

(h) *Corrections and supplemental payments.* Where the auditor has concluded that any of the information given in a Statement of Account is incorrect or incomplete, that the calculation of the royalty fee payable for a particular accounting period was incorrect, or that the amount deposited in the Copyright Office for that period was too low, a licensee may file a correction to the Statement of Account and supplemental royalty fee payments with the Office in accordance with the procedures set forth in §§ 201.11(h) or 201.17(m).

(i) *Distribution of the auditor's report.* No less than 60 days after the date that the auditor delivered his or her report to the statutory licensee and subject to the confidentiality provisions set forth in paragraph (m) of this section, the auditor shall deliver a written report to the copyright owner(s) who retained the auditor's services setting forth his or her conclusions. At the same time the auditor shall deliver a copy of that report to the statutory licensee. The copyright owner(s) shall retain this report for a period of not less than three years.

(j) *Costs of the audit.* The copyright owner(s) who selected the auditor shall pay the auditor for his or her work in connection with the audit, unless the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account that is subject to the audit, in which case, the auditor's fee shall be paid by the statutory licensee that deposited that Statement with the Copyright Office with the proviso that if a court, in a final judgment (i.e., after all appeals have been exhausted) rejects that determination, the copyright owners will reimburse the licensee for its payment of the auditor's services.

(k) *Frequency of verification.* (1) Subject to the limitations in paragraph (k)(3) of this section, a copyright owner may include more than one Statement of Account in its notice of intent to audit, but each Statement of Account shall be subject to audit only once. Once a notice of intent to audit a particular semiannual Statement of Account has been received in the Office, a notice of intent to audit the same Statement of Account will not be accepted for publication in the **Federal Register**.

(2) A satellite carrier or a cable operator that owns a single cable system shall be subject to no more than one audit per calendar year.

(3) A cable operator that owns multiple cable systems shall be subject to no more than three audits per calendar year. Each audit shall be limited to a sampling of no more than fifty percent of the cable systems owned by that operator, unless the auditor concludes that there was an underpayment of five percent or more reported in any Statement of Account filed by that operator, in which case, the audit may be expanded to include any and all of the cable systems owned by that operator. The specific cable systems to be included within each sampling shall be selected by the copyright owner(s) who retained the auditor's services. The limitation on the number of systems under common ownership that can be audited in a calendar year does not limit in any way the number of Statements of Account submitted by the selected systems that may be audited in a calendar year.

(l) *Retention of records.* For each semiannual Statement of Account that a statutory licensee files with the Copyright Office for accounting periods beginning on or after January 1, 2010, the licensee shall maintain all records necessary to confirm the correctness of the calculations and royalty payments reported in each Statement for at least three and a half years after the last day of the year in which that Statement was filed with the Office. If the Office publishes a **Federal Register** notice announcing the receipt of a notice of intent to audit a specific Statement of Account, the statutory licensee shall maintain all records necessary to confirm the correctness of the calculations and royalty payments reported in that Statement for at least three years after the date that the auditor delivers a written report setting forth his or her conclusions to the copyright owner(s) who retained the auditor's services.

(m) *Confidentiality.* (1) For purposes of this section, confidential information shall include any non-public financial or business information pertaining to a Statement of Account that has been subjected to an audit under sections 111(d)(6) or 119(b)(2) of title 17 of the United States Code, as amended by Public Law 111–175. Confidential information also shall include any information so designated in a

confidentiality agreement which has been duly executed between a statutory licensee and any other interested party, or between one or more interested parties; *provided* that all such information shall be made available for the audit procedure provided for in this section.

(2) Access to confidential information under this section shall be limited to:

(i) The auditor; and

(ii) Subject to an appropriate confidentiality agreement, those employees, agents, consultants and independent contractors of the auditor who are not employees, officers, or agents of a copyright owner for any purpose other than the audit, who are engaged in the audit of a Statement of Account or activities directly related hereto, and who require access to the confidential information for the purpose of performing such duties during the ordinary course of their employment.

(3) The auditor and any person identified in paragraph (m)(2)(ii) of this section shall implement procedures to safeguard all confidential information received from any third party in connection with an audit, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the auditor or such person.

Dated: June 8, 2012.

David O. Carson,

General Counsel.

[FR Doc. 2012–14454 Filed 6–13–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0323; FRL–9686–7]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Tennessee: Bristol; Determination of Attainment for the 2008 Lead Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 4, 2012, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a request to EPA to make a determination that the Bristol nonattainment area for the 2008 lead national ambient air quality standards (NAAQS or standard) has attained the 2008 lead NAAQS. In this action, EPA is proposing to determine that the Bristol nonattainment area (hereafter also referred to as the ''Bristol Area'' or ''Area'') has attained the 2008 lead NAAQS. This proposed determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2009—2011 period showing that the Area has monitored attainment of the 2008 lead NAAQS. EPA is further proposing that, if EPA finalizes this proposed determination of attainment, the requirements for the Area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines shall be suspended for so long as the Area continues to attain the 2008 lead NAAQS.

DATES: Comments must be received on or before July 16, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0323, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9040.
4. *Mail:* EPA–R04–OAR–2012–023, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0323. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Scofield or Richard Wong, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Mr. Scofield may be reached by phone at (404) 562–9034 or via electronic mail at *scofield.steve@epa.gov.* Mr. Wong may be reached by phone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking?
II. What is the background for these actions?
III. Application of EPA's Clean Data Policy to the 2008 Lead NAAQS
IV. Does the Bristol area meet the 2008 lead NAAQS?
A. Criteria
B. Bristol Area Air Quality
V. What is the effect of these actions?
VI. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA is proposing to determine that the Bristol Area (comprising the portion of Sullivan County bounded by a 1.25 kilometer radius surrounding the Universal Transverse Mercator (UTM) coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Technologies Facility) has attained the 2008 lead NAAQS. This proposal is based upon complete, quality-assured and certified ambient air monitoring data for the 2009–2011 monitoring period that show that the Area has monitored attainment of the 2008 lead NAAQS.

Further, EPA is proposing that, if this proposed determination of attainment is made final, the requirements for the Bristol Area to submit an attainment demonstration together with RACM, a RFP plan, and contingency measures for failure to meet RFP and attainment deadlines would be suspended for so long as the Area continues to attain the 2008 lead NAAQS. As discussed below, EPA's proposal is consistent with EPA's regulations and with its longstanding interpretation of subpart 1 of part D of the Clean Air Act (CAA or Act).

If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that the Area has violated the 2008 lead NAAQS, the basis for the suspension of these attainment planning requirements would no longer exist for the Bristol Area, and the Area would thereafter have to address such requirements.

II. What is the background for these actions?

On November 12, 2008 (73 FR 66964), EPA established a 2008 primary and secondary lead NAAQS at 0.15 micrograms per cubic meter (μg/m^3) based on a maximum arithmetic 3-month mean concentration for a 3-year period. *See* 40 CFR 50.16. On November 22, 2010 (75 FR 71033), EPA published its initial air quality designations and classifications for the 2008 lead NAAQS based upon air quality monitoring data from those monitors for calendar years 2007–2009. These designations became effective on December 31, 2010.[1] The Bristol Area was designated nonattainment for the 2008 lead NAAQS. *See* 40 CFR 81.343.

On April 4, 2012, the State of Tennessee, through TDEC, submitted a request to EPA to make a determination that the Bristol Area for the 2008 lead NAAQS has attained that standard based on complete, quality-assured, quality-controlled monitoring data from 2009 through 2011.[2]

III. Application of EPA's Clean Data Policy to the 2008 Lead NAAQS

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the $PM_{2.5}$ NAAQS. *See* Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (December 14, 2004).

Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment. *See* 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah, 1-hour ozone); 61 FR 20458 (May 7, 1996) (Cleveland Akron-Lorain, Ohio, 1-hour ozone); 61 FR 31832 (June 21, 1996) (Grand Rapids, Michigan, 1-hour ozone); 65 FR 37879 (June 19, 2000) (Cincinnati-Hamilton, Ohio-Kentucky, 1-hour ozone); 66 FR 53094 (October 19, 2001) (Pittsburgh-Beaver Valley, Pennsylvania, 1-hour ozone); 68 FR 25418 (May 12, 2003) (St Louis, Missouri, 1-hour ozone); 69 FR 21717 (April 22, 2004) (San Francisco Bay Area, 1-hour ozone), 75 FR 6570 (February 10, 2010) (Baton Rouge, Louisiana, 1-hour ozone), 75 FR 27944 (May 19, 2010) (Coso Junction, California, PM_{10}).

EPA also incorporated its interpretation under the Clean Data Policy in implementation rules. *See* Clean Air Fine Particle Implementation Rule, 72 FR 20586 (April 25, 2007); Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2, 70 FR 71612 (November 29, 2005). The Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA's rule embodying the Clean Data Policy for the 1997 8-hour ozone standard. *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). Other courts have reviewed and considered rulemakings applying EPA's Clean Data Policy, and have consistently upheld them. *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9th Cir. June 28, 2005 (Memorandum Opinion)), *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009 (Memorandum Opinion)). EPA sets forth below a brief explanation of the Clean Data Policy. EPA also incorporates the discussions of its interpretation set forth in prior rulemakings, including the $PM_{2.5}$ implementation rulemaking. *See also* 75 FR 31288 (June 3, 2010) (Rhode Island, 1997 8-hour ozone), 75 FR 62470 (October 12, 2010) (Knoxville, Tennessee, 1997 8-hour ozone), 75 FR 53219 (August 31, 2010) (Greater Connecticut Area, 1997 8-hour ozone), 75 FR 54778 (September 9, 2010) (Baton Rouge, Louisiana, 1997 8-hour ozone), 75 FR 64949 (October 21, 2010) (Providence, Rhode Island, 1997 8-hour ozone), 76 FR 11080 (March 1, 2011) (Milwaukee-Racine and Sheboygan Areas, 1997 8-hour ozone), 76 FR 31273 (May 31, 2011) (Pittsburgh-Beaver Valley, 1997 8-hour ozone), 76 FR 33647 (June 9, 2011) (St. Louis, Missouri-Illinois, 1997 8-hour ozone), 76 FR 7145 (November 15, 2011) (Charlotte, North Carolina-South Carolina, 1997 8-hour ozone), 77 FR 31496 (May 29, 2012)

[1] EPA completed a second and final round of designations for the 2008 Lead NAAQS on November 22, 2011. See 76 FR 72097. No additional areas in Sullivan County, Tennessee were designated as nonattainment for the 2008 Lead NAAQS.

[2] This Area has ambient air monitoring data for forty-seven (47) months for the period of February 2008 through December 31, 2011, which show attainment of the 2008 lead NAAQS. Preliminary 2012 data indicates that this Area is continuing to attain the 2008 lead NAAQS.

(Boston-Lawrence-Worchester, Massachusetts, 1997 8-hour ozone). *See also,* 75 FR 56 (January 4, 2010) (Greensboro-Winston-Salem-High Point, 1997 $PM_{2.5}$), 75 FR 230 (January 5, 2010) (Hickory-Morganton, Lenoir, 1997 $PM_{2.5}$), 75 FR 57186 (September 20, 2010) (Birmingham, Alabama, 2006 $PM_{2.5}$) 76 FR 12860 (March 9, 2011) (Louisville, Kentucky-Indiana, 1997 $PM_{2.5}$), 76 FR 1850 (April 5, 2011) (Rome, Georgia, 1997 $PM_{2.5}$), 76 FR 31239 (May 31, 2011) (Chattanooga, Tennessee-Georgia-Alabama, 1997 $PM_{2.5}$), 76 FR 31858 (June 2, 2011) (Macon, Georgia, 1997 $PM_{2.5}$), 76 FR 36873 (June 23, 2011) (Atlanta, Georgia 1997 $PM_{2.5}$), 76 FR 38023 (June 29, 2011) (Birmingham, Alabama 1997 $PM_{2.5}$), 76 FR 5542 (September 7, 2011) (Huntington-Ashland, West Virginia-Kentucky-Ohio, 1997 $PM_{2.5}$), 76 FR 60373 (September 29, 2011) (Cincinnati, Ohio-Kentucky-Indiana, 1997 $PM_{2.5}$), (November 18, 2011) (Charleston, West Virginia, 2006 $PM_{2.5}$), 77 FR 18922 (March 29, 2012) (Harrisburg-Lebonon-Carlisle-York Allentown, Johnstown and Lancaster, 1997 $PM_{2.5}$)

The Clean Data Policy represents EPA's interpretation that certain requirements of subpart 1 of part D of the Act are by their terms not applicable to areas that are attaining the NAAQS.[3] As explained below, the specific requirements that are inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for: Attainment of the NAAQS; implementation of all reasonably available control measures; reasonable further progress; and implementation of contingency measures for failure to meet deadlines for RFP and attainment.

CAA section 172(c)(1), the requirement for an attainment demonstration, provides in relevant part that SIPs ''shall provide for attainment of the [NAAQS].'' EPA has interpreted this requirement as not applying to areas that have attained the standard. If an area has attained the standard, there is no need to submit a plan demonstrating how the area will reach attainment. In the General Preamble (57 FR 13564), EPA stated that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' *See also* Memorandum from John Calcagni, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (September 4, 1992), at page 6.

[3] This discussion refers to subpart 1 because subparts 1 and 5 contain the requirements relating to attainment of the lead NAAQS.

A component of the attainment plan specified under section 172(c)(1) is the requirement to provide for ''the implementation of all reasonably available control measures as expeditiously as practicable'' (RACM). Since RACM is an element of the attainment demonstration, *see* General Preamble (57 FR 13560), for the same reason the attainment demonstration no longer applies by its own terms, RACM also no longer applies. Furthermore, EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could advance attainment.[4] Thus, where an area is already attaining the standard, no additional RACM measures are required. EPA' s interpretation that the statute requires only implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *EPA,* 314 F. 3d 735, 743–745, 5th Cir. 2002) and by the United States Court of Appeals for the D.C. Circuit (*Sierra Club* v. *EPA,* 294 F. 3d 155, 162–163, D.C. Cir. 2002). *See also* the final rulemakings for Pittsburgh-Beaver Valley, Pennsylvania, 66 FR 53096 (October 19, 2001) and St. Louis, 68 FR 25418 (May 12, 2003).

CAA section 172(c)(2) provides that state implementation plan (SIP) provisions in nonattainment areas must require ''reasonable further progress.'' The term ''reasonable further progress'' is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, by definition, the ''reasonable further progress'' provision requires only such reductions in emissions as are necessary to attain the NAAQS. If an area has attained the NAAQS, the purpose of the RFP requirement has been fulfilled, and since the area has already attained, showing that the State will make RFP towards attainment ''[has] no meaning at that point.'' General Preamble, 57 FR 13498, 13564 (April 16, 1992).

CAA section 172(c)(9) provides that SIPs in nonattainment areas ''shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or [EPA].'' This contingency measure requirement is inextricably tied to the reasonable further progress and attainment demonstration requirements. Contingency measures are implemented if reasonable further progress targets are not achieved, or if attainment is not realized by the attainment date. Where an area has already achieved attainment by the attainment date, it has no need to rely on contingency measures to come into attainment or to make further progress to attainment. As EPA stated in the General Preamble: ''The section 172(c)(9) requirements for contingency measures are directed at ensuring RFP and attainment by the applicable date.'' *See* 57 FR 13564. Thus these requirements no longer apply when an area has attained the standard.

[4] This interpretation was adopted in the General Preamble, see 57 FR 13498, and has been upheld as applied to the Clean Data Policy, as well as to nonattainment SIP submissions. *See NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155 (D.C. Cir. 2002).

It is important to note that should an area attain the lead standards based on 3 years of data, its obligation to submit an attainment demonstration and related planning submissions is suspended only for so long as the area continues to attain the standard. If EPA subsequently determines, after notice-and-comment rulemaking, that the Area has violated the 2008 lead NAAQS, the requirements for the State to submit a SIP to meet the previously suspended requirements would be reinstated. It is likewise important to note that the area remains designated nonattainment pending a further redesignation action.

IV. Does the Bristol area meet the 2008 lead NAAQS?

A. Criteria

Today's proposed rulemaking assesses whether Bristol Area has attained the 2008 Lead NAAQS, based on the most recent 3 years of quality-assured data. The Bristol Area comprises the portion of Sullivan County bounded by a 1.25 kilometer radius surrounding the UTM coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Technologies Facility.

Under EPA regulations at 40 CFR 50.16, the 2008 primary and secondary lead standards are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR part 50, Appendix R, is less than or equal to 0.15 $\mu g/m^3$ at all relevant monitoring sites in the subject area.

B. Bristol Area Air Quality

EPA has reviewed the ambient air monitoring data for the Bristol Area in

accordance with the provisions of 40 CFR part 50, Appendix R. All data considered are complete, quality-assured, certified, and recorded in EPA's Air Quality System (AQS) database. This review addresses air quality data collected in 3-year period of 2009–2011 which are the most recent quality-assured data available.

40 CFR part 58, Appendix D, Section 4.5, states that ''At a minimum, there must be one source-oriented State and Local Air Monitoring Station site located to measure the maximum Pb [lead] concentration in ambient air resulting from each non-airport Pb source which emits 0.50 or more tons per year * * *.'' The Exide Technologies facility in Bristol is responsible for operating the monitors that meet this requirement. EPA's review shows that Exide has been exceeding the minimum monitoring requirement of one monitor, and is currently operating three Federal reference method (FRM) source-oriented monitors at the facility, which meet the quality assurance requirements of 40 CFR part 58, Appendix A. In addition, the State of Tennessee is also operating one additional source-oriented FRM monitor (AQS ID 47–163–3004, identified in Table 1) at the Exide facility. The State's monitor originally operated from January 1, 2009 through December 31, 2009 (AQS ID 47–163–4002). Beginning January 1, 2010, Tennessee's monitor was relocated 0.3 miles to its current location, approximately 10 feet from Exide's design value monitor (47–163–3001), which is an area of expected maximum concentration at the site.

Table 1 shows the 2009–2011 design values at the Bristol Area monitors (the metrics calculated in accordance with 40 CFR part 50, Appendix R, for determining compliance with the NAAQS) for the 2008 lead NAAQS. It also shows the maximum 3-month rolling average for each individual year.

TABLE 1—DESIGN VALUE FOR MONITORS IN THE BRISTOL NONATTAINMENT AREA FOR THE 2008 LEAD NAAQS

Location	AQS site ID	2009 Max 3-month rolling avg (μg/m³)	2010 Max 3-month rolling avg (μg/m³)	2011 Max 3-month rolling avg (μg/m³)	2009–2011 design value (μg/m³)
364 Exide Drive	[5] 47–163–3001	0.09	0.08	0.06	0.09
	47–163–3002	0.06	0.04	0.04	0.06
	47–163–3003	0.06	0.04	0.05	0.06
	47–163–3004	.....	0.05	0.08	.....
	47–163–4002	0.04	.....	.....	.....

EPA's review of these data indicates that the Bristol Area has attained and continues to attain the 2008 Lead NAAQS, with a design value of 0.09 μg/m³ for the period of 2009–2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. What is the effect of these actions?

EPA is proposing to determine that the Bristol Area has attained the 2008 lead NAAQS, based on complete, quality-assured and certified data for 2009–2011. Preliminary data available for 2012 indicates that the area continues to be in attainment. EPA further proposes that, if its proposed determination of attainment is made final, the requirements for the Bristol Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2008 lead NAAQS would be suspended for so long as the Area continues to attain the 2008 lead NAAQS. EPA's proposal is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (*see* 40 CFR 51.918) and fine particulate matter (*see* 40 CFR 51.1004(c)). As described below, any such determination would not be equivalent to the redesignation of the Area to attainment for the 2008 Lead NAAQS.

Finalizing this proposed action would not constitute a redesignation of the Area to attainment of the 2008 Lead NAAQS under section 107(d)(3) of the CAA. Further, finalizing this proposed action does not involve approving a maintenance plan for the Area as required under section 175A of the CAA, nor would it find that the Area has met all other requirements for redesignation. Even if EPA finalizes the proposed action, the Bristol Area would remain designated nonattainment for the 2008 Lead NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Area.

If the Bristol Area continues to monitor attainment of the 2008 lead NAAQS, EPA proposes that the requirements for the Bristol Area to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the annual $PM_{2.5}$ NAAQS will remain suspended. If this proposed rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that the Area has violated the 2008 Lead NAAQS, the basis for the suspension of these attainment planning requirements would no longer exist for the Bristol Area, and the Area would thereafter have to address such requirements.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data and to suspend certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic

[5] According to 40 CFR 58.12(b) ''For Pb manual methods, at least one 24-hour sample must be collected every 6 days except during periods or seasons exempted by the Regional Administrator.'' All three Exide monitors met and exceeded this requirement, and collected a sample every three days. EPA also publishes an annual recommended national sampling calendar, which contains suggested days of the week for sampling. While this schedule is recommended, it is not a CFR requirement. From March 30, 2011–November 23, 2011, the Exide facility's monitors inadvertently operated on a schedule that deviated from the recommended national schedule by one day of the week. However, since the monitors still collected a sample every six days, the data collection requirements were met by all three Exide monitors for the Area. EPA has thus counted the samples collected using the alternate sampling schedule as creditable samples and calculated valid design values supporting a clean data determination for the Area.

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). Because this rule proposes to make a determination based on air quality data and to suspend certain Federal requirements, it 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). This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it only proposes to make a determination based on air quality data and suspend certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards. The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the CAA. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Lead, Reporting and Recordkeeping requirements.

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

Dated: June 5, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–14566 Filed 6–13–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 77, No. 115
Thursday, June 14, 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.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the United States Department of Agriculture (USDA) Rural Development administers rural utilities programs through the Rural Utilities Service. The USDA Rural Development invites comments on the following information collections for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by August 13, 2012.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, U.S. Department of Agriculture, 1400 Independence Ave. SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information 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 appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

Title: Request for Approval to Sell Capital Assets.

OMB Control Number: 0572–0020.

Type of Request: Extension of a currently approved collection.

Abstract: A borrower's assets provide the security for a government loan. The selling of assets reduces the security and increases the risk to the government. RUS Form 369 allows the borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sales of a portion of the borrower's systems. USDA Rural Development electric utility borrowers complete this form to request USDA Rural Development approval in order to sell capital assets when the fair market value exceeds 10 percent of the borrower's net utility plant.

Estimate of Burden: Public Reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Not-for-profit institutions; Business or other for profit.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 15 hours.

Dated: May 30, 2012.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2012–14525 Filed 6–13–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA626

Marine Mammals; File Nos. 16163, 16160, and 15569

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits have been issued to the Northwest Fisheries Science Center (NWFSC, Dr. M. Bradley Hanson, Principal Investigator) [File No. 16163], 2725 Montlake Blvd. East, Seattle, WA 98112–2097; The Whale Museum (Jenny Atkinson, Responsible Party) [File No. 16160], P.O. Box 945, Friday Harbor, WA 98250; and The Center for Whale Research (CWR; Kenneth C. Balcomb III, Responsible Party) [File No. 15569], P.O. Box 1577, Friday Harbor, WA 98250 to conduct research on marine mammals.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: The following Analysts at (301) 427–8401: Joselyd Garcia-Reyes [for File No. 16160]; Laura Morse [for File No. 16163]; and Jennifer Skidmore [for File No. 15569].

SUPPLEMENTARY INFORMATION: On November 3, 2011, notice was published in the **Federal Register** (76 FR 213) that a request for permits to conduct research on marine mammals had been submitted by the above-named applicants. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

File No. 16163: Authorizes take of forty-two species of marine mammals in all U.S. and international waters in the

Pacific Ocean, including waters of Alaska, Washington, Oregon, California, and Hawaii. Harassment of all species of cetaceans will occur through vessel approach for sighting surveys, photographic identification, behavioral research, opportunistic sampling (breath, sloughed skin, fecal material, and prey remains), acoustic imaging with echosounders, and aerial surveys. Twenty seven cetacean species and unidentified mesoplodon species will be biopsied, dart, and/or suction-cup tagged. Ultrasound sampling will be directed at killer whales including the Southern Resident stock. Active acoustic playback studies will be directed at Southern Resident killer whales. Import and export of marine mammal prey specimens, skin and blubber, sloughed skin, fecal and breath samples obtained is authorized. The permit is valid until June 6, 2017.

File No. 16160: Authorizes take of eight species of cetaceans in the inland waters of Washington State. Harassment of all species will occur through close vessel approach for photo-identification, behavioral observation, and monitoring. The permit is valid until June 6, 2017.

File No. 15569: Authorizes take of twenty-two species of marine mammals in the coastal eastern North Pacific from the southern boundary of California to Alaskan waters east of Kodiak Island, including all territorial waters up to 200 nautical miles offshore. Harassment of all species of cetaceans will occur through vessel approach for photographic identification, behavioral research, opportunistic sampling (fecal material and prey remains), remote measuring (aerial and laser techniques), and passive acoustic recording. The permit is valid until June 6, 2017.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permits will not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on June 4, 2012.

As required by the ESA, issuance of these permits was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941.

Dated: June 8, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–14587 Filed 6–13–12; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Proposed Collection; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (the ''CFPB'' or the ''Bureau''), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau is soliciting comments concerning the information collection requirements relating to gather information from various depository and non-depository providers of consumer financial products and services (''providers'') regarding the compliance costs and other effects of proposed and existing regulations, pursuant to the Bureau's authorities under the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203.

DATES: Written comments are encouraged and must be received on or before August 13, 2012 to be assured of consideration.

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

- *Electronic: CFPB_Public_PRA@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Direct all written comments to Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

Instructions: Submissions should include the agency name and collection title. Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 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 only submit information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the documents contained under this approval number should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or through the Internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for Collection of Information on Compliance Costs and Other Effects of Regulations.

OMB Control Number: 3170–XXXX.

Abstract: Under the Dodd-Frank Act, the Bureau has the responsibility for rulemaking, supervision, and enforcement with respect to various Federal consumer financial protection laws. Among other things, the Dodd-Frank Act directs the Bureau to promulgate rules regulating various aspects of consumer financial protection and establishing supervisory authority over certain non-depository providers of consumer financial products and services. For many of these directives there is a corresponding statutory deadline for a proposed or final rule.

A number of Federal laws require agencies to consider the benefits, costs, and impacts of rulemaking actions, including the Regulatory Flexibility Act and the Paperwork Reduction Act. Furthermore, Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of certain rules to consumers and ''covered persons,'' including depository and non-depository providers of consumer financial

products and services (''providers.'') This consideration includes an assessment of the impacts of rules on consumers in rural areas and on depository institutions and credit unions with total assets of $10 billion or less as described in section 1026 of the Dodd-Frank Act. As part of its analysis of benefits and costs of certain rulemakings, the Bureau will consider, among other things, the potential ongoing costs for a provider as well as the implementation costs the provider may incur in order to comply with a regulation.

In order to fulfill the Bureau's rulemaking mandates, the Bureau seeks to collect qualitative information from industry participants regarding the compliance costs and other effects on providers and consumers, both as to existing regulations in force as well as to proposed new regulations. Through the collections under this generic clearance, the Bureau aims to understand the effects of potential regulations on providers and consumers, the ways in which providers may comply with potential regulations, and the costs associated with compliance.

The Bureau has already begun to review existing regulations through a request for public comment on streamlining inherited regulations. The information gathered on compliance costs and other effects through this generic information collection will further enhance the Bureau's understanding of how existing regulations are affecting providers.

In order to gather the information indicated above, the Bureau intends to use structured interviews, focus groups, conference calls, and written questionnaires—delivered via email or administered through an online survey. The Bureau will seek different providers' estimates of compliance burdens on their respective institutions. The Bureau recognizes that burdens vary depending on the size and type of the institution, as well as on the products and services offered. Therefore, the collections of information will seek to sample providers that are representative of markets affected by a proposed rule, or are already under the authority of existing regulations.

Type of Review: New Generic Collection.

Affected Public: U.S. depository and non-depository financial institutions.

Annual Burden Estimates: Below is a preliminary estimate of the aggregate burden hours.

Estimated Number of Respondents: 1,500 institutions.

Estimated Time per Respondent: 90 minutes for questions administered via focus groups, structured interviews, and conference calls. 60 minutes for questions delivered via email or administered through online survey.

Estimated Total Annual Burden Hours: 1,950 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and the 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.

Dated: June 8, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–14592 Filed 6–13–12; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0024]

Request for Information Regarding Complaints From Private Education Loan Borrowers

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: Section 1035 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) established a Private Education Loan Ombudsman (Ombudsman) within the Consumer Financial Protection Bureau (Bureau) to provide timely assistance to borrowers of private education loans. Among other things, the Dodd-Frank Act directs the Ombudsman to ''compile and analyze data on borrower complaints'' regarding private education loans and make appropriate recommendations to the Director of the Bureau, the Secretary of the Treasury, the Secretary of Education, and Congress. In March 2012, the Bureau launched the intake of borrower complaints on private education loans. In order to ''compile and analyze data'' on complaints processed through other mechanisms, with this Notice and Request for Information, the Ombudsman seeks information on borrower complaints about private education loans.

DATES: Comments must be received on or before August 13, 2012, to be considered and analyzed to develop recommendations as specified in Section 1035(c)(4).

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

- *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the agency name and docket number, CFPB–2012–0024. Please note the number of the question you are answering at the top of each response (you do not need to answer all questions). 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 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by calling (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. *Sensitive personal information such as account numbers or Social Security numbers should not be included.* Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries and submission process questions, please call Monica Jackson at (202) 435–7275.

SUPPLEMENTARY INFORMATION: Section 1035 of the Dodd-Frank Act establishes a Private Education Loan Ombudsman (Ombudsman) within the Consumer Financial Protection Bureau (Bureau). Section 1035(c)(3) requires the Ombudsman to compile and analyze data on borrower complaints regarding private education loans. Sections 1035(d) and 1035(c)(4) further require the Ombudsman to prepare an annual report to Congress and make appropriate

recommendations to the Director of the Bureau, to the Secretary of the Treasury, the Secretary of Education, and to Congress.

In support of the duties of the Ombudsman under section 1035 of Dodd-Frank, the Bureau seeks information on borrower complaints about private education loans.[1] To supplement the data that the Ombudsman will receive through the Bureau's consumer complaint intake function and to capture qualitative information that may help to inform the Ombudsman's recommendations, this notice and request for information therefore seeks responses from the public, including:

- Institutions of higher education's financial aid offices;
- State attorneys general;
- State and local banking and consumer protection agencies;
- Borrower advocates and legal aid entities; or
- Complaint resolution departments of lenders and servicers;
- Other interested parties.

To assist the Bureau in satisfying the requirement that the Ombudsman shall ''compile and analyze data on borrower complaints'' mandated by Section 1035, the Bureau is interested in receiving comments that could bear on its analysis of data regarding borrower complaints. The Bureau is therefore interested in responses to the questions outlined below, including, where known, information on the volume of complaints received and complaint outcomes. Please note that the Bureau is not soliciting individual borrower complaints in response to this notice and request for information. Nor is the Bureau seeking personally identifiable information (PII) regarding borrower complaints, from the parties to the complaint or any third party. Responses to this subsection should not contain account numbers, Social Security numbers or other personal information that could be used to identify the complainant or another party identified in a complaint, or in any way otherwise reveal personally identifiable information. Below are some general areas for which information is being sought. Please feel free to respond to any or all of the questions below:

1. What complaints are submitted by borrowers of private student loans? Among other things, responses can address topics that relate to some or all of following areas:

a. Whether the complainant is the primary borrower, co-signer, school, or other party;

b. The topic or topics featured in complaints (e.g., credit reporting, debt collection, billing disputes);

c. The types of institutions of higher education that complainants attended; or

d. Generalized descriptions or summaries of individual private education loan borrower complaints that do not include personally identifiable information.

2. What processes do institutions have in place to respond to complaints from private education loan borrowers? Among other things, the Bureau invites comments on topics such as:

a. How institutions receive complaints from private student loan borrowers; and

b. How institutions respond to complaints from private student loan borrowers.

Dated: June 11, 2012.

Meredith Fuchs,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2012–14588 Filed 6–13–12; 8:45 am]

BILLING CODE 4810–AM–P

[1] As used in Section 1035 of Dodd-Frank, ''private education loans'' is defined by section 140 of the Truth in Lending Act (15 U.S.C. 1650).

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, June 20, 2012, 10 a.m.–12 Noon.

PLACE: Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Hearing: Agenda and Priorities for Fiscal Year 2014.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: June 12, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–14665 Filed 6–12–12; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2012–OS–0065]

Proposed Collection; Comment Request

AGENCY: Washington Headquarters Services, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Washington Headquarters Services announces a proposed new public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 13, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Washington Headquarters Services, Human Resources Directorate, ATTN: Jo-Anna Griffith, 4800 Mark Center Drive, Suite 03D08, Alexandria, VA 22350–3200, or call (571) 372–4034.

Title; Associated Form; and OMB Number: Confirmation of Request for Reasonable Accommodation; WHS Form 09; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain and record requests for reasonable accommodation, with the intent to measure and ensure Agency compliance with Rehabilitation Act of 1973, Public Law 93–112; Rehabilitation Act Amendments of 1992, Public Law 102–569; Americans with Disabilities Act of 1990, Public Law 101–336; Americans with Disabilities Act Amendments Act of 2008, Public Law 110–325.

Affected Public: Individuals or households.

Annual Burden Hours: 5.

Number of Respondents: 20.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The completed form will document requests for reasonable accommodation(s) (regardless of type of accommodation) and the outcome of such requests. Respondents are employees of WHS serviced components or applicants for employment of WHS serviced components.

Dated: May 7, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–14567 Filed 6–13–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0066]

Proposed Collection; Comment Request

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Deputy Under Secretary of Defense (Installations and Environment), Office of Economic Adjustment announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 13, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal, please write to the Director, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, or call the Director, Office of Economic Adjustment at (703) 604–6020.

Title and OMB Number: Revitalizing Base Closure Communities, Economic Development Conveyance Annual Financial Statement; OMB Number 0790–0004.

Needs and Uses: The information collection requirement is necessary to verify that Local Redevelopment Authority (LRA) recipients of Economic Development Conveyances (EDCs) are in compliance with the requirement that the LRA reinvest proceeds from the sale or lease of EDC property for at least seven years.

Affected Public: State, Local or Tribal Governments; and Not-for-Profit Institutions.

Annual Burden Hours: 1600.

Number of Respondents: 40.

Responses per Respondent: 1.

Average Burden per Response: 40 hours.

Frequency: Annual.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are LRAs that have executed EDC agreements with a Military Department that transferred property from a closed military installation. As provided by Public Law 101–510 such agreements require that the LRA reinvest the proceeds from any sale or lease of EDC property (or any portion thereof) during at least the first seven years after the date of the initial transfer of the property to support the economic redevelopment of, or related to, the installation. The Secretary of Defense may recoup from the LRA such portion of these proceeds not used to support the economic redevelopment of, or related to, the installation. Military Departments monitor LRA compliance with this provision by requiring an annual financial statement certified by an independent Certified Public Accountant. No specific form is required.

Dated: January 31, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–14568 Filed 6–13–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0057; Docket 2012–0076; Sequence 7]

Federal Acquisition Regulation; Information Collection; Evaluation of Export Offers

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the provision at FAR 52.247–51, entitled ''Evaluation of Export Offers.''

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 13, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0057, Evaluation of Export Offers, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0057, Evaluation of Export Offers'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0057, Evaluation of Export Offers''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0057, Evaluation of Export Offers'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0057, Evaluation of Export Offers.

Instructions: Please submit comments only and cite Information Collection 9000–0057, Evaluation of Export Offers, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 501–4082 or via email at *Curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. FAR provision 52.247–51, ''Evaluation of Export Offers,'' is required for insertion in Government solicitations when supplies are to be exported through Contiguous United States (CONUS) ports and offers are solicited on a free onboard (f.o.b.) origin or f.o.b. destination basis. The provision has three alternates, to be used (1) when the CONUS ports of export are DoD water terminals, (2) when offers are solicited on an f.o.b. origin only basis, and (3) when offers are solicited on an f.o.b. destination only basis. The provision collects information regarding the vendor's preference for delivery ports. The information is used to evaluate offers [on the basis of shipment through the port resulting in the lowest cost to the Government].

B. Annual Reporting Burden

Respondents: 100.
Responses per Respondent: 4.
Annual Responses: 400.
Hours per Response: 0.25.
Total Burden Hours: 100.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0057, Evaluation of Export Offers in all correspondence.

Dated: June 8, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–14482 Filed 6–13–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Greenup Locks and Dam, General Reevaluation Report, Greenup County, KY

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps), Huntington District will prepare a General Reevaluation Report (GRR) and Draft Supplemental Environmental Impact Statement (SEIS) to disclose potential impacts to the natural, physical, and human environment resulting from the implementation of alternatives to reduce foreseeable traffic delays and associated economic losses that occur during periodic maintenance at the Greenup Locks and Dam located on the Ohio River. A Feasibility Report and Environmental Impact Statement (EIS) was previously completed for the project in April 2000. This study recommended a 600-foot (ft) extension of the existing auxiliary lock chamber to a length of 1200 ft. The project was authorized by Congress in 2000; however, no funds have been appropriated for project construction. Due to the amount of time that has elapsed since completion of the Feasibility Report, and the associated economic, environmental and reliability changes that may have occurred during this time, the Federal interest must be reevaluated. The project alternatives being considered include the plans considered in the previous study as well as variations to these plans which may include both structural and nonstructural operational measures, and the No Action alternative.

DATES: A public scoping meeting will be held on June 28, 2012 from 5:30–7:30 p.m.

ADDRESSES: The public scoping meeting will be held in the Kentucky room of the Ashland Plaza Hotel, located at 1441 Winchester Avenue, Ashland, KY 41101.

FOR FURTHER INFORMATION CONTACT: Rebecca Black, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV 25701–2070. Telephone: (304) 399–5172. Email: *Rebecca.L.Black@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Authority:* Investigation and justification of the proposed action was conducted under the authority of United States Senate, Committee on Public Works resolution dated May 16, 1955; and, United States House of Representatives, Committee on Public Works and Transportation resolution dated March 11, 1982. Construction of the project was authorized by Section 101(b) (15) of the Water Resources Development Act of 2000.

2. *Background:* a. The primary concern at Greenup Locks and Dam involves traffic delays. Greenup is one of the most heavily used locks on the Ohio River. When the main 1200 ft

chamber is closed, all traffic must lock through the smaller, land-side 600 ft chamber resulting in long delays for all lockages. Reducing delays could save millions of dollars in transportation costs and reduce the impacts of waiting-tows on aquatic resources adjacent to the locks and dam. The Feasibility Report and EIS completed in 2000 considered various alternatives to either minimize maintenance closure time and/or to increase traffic throughput when one or the other chamber is closed to traffic.

b. In 2000, the Chief of Engineers recommended that the Greenup Locks and Dam be modified for the purposes of navigation efficiency and reliability. The Greenup plan of improvement included a 600 ft extension of the existing auxiliary lock chamber to a length of 1200 ft, extension of the downstream guidewall, filling and emptying system improvements, installation of a miter gate quick changeout system for faster repairs to the lock miter gates, an off-site dry dock to minimize transportation impacts during construction, and environmental mitigation measures.

c. The District is currently utilizing Operation and Maintenance funds to replace the miter gates in the main chamber. Replacement of the miter gates is expected to increase the reliability of main chamber operation, resulting in fewer traffic delays at the lock. In addition, barge traffic at the lock has decreased in recent years and future traffic forecasts are expected to reflect a continuation of that trend.

d. The without project conditions developed in the 2000 Feasibility Report and EIS have changed for the Greenup Locks due to the length of time since the report was completed, changes in the reliability of the main chamber, and a potential for decreased traffic at the project. Therefore, the Corps will complete a study to reevaluate the feasibility of project alternatives including their economic and environmental effects to identify federal interest.

3. *Public Participation:* a. The Corps will conduct a public scoping meeting (see **DATES** and **ADDRESSES**) to gain input from interested agencies, organizations, and the general public concerning the content of the SEIS, issues and impacts to be addressed in the document, and alternatives that should be analyzed.

b. The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Greenup Lock improvements and its potential effects on the environment are urged to participate in this NEPA evaluation process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

c. Public comments are welcomed anytime throughout the NEPA process. Formal opportunities for public participation include: (1) Public meeting to be held in the community of Ashland; (2) Anytime during the NEPA process via mail, telephone or email; (3) During Review and Comment on the Draft SEIS; and (4) Review of the Final SEIS. Schedules and locations will be announced in local news media. Interested parties should submit contact information to be included on the mailing list for public distribution of meeting announcements and documents. Please address all written comments and suggestions concerning this proposed project to Natalie McKinley, CELRH–PM–PD–F, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV 25701–2070. Telephone: 304–399–5842. Email: *Natalie.J.Mckinley@usace.army.mil.*

4. *Schedule:* The GRR and Draft SEIS are scheduled to be released for public review and comment in June 2014. The Final GRR and SEIS are scheduled to be completed in September 2014.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–14555 Filed 6–13–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Missouri River Recovery Implementation Committee

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps) is soliciting applications to fill vacant stakeholder representative member positions on the Missouri River Recovery Implementation Committee (MRRIC). Members are sought to fill vacancies on a committee to represent various categories of interests within the Missouri River basin. The MRRIC was formed to advise the Corps on a study of the Missouri River and its tributaries and to provide guidance to the Corps with respect to the Missouri River recovery and mitigation activities currently underway. The Corps established the MRRIC as required by the U.S. Congress through the Water Resources Development Act of 2007 (WRDA), Section 5018.

DATES: The agency must receive completed applications and endorsement letters no later than July 16, 2012.

ADDRESSES: Mail completed applications and endorsement letters to U.S. Army Corps of Engineers, Omaha District (Attn: MRRIC), 1616 Capitol Avenue, Omaha, NE 68102–4901 or email completed applications to *info@mrric.org.* Please put ''MRRIC'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Mary S. Roth, 402–995–2919.

SUPPLEMENTARY INFORMATION: The operation of the MRRIC is in the public interest and provides support to the Corps in performing its duties and responsibilities under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Sec. 601(a) of the Water Resources Development Act (WRDA) of 1986, Public Law 99–662; Sec. 334(a) of WRDA 1999, Public Law 106–53, and Sec. 5018 of WRDA 2007, Public Law 110–114. The Federal Advisory Committee Act, 5 U.S.C. App. 2, does not apply to the MRRIC.

A Charter for the MRRIC has been developed and should be reviewed prior to applying for a stakeholder representative membership position on the Committee. The Charter, operating procedures, and stakeholder application forms are available electronically at *www.MRRIC.org.*

Purpose and Scope of the Committee. The duties of the MRRIC cover two areas:

1. The Committee provides guidance to the Corps, and affected Federal agencies, State agencies, or Native American Indian Tribes on a study of the Missouri River and its tributaries to determine the actions required to mitigate losses of aquatic and terrestrial habitat, to recover federally listed species protected under the Endangered Species Act, and to restore the river's ecosystem to prevent further declines among other native species. This study is identified in Section 5018 (a) of the WRDA. It will result in a single, comprehensive plan to guide the implementation of mitigation, recovery, and restoration activities in the Missouri River Basin. This plan is referred to as the Missouri River Ecosystem Restoration Plan (MRERP). For more information about the MRERP go to *www.MRERP.org.*

2. The MRRIC also provides guidance to the Corps with respect to the Missouri River recovery and mitigation plan currently in existence, including recommendations relating to changes to the implementation strategy from the use of adaptive management; coordination of the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for the Missouri River recovery and mitigation plan. Information about the Missouri River Recovery Program is available at *www.MoRiverRecovery.org.*

3. Other duties of MRRIC include exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Committee to promote the goals of the Missouri River recovery and mitigation plan; establishment of such working groups as the Committee determines to be necessary to assist in carrying out the duties of the Committee, including duties relating to public policy and scientific issues; facilitating the resolution of interagency and intergovernmental conflicts between entities represented on the Committee associated with the Missouri River recovery and mitigation plan; coordination of scientific and other research associated with the Missouri River recovery and mitigation plan; and annual preparation of a work plan and associated budget requests.

Administrative Support. To the extent authorized by law and subject to the availability of appropriations, the Corps provides funding and administrative support for the Committee.

Committee Membership. Federal agencies with programs affecting the Missouri River may be members of the MRRIC through a separate process with the Corps. States and Federally recognized Native American Indian tribes, as described in the Charter, are eligible for Committee membership through an appointment process. Interested State and Tribal government representatives should contact the Corps for information about the appointment process.

This Notice is for individuals interested in serving as a stakeholder member on the Committee. In accordance with the Charter for the MRRIC, stakeholder membership is limited to 28 people, with each member having an alternate. Members and alternates must be able to demonstrate that they meet the definition of ''stakeholder'' found in the Charter of the MRRIC. Applications are currently being accepted for representation in the stakeholder interest categories listed below:

a. Environmental/Conservation Organizations;
b. Hydropower;
c. Irrigation;
d. Local Government;
e. Navigation;
f. Thermal Power;
g. Water Quality;
h. Water Supply;
i. Waterway Industries; and
j. At Large.

Terms of stakeholder representative members of the MRRIC are three years. There is no limit to the number of terms a member may serve. Incumbent Committee members seeking reappointment do not need to re-submit an application. However, they must submit a renewal letter and related materials as outlined in the ''Streamlined Process for Existing Members'' portion of the document *Process for Filling MRRIC Stakeholder Vacancies* (*www.MRRIC.org*).

Members and alternates of the Committee will not receive any compensation from the federal government for carrying out the duties of the MRRIC. Travel expenses incurred by members of the Committee will not be reimbursed by the federal government.

Application for Stakeholder Membership. Persons who believe that they are or will be affected by the Missouri River recovery and mitigation activities and are not employees of federal agencies, tribes, or state agencies, may apply for stakeholder membership on the MRRIC. Applications for stakeholder membership may be obtained electronically at *www.MRRIC.org.* Applications may be emailed or mailed to the location listed (see **ADDRESSES**). In order to be considered, each application must include:

1. The name of the applicant and the primary stakeholder interest category that person is qualified to represent;

2. A written statement describing the applicant's area of expertise and why the applicant believes he or she should be appointed to represent that area of expertise on the MRRIC;

3. A written statement describing how the applicant's participation as a Stakeholder Representative will fulfill the roles and responsibilities of MRRIC;

4. A written description of the applicant's past experience(s) working collaboratively with a group of individuals representing varied interests towards achieving a mutual goal, and the outcome of the effort(s);

5. A written description of the communication network that the applicant plans to use to inform his or her constituents and to gather their feedback, and

6. A written endorsement letter from an organization, local government body, or formal constituency, which demonstrates that the applicant represents an interest group(s) in the Missouri River basin.

To be considered, the application must be complete and received by the close of business on July 16, 2012, at the location indicated (see **ADDRESSES**). Applications must include an endorsement letter to be considered complete. Full consideration will be given to all complete applications received by the specified due date.

Application Review Process. Committee stakeholder applications will be forwarded to the current members of the MRRIC. The MRRIC will provide membership recommendations to the Corps as described in Attachment A of the Process for Filling MRRIC Stakeholder Vacancies document (*www.MRRIC.org*). The Corps is responsible for appointing stakeholder members. The Corps will consider applications using the following criteria:

- Ability to commit the time required.
- Commitment to make a good faith (as defined in the Charter) effort to seek balanced solutions that address multiple interests and concerns.
- Agreement to support and adhere to the approved MRRIC Charter and Operating Procedures.
- Demonstration of a formal designation or endorsement by an organization, local government, or constituency as its preferred representative.
- Demonstrations of an established communication network to keep constituents informed and efficiently seek their input when needed.
- Agreement to participate in collaboration training as a condition of membership.

All applicants will be notified in writing as to the final decision about their application.

Certification. I hereby certify that the establishment of the MRRIC is necessary and in the public interest in connection with the performance of duties imposed on the Corps by the Endangered Species Act and other statutes.

Mary S. Roth,

Project Manager for the Missouri River Recovery Implementation Committee (MRRIC).

[FR Doc. 2012–14553 Filed 6–13–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Office of Planning, Evaluation and Policy Development; Study of Strategies for Improving the Quality of Local Grantee Program Evaluation

SUMMARY: This study is intended to inform the Department's decisions about how to structure future grant competitions; how to support evaluation and performance reporting activities among funded grantees, including technical assistance to improve the quality of evaluations and performance reporting; and how to make the best possible use of grantee evaluation findings.

DATES: Interested persons are invited to submit comments on or before August 13, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 04869. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of Strategies for Improving the Quality of Local Grantee Program Evaluation.

OMB Control Number: 1875–NEW.

Type of Review: New.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 20.

Abstract: The U.S. Department of Education provides support to states, districts and schools through a number of competitive and formula grant programs. Through these programs, the federal government funds a wide array of activities, from professional development for teachers to turnaround efforts for failing schools. High-quality evaluation plays an essential role informing policy makers about program performance, outcomes and impact. Performance reporting with high-quality data can indicate whether a funded project is meeting its goals and taking place as planned. Project evaluations can explore how best to implement a particular educational practice, whether positive student outcomes were attained, or whether a particular educational intervention actually caused the outcomes observed.

To date, the Department lacks comprehensive information about the quality or rigor of the performance reporting and evaluation activities its grantees are undertaking and whether the technical assistance provided has been useful in improving the quality of the performance reporting or evaluations. Accordingly, the focus of this study is to examine the influence of Department-funded technical assistance practices on the quality and rigor of grantee evaluations and performance reporting in two Department programs (described below). It will describe the technical assistance provided by the Department to support grantee performance reporting and evaluation; explore how grantees perceive the technical assistance has influenced their activities; assess the quality of performance reporting and evaluations undertaken; and determine how the findings from performance reporting and evaluations were used both by grantees and by the Department.

This study will be based upon a systematic review of existing documentation as well as interviews with selected grantees and with federal staff and federal contractors involved in grant monitoring and in the provision of technical assistance to grantees. The interviews with selected grantees are the subject of this OMB clearance request.

This study will focus on two grant programs within the Department's Office of Innovation and Improvement: the Charter Schools Program: State Educational Agencies (CSP SEA) program and the Voluntary Public School Choice (VPSC) program. A brief description of each program is provided below.

1. *Voluntary Public School Choice* (authorized under the Elementary and Secondary Education Act of 1965, as amended, Title V, Part B, Subpart 3, (20 U.S.C. 7225–7225g)). The goal of the VPSC program is to support the creation and development of a large number of high-quality charter schools that are held accountable for enabling students to reach challenging state performance standards, and are open to all students. The program was first enacted as part of the No Child Left Behind Act of 2001 (Pub. L. No. 107–110, § 115, Stat. 1425) to support the emergence and growth of choice initiatives across the country. VPSC's goal is to assist states and local school districts in creating, expanding, and implementing public school choice programs. The program has awarded two cycles of competitive grants to states, local education agencies, and partnerships that include public, nonprofit and for-profit organizations. In 2007, the most recent award year, the program awarded a total of 14 competitive grants to two states, eight school districts, a charter school, an intermediate school district, and KIPP schools in Texas.

2. *Charter Schools Program: State Educational Agencies* (authorized under the Elementary and Secondary Education Act of 1965, Section 5201–5211 (20 U.S.C. 7221a)). Federal support for charter schools began in 1995 with the authorization of the CSP. The CSP SEA program awards competitive grants to state education agencies to plan, design, and implement new charter schools, as well as to disseminate information on successful charter schools. The key goals of the CSP SEA program are to increase the number of charter schools in operation across the nation and to increase the number of students who are achieving proficiency

on state assessments of math and reading. The CSP statute also addresses expanding the number of high-quality charter schools and encouraging states to provide support for facilities financing equal to what states provide for traditional public schools. Grants have been awarded to 40 states, including awards to 33 states since 2005. Grants are typically awarded for three years and may be renewed.

This study will review all technical assistance provided to CSP SEA and VPSC grantees on performance reporting and evaluations and how grantees conduct these activities. All CSP SEA and VPSC grantees are required by the Department to conduct performance reporting. Although grantees are not required to conduct any particular type of evaluation, the study will review both impact evaluations and non-impact evaluations conducted by grantees. The study approach, with respect to the review of performance reporting, impact evaluations, and non-impact evaluations, is described below.

Performance Reporting

The goal of performance reporting is to measure performance and track outcomes of the project's stated goals and objectives. The collection of accurate data on program performance is necessary for the reporting required by the Government Performance and Results Act (GPRA), which was passed by Congress in 1993 and updated through the GPRA Modernization Act of 2010. The latter will require even more frequent reporting—quarterly instead of annually.

In addition to requiring grantees to collect annual data in support of GPRA reporting, the CSP SEA and VPSC programs encourage grantees to develop implementation and outcome measures in support of other program goals. Throughout this document, when we refer to grantee performance measures, we are referring to the measures grantees use not only for GPRA reporting, but also for reporting on other activities and outcomes.

The CSP and VPSC programs provide technical assistance to grantees on developing appropriate objectives and performance measures and on obtaining quality data in support of those measures. Because all grantees conduct some kind of performance reporting, this study's examination of performance reporting encompasses all grantees. It will describe the type of technical assistance provided, categorize the types of performance measures that grantees address, determine whether the measures are responsive to the GPRA indicators defined for each program, review whether the initial set of performance measures changed as a result of the technical assistance received, and examine the quality and appropriateness of data collection for those measures.

Impact Evaluation

While documenting implementation activities and outcomes can be useful to school and district administrators, it does not provide information on the effectiveness of funded interventions. The only evaluation designs that provide credible evidence about the impacts of interventions are rigorous experimental and quasi-experimental designs. Impact evaluations can provide guidance about what interventions should be considered for future funding and replication.

This study will review the quality and rigor of all impact evaluations being conducted of higher-order outcomes, particularly student achievement, using criteria that were adapted from the What Works Clearinghouse review standards for grantees as part of the Department's Data Quality Initiative. These criteria were revised by Abt Associates as part of its annual review of Mathematics and Science Partnership final-year evaluations. The criteria are listed in Appendix A. The study will also examine the completeness and clarity of evaluation reports submitted as part of an impact evaluation.

Non-Impact Evaluation

Grantees may choose to conduct non-impact evaluations to examine program outcomes and implementation processes. Non-impact evaluations may include both formative implementation and process evaluations that evaluate a program as it is unfolding, and summative descriptive evaluations that examine changes in final outcomes in a non-causal manner. A full framework of formative and summative evaluations is included in Appendix B.

The main focus of the review of non-impact evaluations will be on those that focus on a change in higher-order outcomes using a one-group pre-post design. For these evaluations, the study will examine the appropriateness of data collection strategies for the design chosen and whether the findings of the study are described appropriately based on the design. The study will also describe other non-impact evaluations that grantees have undertaken, without commenting on their quality.

Data collection, including conducting interviews and reviewing extant documents, is required to complete this study. Part A of this request discusses the justification for these data collection activities, while Part B describes the data collection and analysis procedures.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–14593 Filed 6–13–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The Fund for the Improvement of Postsecondary Education (FIPSE) National Board

AGENCY: The Fund for the Improvement of Postsecondary Education (FIPSE) National Board, U.S. Department of Education.

ACTION: Notice of an open teleconference meeting.

SUMMARY: This notice sets forth the schedule and agenda of an upcoming open teleconference meeting of the National Board (Board) of the Fund for the Improvement of Postsecondary Education. The notice also describes the functions of the Board. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Thursday, June 28, 2012.

Time: 2:00 p.m.–4:00 p.m., Eastern Standard Time.

ADDRESSES: 1990 K Street NW., Washington, DC 20006, Telephone: (202) 502–7500.

FOR FURTHER INFORMATION CONTACT: Sarah T. Beaton, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544; telephone: (202) 502–7621; email: *sarah.beaton@ed.gov.*

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established in Title VII, Part B, Section 742 of the Higher Education Act of 1965, as amended (20 U.S.C. 1138a). The Board is authorized to advise the Director of the Fund and the Assistant Secretary for Postsecondary Education on (1) priorities for the improvement of postsecondary education, including recommendations for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice; and (2) the operation of the Fund, including advice on planning documents, guidelines, and procedures for grant competitions prepared by the Fund.

On Thursday, June 28, 2012, from 2:00 p.m. to 4:00 p.m., Eastern Standard Time, the Board will conduct business in an open teleconference. The agenda for the meeting will include discussion of the Fund's programs and special initiatives.

Teleconference calling instructions are as follows: Please call 1–877–952–3216 and use participant code 1826857. The maximum number of members of the public that can access the teleconference meeting (listen only) is 50. Callers will be accepted on a first come, first served basis. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS), toll-free, at 1–800–877–8339, Monday through Friday, between the hours of 8:00 a.m. and 8:00 p.m., Eastern Standard Time.

Individuals who will need accommodations for a disability in order to participate in the teleconference (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Sarah T. Beaton at (202)502–7621, no later than June 18, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability.

Members of the public are encouraged to submit written comments related to the FIPSE Program or the Board to the attention of Sarah T. Beaton, 1990 K Street NW., Room 6154, Washington, DC 20006–8544, or by email at *sarah.beaton@ed.gov.*

Records are kept of all Board proceedings and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Sixth Floor, 1990 K Street NW., Washington, DC 20006–8544, from the hours of 8:00 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday.

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.* Specially, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–14583 Filed 6–13–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–8–000]

Commission Information Collection Activities (FERC–567); Comment Request

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 United States Code (U.S.C.) 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–567, Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 11520, 02/27/2012) requesting public comments. FERC received no comments on the FERC–567 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by July 16, 2012.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0005, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–8–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–567, Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity.

OMB Control No.: 1902–0005.

Type of Request: Three-year extension of the FERC–567 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission uses the information from the FERC–567 to obtain accurate data on pipeline facilities and the peak capacity of these facilities. Additionally, the Commission validates the need for new facilities proposed by pipelines in certificate applications. By modeling a applicant's pipeline system, Commission staff utilizes the FERC–567 data to determine configuration and location of installed pipeline facilities; verify and determine the receipt and delivery points between shippers, producers and pipeline companies; determine the location of receipt and delivery points and emergency interconnections on a pipeline system; determine the location of pipeline segments, laterals and compressor stations on a pipeline system; verify pipeline segment lengths and pipeline diameters; justify the maximum allowable operating pressures and suction and discharge pressures at compressor stations; verify the installed horsepower and volumes compressed at each compressor station; determine the existing shippers and producers currently using each pipeline company; verify peak capacity on the system; and develop and evaluate alternatives to the proposed facilities as a means to mitigate environmental impact of new pipeline construction.

18 Code of Federal Regulations (CFR) 260.8(a) requires each major natural gas pipeline with a system delivery capacity

exceeding 100,000 Mcf per day to submit by June 1 of each year, diagrams reflecting operating conditions on the pipeline's main transmission system during the previous 12 months ended December 31. These physical/engineering data are not included as part of any other data collection requirement.

Type of Respondents: Applicants proposing hydropower projects on (or changes to existing projects located within) lands owned by the United States.

Estimate of Annual Burden: [1] The Commission proposed an erroneous burden estimate on the 60-day notice [2] for this information collection. The Commission estimates the corrected total Public Reporting Burden for this information collection as:

FERC–567 (IC12–8–000): GAS PIPELINE CERTIFICATES: ANNUAL REPORTS OF SYSTEM FLOW DIAGRAMS AND SYSTEM CAPACITY

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Data Proposed on 60-day notice [2] for FERC–567					
Natural Gas Pipelines	103	1	103	1	103
Corrected Data Proposed for FERC–567					
Natural Gas Pipelines	103	1	103	55	5,665

The Commission revised the erroneous figures (presented within the 60-day notice for this information collection [2]) based on an improved internal analysis. We were remiss in our previous analysis that resulted in the underestimated burden calculation.

The total estimated annual cost burden to respondents is $ [5,665 hours ÷ 2,080 [3] hours/year = 2.72355 * $143,540/year [4] = $390,938.37]

The estimated annual cost of filing the FERC–567 per response is $3,795.52 [$390,938.37 ÷ 103 responses = $3,795.52/response].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14516 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] 77 FR 11520 (2/27/2012)

[3] 2080 hours = 40 hours/week * 52 weeks (1 year).

[4] Average annual salary per employee in 2012.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1913–000]

RE McKenzie 3 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RE McKenzie 3 LLC application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 21, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14512 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1915–000]

RE McKenzie 4 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RE McKenzie 4 LLC application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 21, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14513 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1917–000]

RE McKenzie 6 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RE McKenzie 6 LLC application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 21, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14515 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1875–000]

AltaGas Renewable Energy Colorado LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of AltaGas Renewable Energy Colorado LLC application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 21, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free) For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14518 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1911–000]

RE McKenzie 1 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RE McKenzie 1 LLC application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 21, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14520 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1912–000]

RE McKenzie 2 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RE McKenzie 2 LLC application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 21, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14521 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1880–000]

Minco Wind III, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Minco

Wind III, LLC application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 21, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14519 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1916–000]

RE McKenzie 5 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of RE McKenzie 5 LLC application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 21, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–14514 Filed 6–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Conformed Power Marketing Criteria or Regulations for the Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Conformance of power marketing criteria in accordance with the Hoover Power Allocation Act of 2011.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), is modifying Part C of its Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (1984 Conformed Criteria) published in the **Federal Register** on December 28, 1984, as required by the Hoover Power Allocation Act of 2011 (HPAA) described herein. This modification will result in the conformance of the 1984 Conformed Criteria to the HPAA. The 2012 Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (2012 Conformed Criteria) will provide the basis for marketing the long-term hydroelectric resources of the Boulder Canyon Project (BCP) beyond September 30, 2017, when Western's current electric service contracts expire. Additional power marketing criteria for new allocations will be established by Western through a subsequent public process. This **Federal Register** notice (FRN) is not a call for applications. A call for applications from those interested in an allocation of BCP power will be provided for in a future notice.

DATES: The 2012 Conformed Criteria will become effective July 16, 2012.

ADDRESSES: Information regarding the 2012 Conformed Criteria is available for public inspection at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, AZ 85005 or at its Web site: *http://www.wapa.gov/dsw/pwrmkt.*

FOR FURTHER INFORMATION CONTACT: Mr. Mike Simonton, Public Utilities Specialist, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, telephone (602) 605–2675, email *Post2017BCP@wapa.gov*.

SUPPLEMENTARY INFORMATION:

The BCP was authorized by the Boulder Canyon Project Act of 1928 (Act) (43 U.S.C. 617). Under Section 5 of the Act, the Secretary of the Interior marketed the capacity and energy from the BCP under electric service contracts effective through May 31, 1987. On December 28, 1984, Western published the 1984 Conformed Criteria (49 FR 50582) to implement applicable provisions of the Hoover Power Plant Act of 1984 (43 U.S.C. 619) for the marketing of BCP power through September 30, 2017. On December 20, 2011, Congress enacted the Hoover Power Allocation Act of 2011 (Pub. L. 112–72), which provides direction and guidance in several key aspects of marketing BCP power after the existing contracts expire in 2017.

Section 2(f) of the HPAA provides that Subdivision C of the 1984 Conformed Criteria shall be deemed to have been modified to conform to the HPAA, and the Secretary of Energy shall cause to be included in the **Federal Register** notice conforming the text of the regulations to such modifications. This FRN conforms the text of the 1984 Conformed Criteria, as appropriate, to the HPAA.

Description of Revisions to Subdivision C of the 1984 Conformed Criteria Required by the Enactment of HPAA

Part 1. General

Section A—Purpose and Scope

A reference to HPAA has been integrated into the purpose and scope section.

Section B—Authorities

The HPAA has been added to the listed authorities.

Section C—Contractual Information

The section has been updated to incorporate the following provisions of HPAA:

(1) Section 2(d)(2)(E) that requires each contract offered pursuant to Schedule D shall include a provision requiring the new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (MSCP) (as defined in Section 9401 of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11; 123 Stat.1327)), and to execute the Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 (Implementation Agreement).

(2) Section 2(g)(1)(A) that requires each contract offered shall expire on September 30, 2067.

(3) Section 2(g)(2)(A) that prescribes the contract offered to the Metropolitan Water District of Southern California (MWD) will not restrict use of capacity and energy, provided that to the extent practicable and consistent with sound water management and conservation practice, MWD shall allocate such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State project water.

(4) Section 2(g)(4) that requires each contract offered shall (i) authorize and require Western to collect from new allottees a pro rata share of Hoover Dam repayable advances paid for by contractors prior to October 1, 2017, and remit such amounts to the contractors that paid such advances in proportion to the amounts paid by such contractors as specified in Section 6.4 of the Implementation Agreement; (ii) permit transactions with an independent system operator; and (iii) contain the same material terms included in Section 5.6 of the current BCP firm electric service power sales contracts in existence on December 20, 2011, the date of enactment of the HPAA.

Part VI. Boulder Canyon Project

Part VI of the 1984 Conformed Criteria is replaced in its entirety in order to conform to and facilitate the following provisions of Section 2 of the HPAA:

(1) Section 2(a) that provides for contract offers to existing Schedule A contractors in predefined contract quantities for delivery commencing October 1, 2017.

(2) Section 2(b) that provides for contract offers to existing Schedule B contractors in predefined contract quantities for delivery commencing October 1, 2017.

(3) Section 2(c) that provides for excess energy provisions for deliveries commencing October 1, 2017.

(4) Section 2(d)(2) that provides for the following:

(i) The creation of a resource pool equal to 5 percent of BCP's full rated capacity of 2,074,000 kilowatts, and associated firm energy, as depicted in Schedule D. Western shall offer prescribed portions of Schedule D contingent capacity and firm energy to entities not receiving contingent capacity and firm energy under Schedule A and/or Schedule B for deliveries commencing October 1, 2017.

(ii) Additional guidance related to the disposition of contingent capacity and firm energy to existing contractors and potential new allottees as described in the 2012 Conformed Criteria.

(iii) Guidance related to the disposition Schedule D contingent capacity and firm energy that is not allocated and contracted for prior to October 1, 2017, as described in the 2012 Conformed Criteria.

(5) Section 2(i) that provides guidance in the event any existing contractor fails to accept an offered contract as described in the 2012 Conformed Criteria.

(6) Section 2(j) that provides guidance regarding Western's obligations in the event water is not available to produce the contingent capacity and firm energy set forth in Schedule A, Schedule B, and Schedule D, as described in the 2012 Conformed Criteria.

Regulatory Procedure Requirements

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Compliance

In accordance with the DOE National Environmental Policy Act Implementing Procedures (10 CFR 1021), Western has determined that these actions fit within a class of action B4.1 Contracts, policies, and marketing and allocation plans for electric power, in Appendix B to Subpart D to Part 1021—Categorical Exclusions Applicable to Specific Agency Actions.

Revised 2012 Conformed Criteria

Part I and Part VI of Section C of the 1984 Conformed Criteria are amended to read as follows:

C. Conformed General Consolidated Power Marketing Criteria or Regulations for Desert Southwest Region Projects

Part I. General

Section A. Purpose and Scope. In accordance with Federal power marketing authorities in Reclamation Law and the Department of Energy Organization Act of 1977, Western has developed and, pursuant to the Hoover Power Allocation Act of 2011 (Pub. L. 112–72) (HPAA), has modified the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (1984 Conformed Criteria) published in the **Federal Register** (49 FR 50582) on December 28, 1984. These 2012 Conformed Criteria establish general marketing principles for power generated at

Federal projects under the marketing jurisdiction of Western's Desert Southwest Regional Office (DSW). This document will serve as new general power marketing criteria for the Boulder Canyon Project (BCP) resource. Western may establish additional power marketing criteria, as deemed necessary and appropriate as determined by Western, in a subsequent public process. The power marketing criteria for the Parker-Davis Project (PDP) and Central Arizona Project (CAP) remain unchanged with the implementation of the 2012 Conformed Criteria. The establishment of these 2012 Conformed Criteria shall serve as conformance of the 1984 Conformed Criteria pursuant to Section 2 (f) of the HPAA.

Section B. Authorities. Federal power in the Desert Southwest Region is marketed in accordance with the power marketing authorities in Federal Reclamation Law (Act of June 17, 1902, (32 Stat. 388), and all acts amendatory thereof or supplementary thereto); the Department of Energy Organization Act of 1977 (91 Stat. 565); and in particular, those acts and amendments enabling the Boulder Canyon Project (45 Stat. 1057); Hoover Power Plant Act of 1984 (Pub. L. 98–381); Hoover Power Allocation Act of 2011 (Pub. L. 112–72); Parker-Davis Project (49 Stat. 1028, 1039; 68 Stat. 143); and the Colorado River Basin Project (82 Stat. 885).

Section C. Contractual Information. Power contracts will be implemented as existing contracts terminate. The existing BCP contracts terminate on September 30, 2017.

Western will offer power contracts to each contractor containing the terms and conditions and any special provisions that may be applicable to the power marketed under the 2012 Conformed Criteria. The contracts will identify the amounts of capacity and energy to be delivered, the point(s) of delivery, and the maximum rate of delivery at each point of delivery. The contracts will be prepared and modified as necessary. Western shall endeavor to maintain similar, if not identical, contractual terms and conditions and any special provisions amongst all BCP contractors.

Each long-term power service contract entered into or amended shall contain provisions requiring the contractor to develop and implement energy conservation measures as demonstrated in integrated resource planning documents.

The PDP, CAP, and BCP projects shall be operationally integrated to improve the efficiency of the Federal system in accordance with: the operational constraints of the Colorado River, hydro-project power plants, as may be imposed by the Secretary of the Interior or authorized representatives; applicable laws; the general terms, conditions, and principles contained in these 2012 Conformed Criteria; and the General Power Contract Provisions in effect.

Long-term contracts for BCP power will commence on October 1, 2017, and terminate on September 30, 2067.

Contingent capacity is capacity that is normally available, except during either forced or planned outages, or unit de-ratings that affect power plant capability. All BCP capacity shall be marketed by Western as contingent capacity to the contractors.

Western's obligations to deliver BCP power to the contractors will be subject to availability of the water needed to produce such contingent capacity and firm energy. In the event that water is not available to produce the contingent capacity and firm energy set forth in Schedule A, Schedule B, and Schedule D, Western shall adjust the contingent capacity and firm energy offered under those schedules in the same proportion as those contractors' allocations of Schedule A, Schedule B, and Schedule D contingent capacity and firm energy bears to the full rated contingent capacity and firm energy obligations.

Contracts for BCP power will allow for reductions in capacity due to generating unit outages or available capacity reductions caused by forced outages, planned or unplanned maintenance activities, or reservoir drawdown. These reductions will also be applied on a proportionate basis as previously described.

Each BCP contractor will be required to contractually agree to supply its own reserves for power that meet or exceed the Western Electricity Coordinating Council's minimum reserve requirements.

Each contract for BCP power will contain a provision by which any dispute or disagreement as to interpretation or performance of the provisions of the Hoover Power Allocation Act of 2011, or of applicable regulations or of the contract may be determined by arbitration or court proceedings.

The contract offer to the Metropolitan Water District of Southern California for BCP capacity and energy will not restrict the use to which capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California; provided, that to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California shall allocate such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water.

Contracts offered shall contain the same material terms included in Section 5.6 of those long-term contracts for purchases from the Hoover Power Plant that were made in accordance with the Hoover Power Plant Act of 1984 and are in existence as of December 20, 2011, the enactment date of the Hoover Power Allocation Act of 2011. These provisions outline the use of generation by the contractor. Within the constraints of river operation, each BCP power contractor is permitted to schedule loaded and unloaded synchronized generation, the sum of which cannot exceed the amount of contingent capacity reserved for the individual contractor. To the extent that energy entitlements are not exceeded, such previously scheduled unloaded synchronized generation may be used for regulation, ramping, and spinning reserves through the use of a dynamic signal. These functions will be deployed by Western and the Bureau of Reclamation (Reclamation), in cooperation with the BCP power contractors, and implemented by contract through written operating or scheduling instructions. Energy used for the purpose of supplying unloaded synchronized generation to BCP power contractors will be accounted for on a monthly basis, and will be supplied by the individual contractors through reductions in energy deliveries, in subsequent months, or as otherwise mutually agreed by Western and the contractor, as specified in the power contracts.

Whenever actual generation in any year is less than the firm commitments (4,527.001 million kilowatt-hours (kWh)), such deficiency shall be borne by the holders of contracts in the ratio that the sum of the quantities of firm energy to which each contractor is entitled, to the total firm commitments. Upon an individual contractor's request, Western will purchase energy, if necessary, specifically for the purpose of fulfilling the energy obligations resulting from Schedule A, Schedule B, and Schedule D allocations. Any costs incurred as a result of the contractor's request for firming energy shall be borne solely by the requesting contractor and will be reimbursed in the year in which the costs were incurred.

The individual projects will remain financially segregated for the purposes of accounting and project repayment. The Desert Southwest Region rate schedules for each individual project will be developed to satisfy cost recovery criteria for each project. In general, the cost recovery criteria will include components such as operation and maintenance, replacements, betterments, amortization of long-term debt with interest, and other financial obligations of the project. Until the end of the repayment period for the CAP, BCP and PDP will provide for surplus revenues by including the equivalent of 4½ mills per kWh in the rates charged to contractors in Arizona and by including the equivalent of 2½ mills per kWh in the rates charged to contractors in California and Nevada. After the repayment period of the CAP, the equivalent of 2½ mills per kWh shall be included in the rates charged to all contractors in Arizona, Nevada, and California.

In order to allow Reclamation to comply with required minimum water releases and to allow Western to receive purchased energy during offpeak load hours, all power contractors may be required to schedule a minimum rate of delivery during such offpeak load hours. The percentage of energy to be taken by the contractors at the minimum scheduled rate of delivery shall be established on a seasonal basis, and may be increased or decreased as conditions dictate. The monthly minimum rate of delivery for each power contractor will be computed by dividing the number of kilowatt-hours to be taken during the month by a contractor at the minimum rate of delivery, by the number of offpeak load hours in the month. The number of kilowatt-hours to be taken during offpeak load hours at the minimum rate of delivery will not exceed 25 percent of the contractor's monthly energy entitlement. Offpeak load hours will be defined in the contracts based on individual system characteristics.

No contractor shall sell for profit any of its allocated capacity and energy to any customer of the contractor for resale by that customer.

Contracts for BCP power shall permit transactions with an independent system operator.

Contract offers shall contain a provision requiring the new allottee to execute the Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 (Implementation Agreement).

Any new allottees or existing contractors with an increased allocation shall be required to pay a pro rata share of Hoover Dam repayable advances paid for by contractors prior to October 1, 2017. Western shall collect such payments from new allottees or existing contractors with an increased allocation and remit such amounts to the contractors that paid such advances in proportion to the amounts paid by such contractors as specified in Section 6.4 of the Implementation Agreement.

Contract offers shall contain a provision requiring the new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (as defined in Section 9401 of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11; 123 Stat. 1327)).

Parts II through V remain unchanged.

Part VI. Boulder Canyon Project

Section A. Schedule A Long-Term Contingent Power. Electric service contracts for long-term contingent capacity and firm energy under new terms and conditions will be offered to existing Boulder Canyon Project contractors in the following amounts:

Schedule A

Long-term Schedule A contingent capacity and associated firm energy for offers of contracts to Boulder Canyon Project contractors

Contractor	Contingent Capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Metropolitan Water District of Southern California	249,948	859,163	368,212	1,227,375
City of Los Angeles	495,732	464,108	199,175	663,283
Southern California Edison Company	280,245	166,712	71,448	238,160
City of Glendale	18,178	45,028	19,297	64,325
City of Pasadena	11,108	38,622	16,553	55,175
City of Burbank	5,176	14,070	6,030	20,100
Arizona Power Authority	190,869	429,582	184,107	613,689
Colorado River Commission of Nevada	190,869	429,582	184,107	613,689
United States, for Boulder City	20,198	53,200	22,800	76,000
Totals	1,462,323	2,500,067	1,071,729	3,571,796

Section B. Schedule B Long-Term Contingent Power. Electric service contracts for long-term contingent capacity and firm energy under new terms and conditions will be offered to existing Boulder Canyon Project contractors in the following amounts:

Schedule B

Long-term Schedule B contingent capacity and associated firm energy for offers of contracts to Boulder Canyon Project contractors

Contractor	Contingent Capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
City of Glendale	2,020	2,749	1,194	3,943
City of Pasadena	9,089	2,399	1,041	3,440
City of Burbank	15,149	3,604	1,566	5,170
City of Anaheim	40,396	34,442	14,958	49,400
City of Azusa	4,039	3,312	1,438	4,750
City of Banning	2,020	1,324	576	1,900
City of Colton	3,030	2,650	1,150	3,800
City of Riverside	30,296	25,831	11,219	37,050
City of Vernon	22,218	18,546	8,054	26,600
Arizona	189,860	140,600	60,800	201,400
Nevada	189,860	273,600	117,800	391,400
Totals	507,977	509,057	219,796	728,853

Contracts for the amounts of capacity and associated energy for the States of Arizona and Nevada resulting from Schedule B shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon Project.

Section C. Energy in Excess of Firm Commitments. Energy generated in any year of operation in excess of 4,501.001 million kilowatt-hours shall be delivered in the following order:

SCHEDULE C—EXCESS ENERGY

Priority of excess energy
A. First: The first 200 million kWh for use within the State of Arizona; Provided, That in the event excess energy in the amount of 200 million kWh is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kWh, inclusive of the current year's 200 million kWh. Said first right of delivery shall accrue at a rate of 200 million kWh per year for each year excess energy in the amount of 200 million kWh is not generated, less amounts of excess energy delivered.
B. Second: Meeting Hoover Dam contractual obligations under Section A (Schedule A), Section B (Schedule B), and Section D (Schedule D), not to exceed 26 million kWh in each year of operation.
C. Third: Meeting the energy requirements of the States of Arizona, California, and Nevada; such available excess energy to be divided equally among the three States.

Section D. Schedule D Long-term Contingent Power. A resource pool of contingent capacity and associated firm energy is created for allocation by Western to eligible entities. Western shall offer Schedule D contingent capacity and firm energy to entities not receiving contingent capacity and firm energy under Section A (Schedule A) or Section B (Schedule B) (referred to herein as ''New Allottees'') for delivery commencing October 1, 2017.

Electric service contracts for long-term contingent capacity and firm energy under new terms and conditions will be offered to eligible entities in the following amounts:

Schedule D
Long-term Schedule D resource pool of contingent capacity and associated firm energy for New Allottees

State	Contingent Capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
New Entities Allocated by the Secretary of Energy	69,170	105,637	45,376	151,013
New Entities Allocated by State				
Arizona	11,510	17,580	7,533	25,113
California	11,510	17,580	7,533	25,113
Nevada	11,510	17,580	7,533	25,113
Totals	103,700	158,377	67,975	226,352

In the case of resources committed to New Entities Allocated by State referred to in Schedule D, the following is prescribed:

A. Western is allocating 11.1 percent of the total Schedule D contingent capacity and firm energy to the Arizona Power Authority for allocation to New Allottees in the State of Arizona, for delivery commencing October 1, 2017, for use in the Boulder City Area marketing area.

B. Western is allocating 11.1 percent of the total Schedule D contingent capacity and firm energy to the Colorado River Commission of Nevada for allocation to New Allottees in the State of Nevada, for delivery commencing October 1, 2017, for use in the Boulder City Area marketing area.

C. Western shall allocate 11.1 percent of the total Schedule D contingent capacity and firm energy to New Allottees within the State of California, for delivery commencing October 1, 2017, for use in the Boulder City Area marketing area.

Section E. General Marketing Criteria. Western is establishing the following general marketing criteria to be used in the allocation of Schedule D contingent capacity and firm energy:

A. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking a power allocation:

(1) All qualified applicants must be eligible to enter into contracts under Section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d) or be Federally recognized Indian tribes.

(2) All qualified applicants must be located within the established Boulder City Area marketing area.

B. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of the 11.1 percent of Schedule D contingent capacity and firm energy to New Entities Allocated by State and the remaining 66.7 percent of Schedule D contingent capacity and firm energy:

(1) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for New Allottees other than federally recognized Indian tribes shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively. Schedule D contingent capacity and firm energy allocated to federally recognized Indian tribes shall be contracted for directly with Western.

(2) Western shall prescribe additional marketing criteria developed pursuant to a public process.

Section F. Contract Offer Schedule. In the event that contract offers for Schedule A, Schedule B, or Schedule D are not accepted by existing contractors or new allottees, the following shall determine the distribution of the associated contingent capacity and firm energy:

A. Schedule A and Schedule B

If any existing contractor fails to accept an offered contract, Western shall offer the contingent capacity and firm energy thus available first to other entities in the same State listed in Schedule A and Schedule B, second to other entities listed in Schedule A and Schedule B, third to other entities in the same State that receive contingent capacity and firm energy under Schedule D, and last to other entities that receive contingent capacity and firm energy under Schedule D.

B. Schedule D—66.7 Percent Allocated by Western

Any of the 66.7 percent of Schedule D contingent capacity and firm energy that is to be allocated by Western that is not allocated and placed under contract by October 1, 2017, shall be returned to those contractors shown in Schedule A and Schedule B in the same proportion as those contracts' allocations of Schedule A and Schedule B contingent capacity and firm energy.

C. Schedule D—33.3 Percent Allocated by State

Any of the 33.3 percent of Schedule D contingent capacity and firm energy that is to be distributed within the States of Arizona, Nevada, and California that is not allocated and placed under contract by October 1, 2017, shall be returned to the Schedule A and Schedule B contractors within the State in which the Schedule D contingent capacity and firm energy were to be distributed, in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy.

Parts VII through VIII remain unchanged.

Dated: June 7, 2012.

Anthony H. Montoya,

Acting Administrator.

[FR Doc. 2012–14572 Filed 6–13–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9687–5]

Public Water System Supervision Program Revision for the State of Texas

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Texas is revising its approved Public Water System Supervision Program. Texas has adopted the Lead and Copper Rule (LCR) Short-Term Revisions. EPA has determined that the proposed LCR

Short-Term Revision submitted by Texas is no less stringent than the corresponding federal regulation. Therefore, EPA intends to approve the program revision.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by July 16, 2012 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 16, 2012, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on July 16, 2012. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Texas Commission on Environmental Quality, Water Supply Division, Public Drinking Water Section (MC–155), Building F, 12100 Park 35 Circle, Austin, TX 78753; and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Damon McElroy, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–7159, or by email at *mcelroy.damon@epa.gov*.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: June 7, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2012–14570 Filed 6–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0894; FRL–9681–1]

Regulation of Fuel and Fuel Additives; Modification to Octamix Waiver (TOLAD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has reconsidered a portion of a fuel waiver granted to the Texas Methanol Corporation (Texas Methanol) under the Clean Air Act on February 8, 1988. This waiver was previously reconsidered and modified on October 28, 1988 in a **Federal Register** publication titled ''Fuel and Fuel Additives; Modification of a Fuel Waiver Granted to the Texas Methanol Corporation.'' Today's notice approves the use of an alternative corrosion inhibitor, TOLAD MFA–10A, in Texas Methanol's gasoline-alcohol fuel, OCTAMIX.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–HQ–OAR–2011–0894. All documents and public comments in the docket are listed on the *http://www.regulations.gov* Web site. Publically available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA Headquarters Library, Mail Code: 2822T, EPA West Building, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1742, and the facsimile number for the Air Docket is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice contact, Joseph R. Sopata, U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Transportation and Air Quality, (202) 343–9034, fax number, (202) 343–2800, email address: *sopata.joe@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(f)(1) of the Clean Air Act (CAA or the Act) makes it unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. The Environmental Protection Agency (EPA or the Agency) last issued an interpretive rule on the phrase ''substantially similar'' at 73 FR 22281 (April 25, 2008). Generally speaking, this interpretive rule describes the types of unleaded gasoline that are likely to be considered ''substantially similar'' to the unleaded gasoline utilized in EPA's certification program by placing limits on a gasoline's chemical composition as well as its physical properties, including the amount of alcohols and ethers (oxygenates) that may be added to gasoline. Fuels that are found to be ''substantially similar'' to EPA's certification fuels may be registered and introduced into commerce. The current ''substantially similar'' interpretive rule for unleaded gasoline allows no more than 2.7 percent oxygen by weight for certain ethers and alcohols.

Section 211(f)(4) of the Act provides that upon application of any fuel or fuel additive manufacturer, the Administrator may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that the fuel or fuel additive, or a specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards to which it has been certified pursuant to sections 206 and 213(a) of the Act. The statute requires that the Administrator shall take final action to grant or deny an application after public notice and comment, within 270 days of receipt of the application.

The Texas Methanol Corporation received a waiver under CAA section 211(f)(4) for a gasoline-alcohol fuel blend, known as OCTAMIX,[1] provided that the resultant fuel is composed of a maximum of 3.7 percent by weight oxygen, a maximum of 5 percent by volume methanol, a minimum of 2.5 percent by volume co-solvents [2] and

[1] OCTAMIX waiver decision, 53 FR 3636 (February 8, 1988).

[2] The co-solvents are any one or a mixture of ethanol, propanols, butanols, pentanols, hexanols, heptanols and octanols with the following constraints: the ethanol, propanols and butanols or mixtures thereof must compose a minimum of 60

Continued

42.7 milligrams per liter (mg/l) of Petrolite TOLAD MFA–10 corrosion inhibitor.[3] In the OCTAMIX waiver, the Agency invited other corrosion inhibitor manufacturers to submit test data to establish, on a case-by-case basis, whether their fuel additive formulations are acceptable as alternatives to TOLAD MFA–10.[4]

On October 14, 2011, Baker Hughes requested EPA allow the use of its alternative corrosion inhibitor, TOLAD™ MFA–10A, in the OCTAMIX gasoline-alcohol fuel blend which otherwise would not be allowed under the waiver.[5] TOLAD™ MFA–10A is a fuel additive formulation consisting of a corrosion inhibitor.

On January 20, 2012, EPA published a notice in the **Federal Register** (77 FR 2979) announcing receipt of Baker Hughes's request and inviting comment on it. The comment period closed on February 21, 2012. EPA received comments from four commenters (discussed below).

II. Discussion

One of the major areas of concern to EPA in reviewing any waiver request is the problem of materials compatibility. Materials compatibility data could show a potential failure of fuel systems, emissions related parts and emission control parts from use of the fuel or fuel additive. Any failure could result in greater emissions that would cause or contribute to the engines or vehicles exceeding their emissions standards. Initially, Texas Methanol requested the use of TOLAD MFA–10 or an appropriate concentration of any other corrosion inhibitor such that the fuel will pass the National Association of Corrosion Engineer's TM–01–72 (NACE RUST TEST). However, EPA concluded that compliance with the NACE Rust Test alone was not adequate in determining suitability of a corrosion inhibitor for use under the OCTAMIX waiver.[6] The Agency decided, therefore, to look at corrosion inhibitors on a case-by-case basis to establish whether each formulation would be acceptable as an alternative to the formulation of the original corrosion inhibitor, TOLAD MFA–10, used in the OCTAMIX waiver.[7]

In order to determine whether the OCTAMIX waiver would meet the criteria of section 211(f) if TOLAD MFA–10A were to be used an alternative corrosion inhibitor, EPA reviewed all data submitted with or referenced by the Baker Hughes application. Baker Hughes provided data showing their corrosion inhibitor, TOLAD MFA–10A, met the NACE corrosion test.[8] EPA also considered the information received from the public during the public comment period. There were four public comments submitted to the Agency in response to the notice published on January 20, 2012. Carbon Recycling International,[9] Methanex,[10] Methanol Institute [11] and TEIR Associates Incorporated [12] submitted comments in support of allowing TOLAD MFA–10A as an alternative corrosion inhibitor for use in the OCTAMIX fuel. Two of these commenters noted that the original corrosion inhibitor, TOLAD MFA–10, had been used successfully by several refiners on a commercial basis as an effective corrosion inhibitor. Two commenters, in addition to Baker Hughes, stated that the active ingredients for corrosion inhibitor efficacy are the same for both TOLAD MFA–10 and TOLAD MFA–10A, while one commenter in addition to Baker Hughes noted that the only difference between these two corrosion inhibitor formulations is a solvent to improve additive handling in commerce. Three commenters noted that the Baker Hughes' evaluation of both TOLAD MFA–10 and TOLAD MFA–10A resulted in equivalent passing performance with regards to the NACE corrosion test.[13]

TOLAD MFA–10A is a fuel additive containing the same active ingredients for corrosion inhibitor efficacy with OCTAMIX gasoline-alcohol fuels as the original corrosion inhibitor approved in the OCTAMIX waiver, TOLAD MFA–10. The only difference between TOLAD MFA–10 and TOLAD MFA–10A is a solvent formulation change to improve additive handling in commerce. Both TOLAD MFA–10 and TOLAD MFA–10A were evaluated under the most aggressive fuel formulation of alcohols allowed under the OCTAMIX waiver that included only methanol at 5 volume percent and ethanol at 2.5 volume percent. The use of higher molecular weight cosolvent alcohols, such as propanols or butanols, would tend to be less corrosive. Both TOLAD MFA–10 and TOLAD MFA–10A passed the NACE corrosion test with the most aggressive fuel allowed under the OCTAMIX waiver. Since TOLAD MFA–10A passed the NACE corrosion test using the most aggressive fuel formulation allowed under the OCTAMIX waiver, the Agency believes that Baker Hughes has demonstrated that TOLAD MFA–10A is an effective corrosion inhibitor for use under the OCTAMIX waiver.

With regard to the question of the emissions impacts of TOLAD MFA–10A, its minimum treat rate of 25 mg/l is about 40 percent less than TOLAD MFA–10. The chemical composition and treat rate of TOLAD MFA–10A, which is less than 0.01 mass percent by weight, is such that it is a fuel additive falling under the baseline gasoline fuel grouping category [14] under our fuel and fuel additive registration regulations. In addition, the chemical composition and treat rate of TOLAD MFA–10A is such that it is a fuel additive that meets our gasoline substantially similar definition.[15] Given that TOLAD MFA–10A is a fuel additive that is both substantially similar to the fuel additives used in our certification program and a fuel additive falling under our baseline gasoline fuel category, one would not expect significant emissions changes from the use of TOLAD MFA–10A compared to other fuel additives that fall under the baseline gasoline fuel category, which also includes TOLAD MFA–10 and DMA–67. Therefore, as long as the other conditions of the OCTAMIX waiver are met, which include applicable gasoline volatility specifications,[16] gasoline phase separation specifications [17] and alcohol purity conditions,[18] the Agency

percent by weight of the co-solvent mixture; a maximum limit of 40 percent by weight of the co-solvents mixture is placed on the pentanols, hexanols, heptanols and octanols; and the heptanols and octanols are limited to 5 percent by weight of the co-solvent mixture.

[3] Additional conditions were the final fuel must meet ASTM volatility specifications contained in ASTM D439–85a, as well as phase separation conditions specified in ASTM D–2 Proposal P–176 and Texas Methanol alcohol purity specifications.

[4] 53 FR at 3637.

[5] EPA–HQ–OAR–2011–0894–0001.

[6] 53 FR at 3637.

[7] 53 FR at 3637.

[8] NACE Standard TM–01–72.

[9] EPA–HQ–OAR–2011–0894–0008.

[10] EPA–HQ–OAR–2011–0894–0007.

[11] EPA–HQ–OAR–2011–0894–0005.

[12] EPA–HQ–OAR–2011–0894–0006.

[13] EPA–HQ–OAR–2011–0894–0002 and EPA–HQ–OAR–2011–0894–0003.

[14] See 40 CFR 79.56(e)(3)(i).

[15] For our most recent substantially similar gasoline interpretative rule, please see: *http://www.epa.gov/fedrgstr/EPA-AIR/2008/April/Day-25/a8944.pdf*.

[16] See 40 CFR 80.27 for applicable volatility specifications for conventional gasoline, or 40 CFR 80 Subpart D for reformulated gasoline requirements, or any applicable state implementation plan approved by EPA that includes low RVP fuel.

[17] See American Society for Testing and Materials (ASTM) D4814 for applicable gasoline phase separation conditions.

[18] Additional conditions were the final fuel must meet ASTM volatility specifications contained in ASTM D439–85a (ASTM D4814 supercedes ASTM D439–85a), as well as phase separation conditions specified in ASTM D–2 Proposal P–176 (ASTM D4814 supercedes ASTM D–2 Proposal P–176) and Texas Methanol alcohol purity specifications.

believes the that the use of TOLAD MFA–10A in place of TOLAD MFA–10 will allow engines and vehicles to remain compliant with their emissions standards when using fuels made as approved under the original conditions granted for the OCTAMIX waiver.

III. Finding and Conclusion

Based on the information submitted by Baker Hughes in its application, and the additional information received during the public comment period, I conclude that the performance of TOLAD MFA–10A in OCTAMIX would be comparable to TOLAD MFA–10, the original corrosion inhibitor approved under the OCTAMIX waiver. Therefore, I am modifying condition (3) of the OCTAMIX waiver to read as follows:

(3) Any one of the following four corrosion inhibitors must be included:

(a) Petrolite's corrosion inhibitor formulation, TOLAD MFA–10, blended in the final fuel at 42.7 mg/l;

OR

(b) DuPont's corrosion inhibitor formulation, DMA–67, blended in the final fuel at 31.4 mg/l;

OR

(c) Spirit of 21st Century LLC's corrosion inhibitor formulation, TXCeed, blended in the final fuel at 3.9 ml/gal (987.6 mg/l);

OR

(d) Baker Hughes's corrosion inhibitor formulation, TOLAD MFA–10A, blended in the final fuel at 25 mg/l.

This action should provide additional flexibility to any manufacturer wishing to produce the OCTAMIX blend. At the same time, any manufacturer wishing to use a corrosion inhibitor other than the four permitted by the OCTAMIX waiver must apply for a further modification of the waiver. Since EPA is still unaware of any basis for extrapolating findings in the emissions impact of one corrosion inhibitor to other corrosion inhibitors, the Agency will continue to examine the emissions impact of specific corrosion inhibitor formulations on a case-by-case basis.

IV. Miscellaneous

This waiver modification decision is final agency action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to CAA section 307(b)(1), judicial review of this final agency action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by August 13, 2012. Judicial review of this final agency action may not be obtained in subsequent proceedings, pursuant to CAA section 307(b)(2). This action is not a rulemaking and is not subject to the various statutory and other provisions applicable to a rulemaking.

Dated: June 7, 2012.

Lisa P. Jackson,

Administrator.

[FR Doc. 2012–14569 Filed 6–13–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0134]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 09–01 Payment Default Report OMB 3048–0028.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection allows insured/guaranteed parties and insurance brokers to report overdue payments from the borrower and/or guarantor. Ex-Im Bank customers will submit this form electronically through Ex-Im Online, replacing paper reporting. Ex-Im Bank has simplified reporting of payment defaults in this form by including checkboxes and providing for many fields to be self-populated. Ex-Im Bank provides insurance, loads, and guarantees for the financing of exports of goods and services.

DATES: Comments should be received on or before August 13, 2012 to be assured of consideration.

ADDRESSES: Direct all comments to Mauricio Paredes, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 09–01 Payment Default Report.

OMB Number: 3048–0028.

Type of Review: Regular.

Need and Use: the information requested enables insured/guaranteed parties and insurance brokers to report overdue payments from the borrower and/or guarantor.

Affected Public: Insured/guaranteed parties and brokers.

Annual Number of Respondents: 200.

Estimated Time per Respondent: 15 minutes.

Government Review Time: 50 hours.

Cost to the Government: $2,000.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–14551 Filed 6–13–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0136]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: EIB 94–08 Notification and Assignment by Insured to Financial Institution of Medium Term Export Credit Insurance Policy.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Ex-Im Bank is requesting an emergency approval of Ex-Im Bank form EIB 94–08, Notification and Assignment by Insured to Financial Institution of Medium Term Export Credit Insurance Policy. Ex-Im Bank's exporter policy holders, along with the financial institution providing it with financing, provide this form to Ex-Im Bank. The form transfers the duties and obligations of the insured exporter to the financial institution. It also provides certifications to the financial institution and Ex-Im Bank that the financed export transaction results in a valid, enforceable, and performing debt obligation. Exporter policy holders need this form to obtain financing for their medium term export sales. Ex-Im Bank believes that EIB 94–08 requires emergency approval in order to continue operation of its medium term program for U.S. exporters.

Lack of an emergency approval of this form would greatly restrict our ability to support many of the export sales made by U.S. businesses. Without this form, it would not be possible for financial institutions to obtain sufficient comfort to provide funding to our exporter policy holders. This would adversely impact Ex-Im Bank's ability to finance small business exporters and its overall mission to support U.S. exports and maintain U.S. jobs. Accordingly, Ex-Im Bank requests emergency approval of

EIB 94–08 in order to continue operation of this important export program.

The form can be viewed at *www.exim.gov/pub/pending/eib94–08.pdf.*

DATES: Comments should be received on or before July 16, 2012 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *www.regulations.gov* or by mail to Arnold Chow, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 94–08 Notification and Assignment by Insured to Financial Institution of Medium Term Export Credit Insurance Policy.

OMB Number: 3048–xxx.

Type of Review: Regular.

Need and Use: The form transfers the duties and obligations of the insured exporter to the financial institution. It also provides certifications to the financial institution and Ex-Im Bank that the financed export transaction results in a valid, enforceable, and performing debt obligation. Exporter policy holders need this form to obtain financing for their medium term export sales.

Affected Public: This form affects entities involved in the export of U.S goods and services.

Annual Number of Respondents: 50.

Estimated Time per Respondent: 10 minutes.

Government Annual Burden Hours: 5 hours.

Frequency of Reporting or Use: As needed.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–14552 Filed 6–13–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, June 19, 2012 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Signed:

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–14669 Filed 6–12–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (www.fmc.gov) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201215.

Title: Port of Los Angeles Data Delivery Agreement.

Parties: Port of Los Angeles; PierPass Inc.; APM Terminals Pacific; California United Terminals, Inc.; Eagle Marine Services, Ltd.; Seaside Transportation Services LLC; Trapac Inc.; Yusen Terminals, Inc.; and West basin Container Terminal L.L.C.

Filing Party: David F. Smith, Esq., Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement would provide for delivery of data to the Port of Los Angeles by the participating marine terminal operators and PierPass Inc., and various arrangements associated with that data delivery.

By Order of the Federal Maritime Commission.

Dated: June 11, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–14539 Filed 6–13–12; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Muhammad Habib,* Zurich, Switzerland; to retain a controlling interest in Maham Beteiligungsgessellschaft AG, Zurich, Switzerland, and thereby indirectly retain control of Habib American Bank, New York, New York.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Robert Roschman and the Robert Roschman Revocable Trust, Robert Roschman trustee,* all of Fort Lauderdale, Florida; to retain control of Giant Holdings, Inc., and thereby indirectly retain control of Landmark Bank, NA, both in Fort Lauderdale, Florida.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *David L. Spehar, Olathe, Kansas; Charles E. Thacker, Fulton, Illinois; Larry G. Barcus, Rockville, Missouri; John G. Sturtridge, Oro Valley, Arizona; and Keith L. Roberts,* Leawood, Kansas; all as a group acting in concert, to acquire control of First Bancshares, Inc., and thereby indirectly acquire control of The First State Bank of Kansas City, Kansas, both in Kansas City, Kansas.

Board of Governors of the Federal Reserve System.

Dated: June 11, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–14579 Filed 6–13–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Diamond A Financial, L.P., Hilltop Holdings Inc., and Meadow Corporation,* all in Dallas, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of PlainsCapital Corporation, and its subsidiary bank, PlainsCapital Bank, both in Dallas, Texas.

In connection with this application, Applicants also have applied to acquire PrimeLending, a PlainsCapital Company, and indirectly acquire PrimeLending Ventures Management, LLC, and PrimeLending Ventures, LLC, all in Dallas, Texas; and thereby engage in mortgage lending activities pursuant to section 225.28(b)(1) and (2).

In addition, *Diamond A Financial, L.P., and Hilltop Holdings Inc.;* have applied to retain an interest in SWS Group, Inc., and indirectly retain an interest in Southwest Securities, FSB, both in Dallas, Texas, and thereby engage in the operation of a savings association pursuant to section 225.28(b)(4)(ii). Applicants also have applied to engage in the following activities: extending credit and servicing loans activities, pursuant to section 225.28(b)(1) and (2); financial and investment advisory activities, pursuant to section 225.28(b)(6); agency transactional services for customers, including providing securities brokerage services, pursuant to section 225.28(b)(7); acting as riskless-principal and providing private-placement services and other transactional services as agent for customers, pursuant to section 225.28(b)(7); underwriting and dealing in government obligations and money market investments, pursuant to section 225.28(b)(8); community development activities, pursuant to section 225.28(b)(12); and issuing and selling money orders, savings bonds, traveler's checks and similar consumer payment instruments, pursuant to section 225.28(b)(13).

Board of Governors of the Federal Reserve System.

Dated: June 11, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–14578 Filed 6–13–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2012.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Northfield Bancorp, MHC,* Staten Island, New York; to convert to a stock form and merge with and into Northfield Bancorp, Inc., Woodbridge, New Jersey, which will become a savings and loan holding company by acquiring Northfield Bank, Staten Island, New York.

Board of Governors of the Federal Reserve System.

Dated: June 11, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–14580 Filed 6–13–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate

quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register.**

The current rate of 10⅞%, as fixed by the Secretary of the Treasury, is certified for the quarter ended March 31, 2012. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: May 25, 2012.

Margie Yanchuk,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2012–14526 Filed 6–13–12; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care Development Fund (CCDF)—Reporting Improper Payments—Instructions for States.

OMB No.: 0970–0323.

Description: The Improper Payments Information Act of 2002 requires Federal agencies to annually report error rate measures. Section 2 of the Improper Payments Information Act provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR, Part 98 requires preparation and submission of a report of errors occurring in the administration of Child Care Development Fund (CCDF) grant funds once every three years. The information collected will be used to prepare the annual Agency Financial Report (AFR) and will provide information necessary to offer technical assistance to grantees.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OMB #0970–0323 Record Review Worksheet	17	276.38	15.43	72,497.24
OMB #0970–0323 Data Entry Form	17	276.38	0.18	845.72
OMB # 0970–0323 State Improper Authorizations for Payment Report	17	1	639	10,863

Estimated Total Annual Burden Hours: 84,205.96

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–14484 Filed 6–13–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of the Aging and Disability Resource Center Program

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (formerly the Administration on Aging (AoA)) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 16, 2012.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 to the OMB Desk Officer for ACL, Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Susan Jenkins, 202.357.3591.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the Administration for Community Living (Formerly the Administration for Aging) has submitted the following proposed collection of information to OMB for review and clearance. The data collection associated with the Evaluation for the Aging and Disability Resource Center (ADRC) Program is necessary to determine the overall effect of ADRCs on both long term support and service systems and individuals. ACL will gather information about how ADRCs provide services and whether consumers, who access ADRCs, as compared to consumers who access other systems, report that the experience is more personalized, consumer-friendly, streamlined, and efficient. Staff of the Administration for Community Living's Administration on Aging's Office of Nutrition and Health Promotion Programs will use the information and recommendations resulting from the evaluation of the Aging and Disability Resource Centers to both determine the value of the ADRC model and to improve program operations. In response to the 60-day **Federal Register** notice related to this proposed data collection and published on October 14, 2011, one set of comments was received. The majority of the comments focused on the practical utility of the proposed collection of information. The remaining comments provided suggestions for enhancing the quality and clarity of the information to be collected. Many of the latter comments resulted in revisions to the proposed data collection tools. The originally proposed data collection tools, the comments with responses and a revised set of data collection tools may be found on the AoA Web site: *http://www.aoa.gov/AoA_programs/*

Tools_Resources/docs/ADRC_Eval_Data_Collection.pdf. ACL estimates the burden of this collection of information as follows 1,118 hours for individuals and 463 hours for organizations—Total Burden for Study 1581 hours.

Dated: June 7, 2012.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2012–14317 Filed 6–13–12; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0559]

Agency Information Collection Activities; Proposed Collection; Comment Request; Public Health Service Guideline on Infectious Disease Issues in Xenotransplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to this notice. This notice solicits comments on the collection of information contained in the Public Health Service (PHS) guideline entitled ''PHS Guideline on Infectious Disease Issues in Xenotransplantation,'' dated January 19, 2001.

DATES: Submit either electronic or written comments on the collection of information by *August 13, 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., 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (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.

PHS Guideline on Infectious Disease Issues in Xenotransplantation—(OMB Control Number 0910–0456)—Extension

The statutory authority to collect this information is provided under sections 351 and 361 of the PHS Act (42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act that apply to drugs (21 U.S.C. 301 *et seq.*). The PHS guideline recommends procedures to diminish the risk of transmission of infectious agents to the xenotransplantation product recipient and to the general public. The PHS guideline is intended to address public health issues raised by xenotransplantation, through identification of general principles of prevention and control of infectious diseases associated with xenotransplantation that may pose a hazard to the public health. The collection of information described in this guideline is intended to provide general guidance on the following topics: (1) The development of xenotransplantation clinical protocols, (2) the preparation of submissions to FDA, and (3) the conduct of xenotransplantation clinical trials. Also, the collection of information will help ensure that the sponsor maintains important information in a cross-referenced system that links the relevant records of the xenotransplantation product recipient, xenotransplantation product, source animal(s), animal procurement center, and significant nosocomial exposures. The PHS guideline describes an occupational health service program for the protection of health care workers involved in xenotransplantation procedures, caring for xenotransplantation product recipients, and performing associated laboratory testing. The PHS guideline is intended to protect the public health and to help ensure the safety of using xenotransplantation products in humans by preventing the introduction, transmission, and spread of infectious diseases associated with xenotransplantation.

The PHS guideline also recommends that certain specimens and records be maintained for 50 years beyond the date of the xenotransplantation. These include: (1) Records linking each xenotransplantation product recipient with relevant health records of the source animal, herd or colony, and the specific organ, tissue, or cell type included in or used in the manufacture of the product (3.2.7.1); (2) aliquots of serum samples from randomly selected animal and specific disease investigations (3.4.3.1); (3) source animal biological specimens designated for PHS use (3.7.1), animal health records (3.7.2), including necropsy results (3.6.4); and (4) recipients' biological specimens (4.1.2). The retention period is intended to assist health care practitioners and officials in surveillance and in tracking the source of an infection, disease, or illness that might emerge in the recipient, the source animal, or the animal herd or colony after a xenotransplantation.

The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human to human transplantation and are therefore thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These

characteristics include long latency periods and the ability to establish persistent infections. Several also share the possibility of transmission among individuals through intimate contact with human body fluids. Human immunodeficiency virus (HIV) and human T-lymphotropic virus are human retroviruses. Retroviruses contain ribonucleic acid that is reverse-transcribed into deoxyribonucleic acid (DNA) using an enzyme provided by the virus and the human cell machinery. That viral DNA can then be integrated into the human cellular DNA. Both viruses establish persistent infections and have long latency periods before the onset of disease, 10 years, and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency periods, e.g., approximately 30 years for hepatitis C.

In addition, the PHS guideline recommends that a record system be developed that allows easy, accurate, and rapid linkage of information among the specimen archive, the recipient's medical records, and the records of the source animal for 50 years. The development of such a record system is a one-time burden. Such a system is intended to cross-reference and locate relevant records of recipients, products, source animals, animal procurement centers, and nosocomial exposures.

Respondents to this collection of information are the sponsors of clinical studies of investigational xenotransplantation products under investigational new drug applications (INDs) and xenotransplantation product procurement centers, referred to as source animal facilities. There are an estimated 2 respondents who are sponsors of INDs that include protocols for xenotransplantation in humans. Other respondents for this collection of information are an estimated four source animal facilities, which provide source xenotransplantation product material to sponsors for use in human xenotransplantation procedures. These four source animal facilities keep medical records of the herds/colonies as well as the medical records of the individual source animal(s). The total annual reporting and recordkeeping burden is estimated to be approximately 45 hours. The burden estimates are based on FDA's records of xenotransplantation-related INDs and estimates of time required to complete the various reporting, recordkeeping, and third-party disclosure tasks described in the PHS guideline.

FDA is requesting an extension of OMB approval for the following reporting, recordkeeping, and third-party disclosure recommendations in the PHS guideline:

TABLE 1—REPORTING RECOMMENDATIONS

PHS guideline section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when the source animal facility or sponsor ceases operations.

TABLE 2—RECORDKEEPING RECOMMENDATIONS

PHS guideline section	Description
3.2.7	Establish records linking each xenotransplantation product recipient with relevant records.
4.3	Sponsor to maintain cross-referenced system that links all relevant records (recipient, product, source animal, animal procurement center, and nosocomial exposures).
3.4.2	Document results of monitoring program used to detect introduction of infectious agents which may not be apparent clinically.
3.4.3.2	Document full necropsy investigations including evaluation for infectious etiologies.
3.5.1	Justify shortening a source animal's quarantine period of 3 weeks prior to xenotransplantation product procurement.
3.5.2	Document absence of infectious agent in xenotransplantation product if its presence elsewhere in source animal does not preclude using it.
3.5.4	Add summary of individual source animal record to permanent medical record of the xenotransplantation product recipient.
3.6.4	Document complete necropsy results on source animals (50-year record retention).
3.7	Link xenotransplantation product recipients to individual source animal records and archived biologic specimens.
4.2.3.2	Record base-line sera of xenotransplantation health care workers and specific nosocomial exposure.
4.2.3.3 and 4.3.2	Keep a log of health care workers' significant nosocomial exposure(s).
4.3.1	Document each xenotransplant procedure.
5.2	Document location and nature of archived PHS specimens in health care records of xenotransplantation product recipient and source animal.

TABLE 3—DISCLOSURE RECOMMENDATIONS

PHS guideline section	Description
3.2.7.2	Notify sponsor or FDA of new archive site when the source animal facility or sponsor ceases operations.
3.4	Standard operating procedures (SOPs) of source animal facility should be available to review bodies.
3.5.1	Include increased infectious risk in informed consent if source animal quarantine period of 3 weeks is shortened.
3.5.4	Sponsor to make linked records described in section 3.2.7 available for review.
3.5.5	Source animal facility to notify clinical center when infectious agent is identified in source animal or herd after xenotransplantation product procurement.

FDA estimates the burden for this collection of information as follows:

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN [1]

PHS Guideline section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
3.2.7.2 [2]	1	1	1	0.50 (30 minutes)	0.50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] FDA is using one animal facility or sponsor for estimation purposes.

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

PHS guideline section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
3.2.7 [2]	1	1	1	16	16
4.3 [3]	2	1	2	0.75 (45 minutes)	1.50
3.4.2 [4]	2	16	32	0.25 (15 minutes)	8
3.4.3.2 [5]	2	4	8	0.25 (15 minutes)	2
3.5.1 [6]	2	0.50	1	0.50 (30 minutes)	0.50
3.5.2 [6]	2	0.50	1	0.25 (15 minutes)	0.25
3.5.4	2	1	2	0.17 (10 minutes)	0.34
3.6.4 [7]	2	4	8	0.25 (15 minutes)	2
3.7 [7]	4	2	8.0	0.08 (5 minutes)	0.64
4.2.3.2 [8]	2	25	50	0.17 (10 minutes)	8.50
4.2.3.2 [6]	2	0.50	1	0.17 (10 minutes)	0.17
4.2.3.3 and 4.3.2 [6]	2	0.50	1	0.17 (10 minutes)	0.17
4.3.1	2	1	2	0.25 (15 minutes)	0.50
5.2 [9]	2	6	12	0.08 (5 minutes)	0.96
Total					41.53

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] A one-time burden for new respondents to set up a recordkeeping system linking all relevant records. FDA is using one new sponsor for estimation purposes.
[3] FDA estimates there is minimal recordkeeping burden associated with maintaining the record system.
[4] Monitoring for sentinel animals (subset representative of herd) plus all source animals. There are approximately 6 sentinel animals per herd × 1 herd per facility × 4 facilities = 24 sentinel animals. There are approximately 8 source animals per year (see footnote 7 of this table); 24 + 8 = 32 monitoring records to document.
[5] Necropsy for animal deaths of unknown cause estimated to be approximately 2 per herd per year × 1 herd per facility × 4 facilities = 8.
[6] Has not occurred in the past 3 years and is expected to continue to be a rare occurrence.
[7] On average two source animals are used for preparing xenotransplantation product material for one recipient. The average number of source animals is 2 source animals per recipient × 4 recipients annually = 8 source animals per year. (See footnote 5 of table 6 of this document.)
[8] FDA estimates there are approximately 2 clinical centers doing xenotransplantation procedures × approximately 25 health care workers involved per center = 50 health care workers.
[9] Eight source animal records + 4 recipient records = 12 total records.

TABLE 6—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

PHS Guideline section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
3.2.7.2 [2]	1	1	1	0.50 (30 minutes)	0.50
3.4 [3]	4	0.50	2	0.08 (5 minutes)	0.16
3.5.1 [4]	4	0.25	1	0.25 (15 minutes)	0.25
3.5.4 [5]	4	1	4	0.50 (30 minutes)	2
3.5.5 [4]	4	0.25	1	0.25 (15 minutes)	0.25
Total					3.16

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] FDA is using one animal facility or sponsor for estimation purposes.
[3] FDA's records indicate that an average of two INDs are expected to be submitted per year.
[4] To our knowledge, has not occurred in the past 3 years and is expected to continue to be a rare occurrence.
[5] Based on an estimate of 12 patients treated over a 3-year period, the average number of xenotransplantation product recipients per year is estimated to be 4.

Because of the potential risk for cross-species transmission of pathogenic persistent virus, the guideline recommends that health records be retained for 50 years. Since these records are medical records, the retention of such records for up to 50 years is not information subject to the PRA (5 CFR 1320.3(h)(5)). Also, because of the limited number of clinical studies with small patient populations, the number of records is expected to be insignificant at this time.

Information collections in this guideline not included in tables 1 through 6 can be found under existing regulations and approved under the OMB control numbers as follows: (1) ''Current Good Manufacturing Practice for Finished Pharmaceuticals,'' 21 CFR 211.1 through 211.208, approved under OMB control number 0910–0139; (2) ''Investigational New Drug Application,'' 21 CFR 312.1 through

312.160, approved under OMB control number 0910–0014; and; (3) information included in a biologics license application, 21 CFR 601.2, approved under OMB control number 0910–0338. (Although it is possible that a xenotransplantation product may not be regulated as a biological product (e.g., it may be regulated as a medical device), FDA believes, based on its knowledge and experience with xenotransplantation, that any xenotransplantation product subject to FDA regulation within the next 3 years will most likely be regulated as a biological product.) However, FDA recognized that some of the information collections go beyond approved collections; assessments for these burdens are included in tables 1 through 6.

In table 7 of this document, FDA identifies those collection of information activities that are already encompassed by existing regulations or are consistent with voluntary standards which reflect industry's usual and customary business practice.

TABLE 7—COLLECTION OF INFORMATION REQUIRED BY CURRENT REGULATIONS AND STANDARDS

PHS guideline section	Description of collection of information activity	21 CFR section (unless otherwise stated)
2.2.1	Document off-site collaborations	312.52.
2.5	Sponsor ensures counseling patient + family + contacts	312.62(c).
3.1.1 and 3.1.6	Document well-characterized health history and lineage of source animals	312.23(a)(7)(a) and 211.84.
3.1.8	Registration with and import permit from the Centers for Disease Control and Prevention.	42 CFR 71.53.
3.2.2	Document collaboration with accredited microbiology labs	312.52.
3.2.3	Procedures to ensure the humane care of animals	9 CFR parts 1, 2, and 3 and PHS Policy.[1]
3.2.4	Procedures consistent for accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) and consistent with the National Research Council's (NRC) Guide.	AAALAC International Rules of Accreditation[2] and NRC Guide.[3]
3.2.5, 3.4, and 3.4.1	Herd health maintenance and surveillance to be documented, available, and in accordance with documented procedures; record standard veterinary care.	211.100 and 211.122.
3.2.6	Animal facility SOPs	PHS Policy.[1]
3.3.3	Validate assay methods	211.160(a).
3.6.1	Procurement and processing of xenografts using documented aseptic conditions.	211.100 and 211.122.
3.6.2	Develop, implement, and enforce SOP's for procurement and screening processes.	211.84(d) and 211.122(c).
3.6.4	Communicate to FDA animal necropsy findings pertinent to health of recipient.	312.32(c).
3.7.1	PHS specimens to be linked to health records; provide to FDA justification for types of tissues, cells, and plasma, and quantities of plasma and leukocytes collected.	312.23(a)(6).
4.1.1	Surveillance of xenotransplant recipient; sponsor ensures documentation of surveillance program life-long (justify >2 yrs.); investigator case histories (2 yrs. after investigation is discontinued).	312.23(a)(6)(iii)(f) and (g), and 312.62(b) and (c).
4.1.2	Sponsor to justify amount and type of reserve samples	211.122.
4.1.2.2	System for prompt retrieval of PHS specimens and linkage to medical records (recipient and source animal).	312.57(a).
4.1.2.3	Notify FDA of a clinical episode potentially representing a xenogeneic infection.	312.32.
4.2.2.1	Document collaborations (transfer of obligation)	312.52.
4.2.3.1	Develop educational materials (sponsor provides investigators with information needed to conduct investigation properly).	312.50.
4.3	Sponsor to keep records of receipt, shipment, and disposition of investigative drug; investigator to keep records of case histories.	312.57 and 312.62(b).

[1] The "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (*http://www.grants.nih.gov/grants/olaw/references/phspol.htm*).
[2] AAALAC International Rules of Accreditation (*http://www.aaalac.org/accreditation/rules.cfm*).
[3] The NRC's "Guide for the Care and Use of Laboratory Animals."

Dated: June 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14483 Filed 6–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0564]

Agency Information Collection Activities; Proposed Collection; Comment Request; Dietary Supplement Labeling Requirements and Recommendations Under the Dietary Supplement and Nonprescription Drug Consumer Protection Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Dietary Supplement and Nonprescription Drug Consumer Protection Act (the DSNDCPA) and the guidance document entitled ''Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.''

DATES: Submit either electronic or written comments on the collection of information by August 13, 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: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Dietary Supplement Labeling Requirements and Recommendations Under the Dietary Supplement and Nonprescription Drug Consumer Protection Act—(OMB Control Number 0910–0642)—Extension

In 2006, the DSNDCPA (Pub. L. 109–462, 120 Stat. 3469) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The DSNDCPA also amended the FD&C Act to add section 403(y) (21 U.S.C. 343(y)), which requires the label of a dietary supplement marketed in the United States to include a domestic address or domestic telephone number through which the product's manufacturer, packer, or distributor may receive a report of a serious adverse event associated with the dietary supplement.

In the **Federal Register** of September 1, 2009 (74 FR 45221), FDA announced the availability of a guidance document entitled, ''Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' The guidance document contains questions and answers related to the labeling requirements in section 403(y) of the FD&C Act and provides guidance to industry on the use of an explanatory statement before the domestic address or telephone number. The guidance document provides the Agency's interpretation of the labeling requirements for section 403(y) of the FD&C Act and the Agency's views on the information that should be included on the label. The Agency believes that the guidance will enable persons to meet the criteria for labeling that are established in section 403(y) of the FD&C Act.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity	Number of respondents	Number of disclosures per respondent [2]	Total annual disclosures	Average burden per disclosure	Total hours
Domestic address or phone number labeling requirement (21 U.S.C. 343(y))	1,460	3.8	5,560	0.5	2,780
FDA recommendation for label statement explaining purpose of domestic address or phone number	1,460	3.8	5,560	0.5	2,780

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

Activity	Number of respondents	Number of disclosures per respondent [2]	Total annual disclosures	Average burden per disclosure	Total hours
Total					5,560

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Number has been rounded to the nearest tenth.

The labeling requirements of section 403(y) of the FD&C Act became effective on December 22, 2007, although FDA exercised enforcement discretion until September 30, 2010, to enable all firms to meet the labeling requirements for dietary supplements. FDA estimates that all labels required to include the domestic address or telephone number pursuant to section 403(y) of the FD&C Act have been revised by the effective date. Thus, in succeeding years, the Agency estimates that the burden hours associated with the labeling requirements of section 403(y) of the FD&C Act and the Agency's recommendations on the use of an explanatory statement will apply only to new product labels. Based on the A.C. Nielsen Sales Scanner Data, FDA estimated that the number of dietary supplement SKUs for which sales of the products are greater than zero is 55,600. Assuming that the flow of new products is 10 percent per year, then approximately 5,560 new dietary supplement products will come on the market each year. FDA also estimates that there are about 1,460 dietary supplement manufacturers, re-packagers, re-labelers, and holders of dietary supplements. Assuming the approximately 5,560 new products are split equally among the firms, then each firm would prepare labels for close to four new products per year (5,560 new products/1,460 firms is approximately 3.8 labels per firm). Thus, the estimated total annual disclosures are 5,560 (1,460 firms × 3.8 labels per year = 5,560).

The Agency expects that firms prepare the required labeling for their products in a manner that takes into account at one time all information required to be disclosed on their product labels. Based upon its knowledge of food and dietary supplement labeling, FDA estimates that firms would require less than 0.5 hour per product to comply with the requirement to include the domestic address or telephone number pursuant to section 403(y) of the FD&C Act. The total hour burden of this task is shown in row 1 of table 1.

FDA estimates that all firms will include an explanatory statement on the label, which lets consumers know the purpose of the domestic address or telephone number on the label of the dietary supplement product. Based upon its knowledge of food and dietary supplement labeling, FDA estimates that firms would require less than 0.5 hour per product to comply with the Agency's recommendations on the use of an explanatory statement. The total hour burden of this task is shown in row 2 of table 1.

The total reporting hour burden is 5,560 hours, which equals the burden for the required domestic address or telephone (2,780) plus the burden for the explanatory statement before the domestic address or telephone number (2,780).

Dated: June 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14487 Filed 6–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Draft and Revised Draft Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

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 comments on these draft and revised draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft and revised draft product-specific BE recommendations listed in this notice by August 13, 2012.

ADDRESSES: Submit written requests for single copies of the individual BE guidances 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 recommendations.

Submit electronic comments on the draft product-specific BE recommendations 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: K. Geoffrey Wu, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9326.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA

adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on FDA's Web site and announced periodically in the **Federal Register.** The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register.** FDA considers any comments received and either publishes final recommendations or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** of March 28, 2012 (77 FR 18827). This notice announces draft product-specific recommendations, either new or revised, that are being posted on FDA's Web site concurrently with publication of this notice.

II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

FDA is announcing new draft product-specific BE recommendations for drug products containing the following active ingredients:

A
- Aliskiren hemifumarate; amlodipine besylate
- Alvimopan
- Azilsartan medoxomil

B
- Bacitracin
- Boceprevir

C
- Cefpodoxime proxetil (multiple reference listed drugs (RLDs))
- Cefprozil (multiple RLDs)
- Cetirizine HCl
- Ciprofloxacin HCl; hydrocortisone
- Clomiphene citrate

D
- Dabigatran etexilate mesylate
- Dexamethasone; tobramycin
- Dinoprostone
- Diphenhydramine; ibuprofen

E
- Erythromycin

F
- Famotidine; ibuprofen

G
- Gabapentin enacarbil

I
- Itraconazole

K
- Ketoconazole

L
- Lacosamide

M
- Malathion
- Morphine sulfate; naltrexone HCl

P
- Podofilox

R
- Rotigotine
- Rufinamide

T
- Tapentadol HCl
- Tetrabenazine

Z
- Zolpidem tartrate

III. Drug Products for Which Revised Draft Product-Specific BE Recommendations Are Available

FDA is announcing revised draft product-specific BE recommendations for drug products containing the following active ingredients:

D
- Dexamethasone; tobramycin (multiple RLDs)

E
- Everolimus

L
- Loteprednol etabonate
- Loteprednol etabonate; tobramycin

S
- Sorafenib tosylate

For a complete history of previously published **Federal Register** notices related to product-specific BE recommendations, please go to *http://www.regulations.gov* and enter docket number FDA–2007–D–0369.

These draft and revised draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These guidances represent the Agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do 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.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on any of the specific BE recommendations posted on FDA's Web site. Identify comments with the docket number found in brackets in the heading of this document. The guidances, notices, and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. 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: June 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14477 Filed 6–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0146]

Guidance for Industry on Irritable Bowel Syndrome—Clinical Evaluation of Drugs for Treatment; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of May 31, 2012 (77 FR 32124). The document announced the availability of a guidance for industry entitled ''Irritable Bowel Syndrome—Clinical Evaluation of Drugs for Treatment.'' The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3208, Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: In FR Doc. 2012–13143, appearing on page 32124 in the **Federal Register** of Thursday, May 31, 2012, the following correction is made:

1. On page 32124, in the first column, in the headings section of the document, ''[Docket No. FDA–2012–D–0146]'' is corrected to read ''[Docket No. FDA–2010–D–0146]''.

Dated: June 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14485 Filed 6–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–M–0726, FDA–2011–M–0919, FDA–2012–M–0024, FDA–2012–M–0056, FDA–2012–M–0074, FDA–2012–M–0075, FDA–2012–M–0082, FDA–2012–M–0112, FDA–2012–M–0172, FDA–2012–M–0173, FDA–2012–M–0177, FDA–2012–M–0180, FDA–2012–M–0181, FDA–2012–M–0207, FDA–2012–M–0208, FDA–2012–M–0209, FDA–2012–M–0210, FDA–2012–M–0221, and FDA–2012–M–0250]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2012, through March 31, 2012. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2012, THROUGH MARCH 31, 2012

PMA No., Docket No.	Applicant	Trade name	Approval date
P090012, FDA–2012–M–0074	Mela Sciences, Inc	MelaFind	November 1, 2011.
H100008, FDA–2011–M–0726	TriVascular, Inc	OVATION Abdominal Stent Graft System.	November 1, 2011.
H090002, FDA–2011–M–0848	BSD Medical Corporation	BSD–2000 Hyperthermia System	November 18, 2011.
H100004, FDA–2011–M–0919	Berlin Heart, Inc	Berlin Heart EXCOR Pediatric Ventricular Assist Device.	December 16, 2011.
P110031, FDA–2012–M–0024	Roche Diagnostics Corp	Elecsys Anti-HBc IgM Immunoassay and Elecsys PreciControl Anti-HBc IgM.	January 3, 2012.
P040043.S040, FDA–2012–M–0056	W.L. Gore & Associates, Inc	Gore TAG Thoracic Endoprosthesis	January 13, 2012.
P100039, FDA–2012–M–0075	Siemens Healthcare Diagnostics Inc	ADVIA Centaur Anti-HBs2 Assay and Quality Control Material.	January 20, 2012.
P100005, FDA–2012–M–0082	Vucomp, Inc	M–Vu Algorithm Engine	January 23, 2012.
P110016, FDA–2012–M–0112	St. Jude Medical, Inc. (parent company for Irvine Biomedical, Inc.).	Therapy Cool Path Duo/Safire BLU Duo Ablation Catheter and IBI 1500T9–CP V1.6 Cardiac Ablation Generator.	January 25, 2012.
P080012, FDA–2012–M–0180	Flowonix Medical, Inc. (approved under Medasys, Inc.).	Prometra Programmable Infusion Pump System.	February 7, 2012.
P100007, FDA–2012–M–0172	Almen Laboratories, Inc	Breast Companion Software System	February 10, 2012.
P100033, FDA–2012–M–0173	Gen-Probe Inc	PROGENSA PCA3 Assay	February 13, 2012.
P110013, FDA–2012–M–0177	Medtronic Vascular	Resolute MicroTrac/Resolute Integrity Zotarolimus-Eluting Coronary Stent System.	February 17, 2012.
P110028, FDA–2012–M–0181	Abbott Vascular Inc	Absolute Pro Vascular Self-Expanding Stent System.	February 22, 2012.
P100025, FDA–2012–M–0207	Otsuka America Pharmaceutical, Inc	BreathTek UBT *H. pylori* Kit and Pediatric Urea Hydrolysis Rate Calculation Application (PUHR–CA), Version 1.0.	February 22, 2012.
P100023.S015, FDA–2012–M–0208	Boston Scientific Corp	ION Paclitaxel-Eluting Coronary Stent System (Monorail and Over-The-Wire Delivery Systems).	February 22, 2012.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2012, THROUGH MARCH 31, 2012—Continued

PMA No., Docket No.	Applicant	Trade name	Approval date
P060008.S046, FDA–2012–M–0210	Boston Scientific Corp	TAXUS Liberté Paclitaxel-Eluting Coronary Stent System (Monorail and Over-The-Wire Delivery Systems).	February 22, 2012.
P030025.S086, FDA–2012–M–0209	Boston Scientific Corp	TAXUS Express2 Paclitaxel-Eluting Coronary Stent System (Monorail and Over-The-Wire Delivery Systems).	February 22, 2012.
P110023, FDA–2012–M–0221	ev3, Inc	Everflex Self-Expanding Peripheral Stent System (Everflex).	March 7, 2012.
P070004, FDA–2012–M–0250	Sientra, Inc	SIENTRA Silicone Gel Breast Implants.	March 9, 2012.

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm* and *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/HDEApprovals/ucm161827.htm.*

Dated: June 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14486 Filed 6–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Update to Electronic Common Technical Document Module 1

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following meeting: Update to Electronic Common Technical Document Module 1. The topic to be discussed is final documentation of the Electronic Common Technical Document (eCTD) Module 1, which is used for electronic submission of administrative and prescribing information by industry. The purpose of the meeting is to provide clarification and answer questions from industry and software vendors regarding the changes being made to this module. Registration is required in advance and participation will be limited.

DATES: *Date and Time:* The meeting will be held on Tuesday, September 18, 2012, from 8 a.m. to 11:30 a.m.

LOCATION: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, Great Room 1503, Silver Spring, MD 20993. The following link contains public meeting attendee information as well as frequently asked questions and answers regarding public meetings at White Oak: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

CONTACT: Julie Quinonez, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1135, Silver Spring, MD 20993, 301–796–0282, FAX: 301–796–9876, email: *Julie.Quinonez@fda.hhs.gov.*

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to Julie Quinonez (see *Contact*). Registrations will be accepted in the order that they are received with a limit of 350.

SUPPLEMENTARY INFORMATION: The eCTD is an International Conference on Harmonization (ICH) standard based on specifications developed by ICH and its member parties. The Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) have been receiving submissions in the eCTD format since 2003, and the eCTD has been the standard for electronic submissions to CDER and CBER since January 1, 2008. In fact, the majority of new electronic submissions are now received in eCTD format. Since adoption of the eCTD standard, it has become necessary to update the administrative portion of the eCTD Module 1 to reflect regulatory changes; to provide clarification of business rules for submission, processing, and review; to refine the characterization of promotional labeling and advertising material; and to facilitate automated processing of submissions. In the process of considering these changes, FDA has previously made available for comment versions of documents that support making regulatory submissions in electronic format using the (eCTD) specifications. These draft documents represented FDA's major updates to Module 1 of the eCTD based on previous comments. FDA will make available revised versions of these documents in preparation for this meeting. These documents will be posted at: *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm253101.htm.*

If you need special accommodations due to a disability, please contact Julie Quinonez (see *Contact*) at least 7 days in advance.

Dated: June 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14469 Filed 6–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0517]

Notice of Withdrawal of Certain Unapproved Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing its intention to deem to be withdrawn any abbreviated new drug applications (ANDAs) that have been determined to be incomplete and as to which the ANDA applicant has not communicated with FDA since July 8, 1991. Each of these applications will be

deemed to have been withdrawn voluntarily by the applicant unless the applicant informs the Agency in writing that it intends to actively pursue approval of the application(s) (see **DATES**).

DATES: The applicant of an ANDA covered by this notice that intends to actively pursue approval of its application must submit a written notification to FDA by August 13, 2012.

ADDRESSES: Applicants should submit written notifications to the ANDA archival file to the Office of Generic Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, Document Control Room, MPN7, 7620 Standish Pl., Rockville, MD 20855. A copy of written notifications should also be submitted to Thomas Hinchliffe, Center for Drug Evaluation and Research (HFD–617), Food and Drug Administration, 7500 Standish Pl., rm. N–142, MPN2, Rockville, MD 20855, FAX: 240–276–8440, email: *inactiveandas@fda.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Hinchliffe, Center for Drug Evaluation and Research (HFD–617), Food and Drug Administration, 7500 Standish Pl., rm. N–142, MPN2, Rockville, MD 20855, 240–276–8433, FAX: 240–276–9310, *email: inactiveandas@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA has identified 364 ANDAs for which FDA has not received any communication from the ANDA applicant since July 8, 1991, or earlier (Inactive ANDAs). (See section IV of this document for the list of Inactive ANDAs). For purposes of this document, the term ''applicant'' includes any successor in interest. FDA's regulations provide that the Agency will consider withdrawn any application for which the applicant has not contacted the Agency about its intention regarding such application within 1 year after issuance of a complete response letter to the applicant (see 21 CFR 314.110(c)). The Inactive ANDAs, however, predate, and consequently are not subject to this regulation. Therefore, the Inactive ANDAs have not been deemed withdrawn although there has been no communication from the applicants since July 8, 1991, or earlier.

II. Withdrawal of Inactive ANDAs

At this time, the Agency is announcing its intention to deem all Inactive ANDAs to have been voluntarily withdrawn by the respective applicants as of August 13, 2012, unless the applicant informs the Agency in writing by the date set forth under **DATES** in this document of its intent to actively pursue approval of the application. Therefore, in the absence of a written notice with respect to an Inactive ANDA by the date specified in this notice, the ANDA will be considered to have been withdrawn by the applicant. No further notice of the withdrawal of Inactive ANDAs will be provided. Withdrawal of an unapproved application is without prejudice to resubmission of that application (21 CFR 314.65). Because of the length of time that has passed since these applications were submitted, FDA strongly recommends that any applicant intending to actively pursue approval review the application carefully to determine whether it satisfies current ANDA requirements (21 CFR part 314).

III. Action by the Applicant

If the applicant wishes to actively pursue approval of an Inactive ANDA and does not wish the application to be deemed by FDA to have been voluntarily withdrawn, the applicant must inform the Agency in writing within the time specified in this document. Written notice should be provided to Thomas Hinchliffe and the Office of Generic Drugs (see **ADDRESSES**).

FDA also asks any applicant that agrees to consider its application to be voluntarily withdrawn to send a written notice to Thomas Hinchliffe and the Office of Generic Drugs (see **ADDRESSES**) to confirm that agreement. However, applicants of Inactive ANDAs covered by this notice who wish their applications to be withdrawn are not required to provide written notice to FDA.

IV. Details About Inactive ANDAs

Information about the Inactive ANDAs is listed in this section of the document. To protect applicant confidentiality, this notice lists the application number and drug name for each Inactive ANDA and separately lists the name of the applicant as shown in the information on file with FDA, without linking identified applicants with specific applications or drug names. In some cases, the identified applicants may no longer exist as ongoing business entities. If an identified applicant is unsure which application(s) belong to it (if any), it may contact Thomas Hinchliffe (see **FOR FURTHER INFORMATION CONTACT**).

Alphabetical List of Abbreviated New Drug Application Applicants

1st Texas Pharmaceuticals, Inc., Subsidiary of Scherer Laboratories Inc.
Abraxis Pharmaceutical Products
AH Robins, Co.
Alpharma US Pharmaceuticals Division
Ambix Laboratories Division of Organics Corp America
Ankerfarm SpA
Ankerman SpA
Antibioticos SA
Arcum Pharmaceutical Corp.
Banner Pharmacaps, Inc.
Barr Laboratories, Inc.
Baxter Healthcare Corp.
Beecham Laboratories Division of Beecham Inc.
Beecham SA
Bel Mar Laboratories, Inc.
Biocraft Laboratories, Inc.
Biometric Testing, Inc.
Boots Laboratories, Inc., Division of Boots Pharmaceuticals Inc.
Bristol Laboratories, Inc., Division of Bristol Myers Co.
Bristol Myers Co. International Division
Bristol Myers Industrial Division
Bristol Myers Squibb
Camall Co., Inc.
Carlo Erba SpA
Century Pharmaceuticals, Inc.
Chemibiotic Ireland, Ltd.
Chromalloy Laboratories Division of Chromalloy Pharmaceuticals, Inc.
Clifford Chemical Corp.
CM Bundy Co.
Comatic Laboratories, Inc.
Credo Co.
Delco Chemical Co., Inc.
Dell Laboratories, Inc.
Dermasave Laboratories, Inc.
Dista Products Co. Division of Eli Lilly & Co.
DM Pharmaceuticals, Inc.
Dorasol Laboratories
Dunhall Pharmaceuticals, Inc.
ER Squibb and Sons Pharmaceutical Laboratories
Ersana, Inc., Subsidiary of ER Squibb and Sons
Everylife
Fallek Products Co., Inc.
Farmila Farmaceutica
Faton Pharmaceuticals, Inc.
Fermion Oy
Ferndale Laboratories, Inc.
Fisons Corp.
Forest Laboratories, Inc.
Forest Pharmaceuticals, Inc.
Forrest Laboratories, Inc.
G & W Co.
Glenwood Laboratories, Inc.
Global Pharmaceutical Corp.
Gruppo Lepetit SpA Subsidiary of Merrell Dow Pharmaceuticals, Inc.
Heather Drug Co., Inc.
Herald Pharmacal, Inc.
Hoffmann La Roche, Inc.
ICI Ltd.
Ingram Pharmaceutical Co.
Inwood Laboratories, Inc., Subsidiary of Forest Laboratories, Inc.

ISF
Kasar Laboratories Division of Kasar Co.
Kasco EFCO Laboratories, Inc., Division of Byk Gulden, Inc.
KV Pharmaceutical, Co.
Lannett Co, Inc.
Lederle Laboratories Division of American Cyanamid Co.
Leiner Health Products, Inc.
Lemmon Co. Subsidiary of Tag Pharmaceutical, Inc.
Life Laboratories, Inc.
Linden Laboratories, Inc., Subsidiary of Chromalloy American Corp.
Luitpold Pharmaceuticals, Inc.
Marshall Pharmacal Corp.
MD Pharmaceutical, Inc.
Medev, Inc.
Mission Pharmacal Co.
M M Mast & Co.
Mutual Pharmaceutical Company, Inc.
Newtron Pharmaceuticals, Inc.
Novartis Pharmaceuticals Corp.
Nylos Trading Co., Inc.
Panray Corp Subsidiary of Ormont Drug and Chemical Co., Inc.
Parke Davis Division of Warner Lambert Co.
Pasadena Research Laboratories, Inc.
Penick Corp.
Person and Covey, Inc.
Pfizer Co.
Pfizer, Inc.
Pharmaceutical Associates, Inc.
Pharmacia and Upjohn Co.
Pharmadyne Laboratories, Inc.
Pharmavite Pharmaceuticals
Phoenix Laboratories, Inc.
Polfa Pharmaceutical Works
Premo Pharmaceutical Laboratories, Inc.
Purepac Pharmaceutical Co.
Rachelle Laboratories Italia SpA
Reed and Carnrick Division of Block Drug Co., Inc.
Rexar Pharmacal
Richlyn Laboratories, Inc.
Robinson Laboratories, Inc.
Roussel Corp.
Rovers Pharmacal, Inc.
RP Scherer Corp.
Sandoz, Inc.
Scherer Laboratories, Inc.
Schering Corp. Subsidiary of Schering Plough Corp.
Smith Kline and French Laboratory Co. Subsidiary of SmithKline Beckman
Societa Italiana Prodotti Schering
Sperti Drug Products, Inc.
Stayner Corp.
Steri Med, Inc. Subsidiary of Ketchum Laboratories, Inc.
Tablicaps, Inc.
Tera Pharmaceuticals, Inc.
Teva Pharmaceuticals USA, Inc.
Titan Pharmacal, Co.
Travenol Laboratories, Inc.
Valeant Pharmaceuticals International
Watson Laboratories, Inc.
Western Research Laboratories, Inc.
West-Ward Pharmaceutical Corp.
Wharton Laboratories, Inc., Division of US Ethicals
Whiteworth Towne Paulsen, Inc.
Wyeth Ayerst Laboratories
Zenith Laboratories, Inc.

TABLE 1—ABBREVIATED NEW DRUG APPLICATION (ANDA) NUMBERS WITH PRODUCT NAMES

ANDA No.	Product name
60881	Tetracycline hydrochloride.
60913	Dicloxacillin sodium.
60919	Neomycin sulfate; bacitracin.
60965	Neomycin sulfate; polymyxin b sulfates; bacitracin.
61046	Penicillin g sodium.
61091	Phenethicillin potassium.
61093	Penicillin g potassium.
61097	Troleandomycin.
61099	Doxycycline hyclate.
61102	Oxytetracycline calcium.
61114	Chlortetracycline hydrochloride.
61116	Ampicillin trihydrate.
61117	Phenethicillin potassium.
61118	Cloxacillin sodium.
61119	Dicloxacillin sodium.
61120	Tetracycline.
61121	Tetracycline phosphate.
61142	Penicillin g potassium.
61144	Amphotericin b.
61145	Penicillin g potassium.
61152	Tetracycline hydrochloride.
61170	Bacitracin.
61171	Bacitracin zinc.
61191	Tetracycline hydrochloride.
61192	Tetracycline hydrochloride.
61194	Paromomycin sulfate.
61197	Tetracycline hydrochloride.
61382	Ampicillin trihydrate.
61420	Tetracycline.
61422	Oxytetracycline hydrochloride.
61423	Oxytetracycline.
61428	Chloramphenicol palmitate.
61429	Tetracycline.
61430	Chloramphenicol.
61431	Chloramphenicol.
61432	Chloramphenicol sodium succinate.
61433	Chloramphenicol sodium succinate.
61440	Tetracycline hydrochloride.
61442	Erythromycin estolate.
61556	Tetracycline.
61564	Methacycline hydrochloride.
61565	Paromomycin sulfate.
61570	Hetacillin.

TABLE 1—ABBREVIATED NEW DRUG APPLICATION (ANDA) NUMBERS WITH PRODUCT NAMES—Continued

ANDA No.	Product name
61581	Tetracycline hydrochloride.
61582	Tetracycline.
61597	Ampicillin trihydrate.
61604	Ampicillin sodium.
61608	Tetracycline hydrochloride.
61629	Penicillin g benzathine.
61630	Streptomycin sulfate.
61631	Dihydrostreptomycin sulfate.
61749	Dicloxacillin sodium.
61750	Ampicillin trihydrate.
61751	Doxycycline hyclate.
61754	Griseofulvin.
61775	Tetracycline.
61777	Mitomycin.
61778	Erythromycin.
61779	Erythromycin stearate.
61784	Tetracycline hydrochloride.
61795	Oxacillin sodium.
61796	Oxacillin sodium.
61797	Methicillin sodium.
61804	Carbenicillin indanyl sodium.
61824	Tetracycline.
61825	Tetracycline.
61843	Penicillin v potassium.
61844	Ampicillin.
61845	Ampicillin trihydrate.
61852	Tetracycline phosphate complex.
61993	Cloxacillin sodium.
62016	Amoxicillin trihydrate.
62019	Tetracycline hydrochloride.
62020	Tetracycline phosphate.
62344	Cloxacillin sodium.
80004	Propylthiouracil.
80088	Sulfadiazine.
80200	Succinylcholine chloride.
80313	Methyltestosterone.
80350	Prednisone.
80351	Prednisolone.
80359	Prednisone.
80452	Hydrocortisone.
80456	Hydrocortisone.
80501	Diphenhydramine hydrochloride.
80559	Cyanocobalamin.
80560	Pyridoxine hydrochloride.
80561	Thiamine hydrochloride.
80616	Cyanocobalamin.
80676	Testosterone propionate.
80840	Propylthiouracil.
80943	Vitamin a palmitate.
80947	Aminosalicylate sodium.
80956	Vitamin d.
80985	Vitamin a.
83002	Diethylstilbestrol.
83003	Diethylstilbestrol.
83004	Diethylstilbestrol.
83005	Diethylstilbestrol.
83006	Diethylstilbestrol.
83007	Diethylstilbestrol.
83114	Vitamin a palmitate.
83133	Folic acid.
83134	Vitamin a.
83197	Propoxyphene hydrochloride.
83203	Niacin.
83208	Cortisone acetate.
83233	Hydrocortisone acetate.
83243	Chlorpheniramine maleate.
83258	Butabarbital sodium.
83259	Pentobarbital sodium.
83268	Butabarbital sodium.
83269	Butabarbital sodium.
83293	Propoxyphene hydrochloride.
83311	Vitamin a palmitate.

TABLE 1—ABBREVIATED NEW DRUG APPLICATION (ANDA) NUMBERS WITH PRODUCT NAMES—Continued

ANDA No.	Product name
83321	Vitamin a palmitate.
83335	Prednisolone acetate.
83343	Meprobamate.
83374	Estrogens, esterified.
83394	Chlorpheniramine maleate.
83421	Probenecid.
83439	Quinidine sulfate.
83444	Rauwolfia serpentina.
83454	Lidocaine.
83494	Meprobamate.
83503	Negatol.
83537	Secobarbital sodium.
83553	Procainamide hydrochloride.
83562	Prednisolone acetate.
83578	Butabarbital sodium.
83674	Diphenhydramine hydrochloride.
83675	Prednisolone.
83676	Prednisone.
83756	Piperazine citrate.
83772	Pyridoxine hydrochloride.
83864	Secobarbital sodium.
83865	Promethazine hydrochloride.
83867	Rauwolfia serpentina.
83880	Propoxyphene hydrochloride.
83912	Vitamin a palmitate.
83926	Ergotamine tartrate; caffeine.
83929	Cortisone acetate.
83940	Diethylstilbestrol.
83958	Propylthiouracil.
83960	Prednisolone.
83974	Trihexyphenidyl hydrochloride.
84008	Chlorpheniramine maleate.
84009	Prednisone.
84016	Dextroamphetamine hydrochloride.
84027	Promethazine hydrochloride.
84073	Benzthiazide.
84080	Promethazine hydrochloride.
84097	Dicyclomine hydrochloride.
84237	Niacin.
84257	Dicyclomine hydrochloride.
84262	Phenylbutazone.
84263	Dimenhydrinate.
84293	Dicyclomine hydrochloride.
84298	Hydrochlorothiazide.
84311	Phenylbutazone.
84365	Dexamethasone sodium phosphate.
84382	Meclizine hydrochloride.
84410	Trichlormethiazide.
84428	Propantheline bromide.
84459	Propylthiouracil.
84485	Phentermine hydrochloride.
84552	Aminophylline.
84559	Theophylline.
84632	Aminophylline.
84670	Chlordiazepoxide.
84671	Chlordiazepoxide.
84672	Chlordiazepoxide.
84695	Phentermine hydrochloride.
84736	Rescinnamine.
84846	Methocarbamol.
84856	Cortisone acetate.
84871	Prednisolone acetate.
84906	Reserpine; hydrochlorothiazide.
84979	Hydrocortisone.
85033	Methocarbamol.
85115	Prednisone.
85170	Prednisolone.
85174	Cortisone acetate.
85185	Diethylpropion hydrochloride.
85207	Reserpine.
85242	Chlordiazepoxide hydrochloride.
85258	Chlordiazepoxide.

TABLE 1—ABBREVIATED NEW DRUG APPLICATION (ANDA) NUMBERS WITH PRODUCT NAMES—Continued

ANDA No.	Product name
85259	Chlordiazepoxide.
85270	Methyltestosterone.
85280	Chlordiazepoxide hydrochloride.
85281	Chlordiazepoxide hydrochloride.
85308	Phenytoin sodium.
85325	Methylprednisolone.
85360	Chlordiazepoxide hydrochloride.
85405	Perphenazine.
85412	Tripelennamine hydrochloride.
85419	Quinidine sulfate.
85439	Butalbital; aspirin; phenacetin; caffeine.
85442	Chlordiazepoxide hydrochloride.
85489	Probenecid.
85516	Theophylline.
85576	Estradiol.
85590	Oxyphenbutazone.
85592	Brompheniramine maleate.
85613	Phendimetrazine tartrate.
85647	Amitriptyline hydrochloride.
85649	Amitriptyline hydrochloride.
85678	Amitriptyline hydrochloride.
85680	Amitriptyline hydrochloride.
85696	Isoniazid; pyridoxine hydrochloride.
85707	Isopropamide iodide.
85716	Hydralazine hydrochloride.
85717	Hydralazine hydrochloride.
85725	Phendimetrazine tartrate.
85730	Cyanocobalamin.
85731	Phentermine hydrochloride.
85760	Chlorothiazide.
85774	Methyltestosterone.
85776	Methyltestosterone.
85806	Reserpine; hydralazine hydrochloride; hydrochlorotiazide.
85807	Meclizine hydrochloride.
85808	Meclizine hydrochloride.
85812	Propoxyphene hydrochloride.
85901	Imipramine hydrochloride.
85918	Ergotamine tartrate; caffeine.
85942	Amitriptyline hydrochloride.
85943	Triamcinolone acetonide.
85946	Amitriptyline hydrochloride.
85947	Amitriptyline hydrochloride.
85948	Amitriptyline hydrochloride.
85949	Amitriptyline hydrochloride.
85950	Amitriptyline hydrochloride.
85954	Methyltestosterone.
85955	Methyltestosterone.
85972	Acetaminophen; salicylamide; caffeine; codeine phosphate.
86068	Triamcinolone acetonide.
86111	Amodiaquine hydrochloride.
86115	Bethanechol chloride.
86125	Quinidine sulfate.
86128	Chlorpromazine.
86131	Acetazolamide.
86207	Hydrocortisone acetate.
86211	Phendimetrazine tartrate.
86253	Trihexyphenidyl hydrochloride.
86254	Chlorothiazide.
86279	Hydrochlorothiazide.
86286	Butalbital; aspirin; phenacetin; caffeine.
86288	Amitriptyline hydrochloride.
86316	Orphenadrine citrate.
86317	Diphenoxylate hydrochloride; atropine sulfate.
86318	Hydrochlorothiazide.
86319	Hydrochlorothiazide.
86320	Methocarbamol.
86321	Methocarbamol.
86322	Prednisone.
86324	Prednisone.
86326	Butalbital; aspirin; phenacetin; caffeine.
86327	Trifluoperazine hydrochloride.
86334	Hydrocortisone.

TABLE 1—ABBREVIATED NEW DRUG APPLICATION (ANDA) NUMBERS WITH PRODUCT NAMES—Continued

ANDA No.	Product name
86343	Thioridazine hydrochloride.
86345	Thioridazine hydrochloride.
86354	Thioridazine hydrochloride.
86377	Hydrochlorothiazide.
86400	Hydrocortisone acetate.
86401	Hydrocortisone acetate.
86404	Phendimetrazine tartrate.
86407	Phendimetrazine tartrate.
86411	Dimenhydrinate.
86412	Dicyclomine hydrochloride.
86430	Phendimetrazine;adipic acid.
86431	Phendimetrazine.
86436	Homatropine methylbromide.
86437	Homatropine hydrobromide.
86438	Trifluoperazine hydrochloride.
86443	Trifluoperazine hydrochloride.
86447	Trifluoperazine hydrochloride.
86476	Diazepam.
86510	Phentermine hydrochloride.
86515	Phentermine hydrochloride.
86529	Dicyclomine hydrochloride; phenobarbital.
86555	Phendimetrazine tartrate.
86563	Dicyclomine hydrochloride; phenobarbital.
86564	Phenobarbital; atropine sulfate; hyoscyamine sulfate; hyscyamine hydrobromide.
86565	Phenobarbital; hyoscyamine sulfate; atropine sulfate; scopolamine hydrobromide.
86566	Dicyclomine hydrochloride; phenobarbital.
86581	Chlordiazepoxide hydrochloride; clidinium bromide.
86591	Phenobarbital; hyoscyamine sulfate; atropine sulfate; scopolamine hydrobromide.
86625	Dicyclomine hydrochloride.
86627	Meprobamate; tridihexethyl chloride.
86629	Meprobamate; tridihexethyl chloride.
86630	Piperidolate hydrochloride; phenobarbital.
86634	Chlordiazepoxide hydrochloride; clidinium bromide.
86644	Piperidolate hydrochloride.
86647	Chlordiazepoxide hydrochloride; clidinium bromide.
86650	Anisotropine methylbromide; phenobarbital.
86654	Meprobamate; tridihexethyl chloride.
86655	Atropine sulfate; hyoscyamine sulfate; phenobarbital; scopolamine hydrobromide.
86657	Phenobarbital; atropine sulfate; hyoscyamine sulfate; scopolamine hydrobromide.
86658	Meprobamate; tridihexethyl chloride.
86665	Phenobarbital; atropine sulfate; hyoscyamine sulfate; scopolamine hydrobromide.
86667	Chlordiazepoxide hydrochloride; clidinium bromide.
86668	Phenobarbital; belladonna alkaloid malates, l-.
86669	Dicyclomine hydrochloride.
86670	Atropine sulfate; hyoscyamine sulfate; phenobarbital; scopolamine hydrobromide.
86671	Phenobarbital; hyoscyamine sulfate.
86674	Meprobamate; tridihexethyl chloride.
86675	Butabarbital sodium; simethicone; atropine sulfate; hyoscyamine sulfate; scopoamine.
86685	Chlordiazepoxide hydrochloride; clidinium bromide.
86687	Phenobarbital; belladonna extract.
86692	Amobarbital; belladonna.
86694	Oxyphencyclimine hydrochloride; phenobarbital.
86696	Phenobarbital; hyoscyamine sulfate; atropine sulfate; scopolamine hydrobromide.
86701	Atropine sulfate; phenobarbital.
86703	Phenobarbital; hyoscyamine sulfate; atropine sulfate; scopolamine hydrobromide.
86704	Phenobarbital; hyoscyamine sulfate; atropine sulfate; scopolamine hydrobromide.
86706	Meprobamate; tridihexethyl chloride.
86708	Cyproheptadine hydrochloride.
86709	Meprobamate; tridihexethyl chloride.
86721	Procainamide hydrochloride.
86770	Nitroglycerin.
86773	Triamcinolone diacetate.
86774	Erythrityl tetranitrate.
86775	Isosorbide dinitrate.
86776	Pentaerythritol tetranitrate.
86777	Nitroglycerin.
86779	Nitroglycerin.
86782	Nitroglycerin.
86783	Isosorbide dinitrate.
86784	Pentaerythritol tetranitrate.
86785	Pentaerythritol tetranitrate.
86786	Isosorbide dinitrate.

TABLE 1—ABBREVIATED NEW DRUG APPLICATION (ANDA) NUMBERS WITH PRODUCT NAMES—Continued

ANDA No.	Product name
86789	Estradiol valerate.
86794	Dipyridamole.
86799	Atropine sulfate; phenobarbital.
86838	Pentaerythritol tetranitrate.
86839	Isosorbide dinitrate.
86868	Chlorpromazine hydrochloride.
86882	Hydrocortisone.
86897	Phenobarbital; hyoscyamine hydrobromide; atropine sulfate; scopolamine hydrobromide.
86921	Chlordiazepoxide hydrochloride; clidinum bromide.
86970	Aminophylline.
86976	Doxylamine succinate; pyridoxine hydrochloride.
86991	Probenecid.
86999	Butalbital; aspirin; phenacetin; caffeine.
87000	Hydralazine hydrochloride.
87041	Phendimetrazine tartrate.
87064	Piperazine citrate.
87069	Sulfisoxazole acetyl.
87096	Phentermine hydrochloride.
87097	Phentermine hydrochloride.
87098	Phentermine hydrochloride.
87099	Phentermine hydrochloride.
87106	Ergotamine tartrate; caffeine.
87112	Spironolactone.
87116	Reserpine; chlorothiazide.
87123	Benzthiazide.
87124	Benzthiazide.
87125	Diphenhydramine hydrochloride.
87134	Promethazine hydrochloride.
87166	Phentolamine hydrochloride.
87172	Theophylline.
87198	Belladonna alkaloid malates, l-; phenobarbital.
87379	Quinidine gluconate.
87443	Homatropine methylbromide; phenobarbital.

Dated: June 8, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–14476 Filed 6–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Secretary's Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of Request for Nominations of Non-Voting Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (SACHDNC) members to serve as representatives of organizations or interest groups.

SUMMARY: HRSA is requesting applications to fill three (3) vacancies for non-voting organizational representatives on the SACHDNC.

Authority: Section 1111 of the Public Health Service (PHS) Act, 42 U.S.C. 300b–10, as amended. The SACHDNC also is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App. 2), and 41 CFR part 102–3, which sets forth standards for the formation and use of advisory committees.

DATES: The agency must receive written applications from nominees (including a letter of support from an appropriate official of the organization with which affiliated) or the nominee's organization, on or before August 1, 2012.

ADDRESSES: Submit written applications to Sara Copeland, M.D., Designated Federal Official (DFO), SACHDNC; and, Chief, Genetic Services Branch, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Applications may also be sent to *Screening@hrsa.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Debi Sarkar, M.P.H., Genetic Services Branch, Maternal and Child Health Bureau, HRSA, at *dsarkar@hrsa.gov* or (301) 443–1080. A copy of the SACHDNC Charter and list of the current membership may be obtained by contacting Ms. Sarkar or by accessing the SACHDNC Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/*.

SUPPLEMENTARY INFORMATION: The SACHDNC is directed to review and report regularly on newborn and childhood screening practices for heritable disorders and recommend improvements in the national newborn and childhood heritable screening programs.

The SACHDNC provides the Secretary with recommendations, advice, and technical information regarding the application of technologies, policies, guidelines, and standards for: (a) Effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders; and (b) enhancing the ability of the State and local health agencies to provide for newborn and child screening, counseling, and health care services for newborns and children having, or at risk for, heritable disorders.

Specifically, HRSA is requesting applications for three (3) non-voting organizational representatives to serve on the SACHDNC: Two (2) at large representatives of a public health constituency, medical professional

society or national advocacy organization and one (1) representative of a public health professional organization. Non-voting representatives provide a perspective unique to the SACHDNC based on their organizations' or interest groups' subject area of expertise, and each nominee selection is based on the organization's/interest group's mission and relevancy to the SACHDNC's purpose (e.g., primary care, pediatrics, newborn screening, genetics and other relevant specialty expertise). Eligible organizations should represent broad constituencies affected or impacted by the work of the SACHDNC, as noted in the SACHDNC Charter.

Applicants eligible for consideration include representatives of the following organizations: (a) Medical, technical, public health, or scientific organizations with special expertise in the field of heritable disorders or (b) organizations that provide screening, counseling, testing, or specialty services for newborns and children at risk for heritable disorders. Organizations will also be chosen based on perspectives and expertise not currently represented, or with expiring terms, that serve to increase the knowledge base of the SACHDNC.

Applicants are requested to submit a written application to the DFO. Applications must contain the following:

- Letter of nomination stating the organization's:
  - Name and mission statement;
  - Outline of the perspective and expertise provided by the nominated organization and why this perspective and expertise would benefit the SACHDNC; and
  - Description of how the SACHDNC's work affects and/or impacts the nominated organization and its constituency.
- Contact information: Point of contact name, address, telephone number, and Web site of the organization;
- Portfolio of organizational projects, programs and products that are of importance to the SACHDNC's work;
- Organization's commitment to provide expert input into the decision-making process of the SACHDNC;
- Organization's detailed information concerning any possible conflicts of interest relative to both the organization and the proposed organizational representative (e.g., current or anticipated employment, consultancies, research grants, or contracts);
- Organization's commitment to support a representative to attend all SACHDNC meetings;
- Organization's commitment to ensure active contribution to and dissemination of SACHDNC activities and recommendations to its representative constituencies;
- Statement affirming that the organization: (a) Wishes to serve as a representative to the SACHDNC, and (b) has no conflict of interest that would preclude informing the SACHDNC in a fair and balanced manner;
- Organization's description clearly identifying how the organizational perspective and expertise would serve to increase the knowledge base of the SACHDNC; and
- SACHDNC's professional impact on the organization and its stakeholders.

Please submit written nominations no later than August 1, 2012. The two (2) at large organizational representatives will be invited to contribute to the SACHDNC for terms of not more than 2 years with an opportunity to re-apply to serve after the 2-year term has expired. The public health professional organization will be invited to have a representative contribute to the SACHDNC for terms of not more than 4 years with an opportunity to re-apply to serve after the 4-year term has expired. Selected organizations will have their representatives begin serving their term in January 2013.

Whenever possible, organizational representatives to the SACHDNC shall have expertise in dealing with heritable disorders and genetic diseases affecting racially, ethnically, and geographically diverse populations of newborns served by State newborn screening programs. HHS will ensure that SACHDNC members equitably reflect geographical location and gender distribution, provided that Committee effectiveness would not be impaired. Appointments shall be made without regard to age, ethnicity, gender, or sexual orientation, and cultural, religious, or socioeconomic status.

Dated: June 7, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–14499 Filed 6–13–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection; Request for Public Comment: Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which requires 60 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions (OMB No. 0917–0028). *Type of Information Collection Request:* Extension, without revision, of currently approved information collection, 0917–0028, ''Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions.'' Although there was a change on the form ''Addendum to Declaration for Federal Employment, Child care and Indian Child care Worker Positions'' (OMB No. 0917–0028), where the item number 15a was changed to 16 to reflect a change in the same item number on the ''Declaration for Federal Employment'' form (OPM OF 306; OMB No. 3206–0182), there are no program changes or adjustments in burden hours. *Form Number:* OMB No. 0917–0028. *Forms:* Addendum to Declaration for Federal Employment, Child Care and Indian Child Care Worker Positions. *Need and Use of Information Collection:* This is a request for approval of the collection of information as required by Section 408 of the Indian Child Protection and Family Violence Prevention Act, Public Law (Pub. L.) 101–630, 104 Stat. 4544, and 25 United States Code (U.S.C.) §§ 3201–3211. The IHS is required to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; and to conduct an investigation of the character of each individual who is employed, or is being considered for employment in a position having regular contact with, or control over, Indian children. 25 U.S.C. § 3207 requires regulations prescribing the

minimum standards of character to ensure that none of the individuals appointed to positions involving regular contact with, or control over, Indian children have been found guilty of, or entered a plea of nolo contendere or guilty to any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children. In addition, 42 U.S.C. § 13041 requires each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision of child care services to children under the age of 18 to assure that all existing and newly hired employees undergo a criminal history background check. The background investigation is to be initiated through the personnel program of the applicable Federal agency. This section requires employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in positions involved with the provision of child care services to children under the age of 18, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED ANNUAL BURDEN HOURS

Data collection instrument	Estimated number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
Addendum to Declaration for Federal Employment (OMB 0917–0028)	3,000	1	12/60	600
Total	3,000			600

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Tamara Clay, Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, call non-toll free (301) 443–4750, send via facsimile to (301) 443–2316, or send your email requests, comments, and return address to: *Tamara.Clay@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: June 5, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–14500 Filed 6–13–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0003]

Protected Critical Infrastructure Information (PCII) Program Survey

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; Reinstatement, with change, of a previously approved collection: 1670–0012.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Information Collection Division (IICD), will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until August 13, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/IICD, 245 Murray Lane, SW., Mailstop 0602, Arlington, VA 20598–0602. Email requests should go to Vickie Bovell, *Vickie.Bovell@dhs.gov*. Written comments should reach the contact person listed no later than August 13, 2012. Comments must be identified by ''DHS–2012–0003'' and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email:* Include the docket number in the subject line of the message.

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.

SUPPLEMENTARY INFORMATION: The Protected Critical Infrastructure Information (PCII) Program was created according to the Critical Infrastructure Information (CII) Act of 2002 for DHS to encourage voluntary information sharing by owners and operators of critical infrastructure and protected systems. The PCII Program provides standardized training for stakeholders to become PCII Authorized Users and PCII Officer/PCII Program Manager Designees. To further its mission, the PCII Program requires supporting

information from these stakeholders regarding its training programs. The information collected by this survey serves this purpose. The survey data collected is for internal PCII Program, IICD, and NPPD/IP use only.OMB is particularly interested in comments that:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Information Collection Division, Protected Critical Infrastructure Information Program.

Title: Protected Critical Infrastructure Information (PCII) Program Survey.

OMB Number: 1670–0012.

Frequency: Annually.

Affected Public: Federal, state, and local entities, and stakeholders or private sector.

Number of Respondents: 3,060 respondents (estimate).

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 408 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $15,224.00.

Dated: May 31, 2012.

Richard Driggers,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2012–14584 Filed 6–13–12; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0082]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0012, Certificate of Discharge to Merchant Mariner and 1625–0040, Application for Merchant Mariner Credential (MMC), Merchant Mariner Medical Certificate Evaluation Report, Small Vessel Sea Service Form, DOT/USCG Periodic Drug Testing Form, and Merchant Mariner Evaluation of Fitness for Entry Level Ratings, Merchant Mariner Credential, Merchant Mariner Medical Certificate, Recognition of Foreign Certificate.

Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before July 16, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0082] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST. SW., STOP 7101, WASHINGTON DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents,

including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2012–0082], and must be received by July 16, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0082], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2012–0082'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0082'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0012 and 1625–0040.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (77 FR 17081, March 23, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

1. *Title:* Certificate of Discharge to Merchant Mariner.

OMB Control Number: 1625–0012.

Type of Request: Revision of a currently approved collection.

Respondents: Shipping companies, masters or individuals in charge of a vessel.

Abstract: Title 46, United States Code, 10311 requires each master or individual in charge of a vessel, for each merchant mariner being discharged from the vessel to prepare a Certificate of Discharge to Merchant Mariners and two copies. These documents are used to establish evidence of sea service aboard U.S. flagged merchant vessels for merchant mariners to upgrade their credentials, establish proof of eligibility for union and other benefits, and in litigation where vessel service is an issue.

Forms: CG–718A.

Burden Estimate The estimated burden has decreased from 2,443 hours to 1,478 hours.

2. *Title:* Application for Merchant Mariner Credential (MMC), Merchant Mariner Medical Certificate Evaluation Report, Small Vessel Sea Service Form, DOT/USCG Periodic Drug Testing Form, Merchant Mariner Evaluation of Fitness for Entry Level Ratings, Merchant Mariner Credential, Merchant Mariner Medical Certificate, Recognition of Foreign Certificate.

OMB Control Number: 1625–0040.

Type of Request Revision of a currently approved collection

Respondents: Applicants for Merchant Mariner Credentials (MMC), whether original, renewal, duplicate, raise of grade, or a new endorsement on a previously issued MMC. Applicants for Medical Certificates to include Standards of Training, Certification and Watchkeeping for Seafarers (STCW) endorsed credentialed mariners, and first-class pilots as defined in the proposed rules, Implementation of the Amendments to the International Convention on STCW for Seafarers, 1978, and Changes to Domestic Endorsements (Docket No. USCG–2004–17914).

Abstract: The Application for Merchant Mariner Credential (MMC), Merchant Mariner Medical Certificate Evaluation Report, Small Vessel Sea Service Form, DOT/USCG Periodic Drug Testing Form, and Merchant Mariner Evaluation of Fitness for Entry Level Ratings, contains the following information: signature of applicant and supplementary material required to show that the mariner meets the mandatory requirements for the credential or medical certificate sought; proof of applicant passing all applicable vision, hearing, medical, and/or physical exams; negative chemical test for dangerous drugs; discharges or other documentary evidence of sea service indicating the name, tonnage, and propulsion power of the vessels, dates of service, capacity in which the applicant served, and on what waters.

Forms: CG–719B, CG–719K, CG–719S, CG–719P, CG–719K/E, CG–4610, CG–4610A, and CG–4610B.

Burden Estimate: The estimated burden has increased from 54,416 hours to 57,083 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: June 6, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–14540 Filed 6–13–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0173]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0048, Vessel Reporting Requirements. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before July 16, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0173] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov*.

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST. SW., STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2012–0173], and must be received by July 16, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0173], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2012–0173'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0173'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMai*n after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0048.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (77 FR 18253, March 27, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

Title: Vessel Reporting Requirements.

OMB Control Number: 1625–0048.

Type of Request: Extension of a currently approved collection.

Respondents: Businesses or other for profit organizations.

Abstract: Owners, Charterers, Managing Operators, or Agents of U.S. vessels must immediately notify the Coast Guard if they believe the vessel may be lost or in danger. The Coast Guard uses this information to investigate the situation and, when necessary, plan appropriate search and rescue operations.

Forms: None.

Burden Estimate: The estimated annual burden remains 137 hours per year.

Dated: June 7, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–14548 Filed 6–13–12; 8:45 am]

BILLING CODE 9110–04–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 I–312, Designation of Attorney In Fact; OMB Control No. 1653–0041.

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 August 13, 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 August 13, 2012. 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 currently approved collection.

(2) *Title of the Form/Collection:* Designation of Attorney In Fact.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–312, U.S. Immigration and Customs Enforcement.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or households; The I–312 is the instrument the U.S. Immigration and Customs Enforcement uses to provide immigration bond holders a means to designate and attorney to accept on the Obligor's behalf, the return of cash or United States bonds or notes deposited to secure an immigration bond upon the cancellation of the bond or the performance of the Obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 30 minutes (.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,250 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: Rich Mattison, Chief, Records Branch, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Dated: June 8, 2012.

Rich Mattison,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–14522 Filed 6–13–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–45]

Notice of Submission of Proposed Information Collection to OMB Request for Termination of Multifamily Mortgage Insurance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information collection is used to notify HUD that the mortgagor and mortgagee mutually agree to terminate the HUD multifamily mortgage insurance.

DATES: *Comments Due Date: July 16, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0416) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Request for Termination of Multifamily Mortgage Insurance.

OMB Approval Number: 2502–0416.

Form Numbers: HUD–9807.

Description of the Need for the Information and Its Propose

The information collection is used to notify HUD that the mortgagor and mortgagee mutually agree to terminate the HUD multifamily mortgage insurance.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	400	5		0.176		368

Total Estimated Burden Hours: 368.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14504 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–39]

Notice of Submission of Proposed Information Collection to OMB; Supplement to Application for Federally Assisted Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any delivery of services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

DATES: *Comments Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0581) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the

Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Supplement to Application for Federally Assisted Housing.

OMB Approval Number: 2502–0581.

Form Numbers: HUD–92006.

Description of the Need for the Information and Its Proposed

Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C.13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing any delivery of services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	364,782	1		0.250		91,196

Total Estimated Burden Hours: 91,196.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14527 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–37]

Notice of Submission of Proposed Information Collection to OMB; Mark-to-Market Program; Requirements for Community-Based Non-Profit Organizations and Public Agencies

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Provides proof of tenant endorsement of entity proposing to purchase restructured property and obtain modification, assignment, or forgiveness of second mortgage debt.

DATES: *Comments Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0563) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mark-to-Market Program; Requirements for Community-Based Non-Profit Organizations and Public Agencies.

OMB Approval Number: 2502–0563.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Us

Provides proof of tenant endorsement of entity proposing to purchase restructured property and obtain modification, assignment, or forgiveness of second mortgage debt.

	Number of respondents	Annual responses	×	Hour per response	=	Burden hours
Reporting Burden	368	1		10		3,680

Total Estimated Burden Hours: 3,680.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14517 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–41]

Notice of Submission of Proposed Information Collection to OMB; FHA–Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees and 235 Loans

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

FHA insurance is an important source of mortgage credit for low and moderate income borrowers and neighborhoods. Providing assistance, as needed, to enable families to cure their delinquencies and retain their homes stabilizes neighborhoods that might otherwise suffer from deterioration and problems associated with vacant and abandoned properties. Avoidance of foreclosure and the resultant costs also serve to further stabilize the mortgage insurance premiums charged by FHA and the Federal budget receipts generated from those premiums. This information collection request for OMB review is an extension of a currently approved collection.

DATES: *Comments Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0583) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: FHA–Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees and 235 Loans

OMB Approval Number: 2502–0583.

Form Numbers: HUD–300, HUD–93100, HUD–93114, HUD–93101a, HUD–93102, HUD–93101.

Description of the Need for the Information and Its Proposed

FHA insurance is an important source of mortgage credit for low and moderate income borrowers and neighborhoods.

Providing assistance, as needed, to enable families to cure their delinquencies and retain their homes stabilizes neighborhoods that might otherwise suffer from deterioration and problems associated with vacant and abandoned properties. Avoidance of foreclosure and the resultant costs also serve to further stabilize the mortgage insurance premiums charged by FHA and the Federal budget receipts generated from those premiums. This information co

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	11,940	6258.53		0.0353		2,644,446

Total Estimated Burden Hours: 2,644,446.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14510 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–42]

Notice of Submission of Proposed Information Collection to OMB; Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This PRA package provides reporting burden for individuals to apply to be placed on the HECM counselor roster and to maintain their name on the HECM counseling roster. For initial application, individuals are required to successfully pass a standardized HECM exam, have received HECM-related education within the past two years and provide information collected on form HUD 92904. HUD uses the information provided to determine the applicants' eligibility to be placed on the HECM counselor roster. To remain on the HECM counselor roster, a counselor must complete continuing education on a HECM related topic every two years and pass the HECM exam every three years.

DATES: *Comments Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0586) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster.

OMB Approval Number: 2502–0586.

Form Numbers: HUD 92904.

Description of the Need for the Information and Its Propose

This PRA package provides reporting burden for individuals to apply to be placed on the HECM counselor roster and to maintain their name on the HECM counseling roster. For initial application, individuals are required to successfully pass a standardized HECM exam, have received HECM-related education within the past two years and provide information collected on form HUD 92904. HUD uses the information provided to determine the applicants' eligibility to be placed on the HECM counselor roster. To remain on the HECM counselor roster, a counselor must complete continuing education on a HECM related topic every two years and pass the HECM exam every three years.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	205	2.951		1.406		851

Total Estimated Burden Hours: 851.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14509 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–43]

Notice of Submission of Proposed Information Collection to OMB; Builder's Certification of Plans, Specifications, and Site

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a revision of a current collection and reflects recent statutory and policy changes but does not increase the paperwork burden previously approved. HUD requires the builder to complete the certification (form HUD–92541) noting adverse site/location factor(s) of the property, including Floodplains. This certification is necessary so that HUD does not

insure a mortgage on property that poses a risk to health or safety of the occupant.

DATES: *Comments Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0496) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Builder's Certification of Plans, Specifications, and Site.

OMB Approval Number: 2502–0496.

Form Numbers: HUD–92541.

Description of the Need for the Information and Its Propose

This is a revision of a current collection and reflects recent statutory and policy changes but does not increase the paperwork burden previously approved. HUD requires the builder to complete the certification (form HUD–92541) noting adverse site/location factor(s) of the property, including Floodplains. This certification is necessary so that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

	Number of respondents	Annual responses	×	Hours per	=	Burden hours
Reporting Burden	30,035	1.997		0.075		4,500

Total Estimated Burden Hours: 4,500.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14507 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–44]

Notice of Submission of Proposed Information Collection to OMB; Personal Financial and Credit Statement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information collection is legally required to collect information to evaluate the character, ability, and capital or the sponsor, mortgagor, and general contractor for mortgage insurance.

DATES: *Comments Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0001) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Personal Financial and Credit Statement.

OMB Approval Number: 2502–0001.

Form Numbers: HUD–92417.

Description of the Need for the Information and Its Propose

The information collection is legally required to collect information to evaluate the character, ability, and capital or the sponsor, mortgagor, and

general contractor for mortgage insurance.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,000	1		8		16,000

Total Estimated Burden Hours: 16,000.

Status: Extension without change of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14505 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–40]

Notice of Submission of Proposed Information Collection to OMB; FHA–Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and their neighborhoods. It is essential that FHA maintain a healthy mortgage insurance fund through premiums charged the borrower by FHA along with Federal budget receipts generated from those premiums to support HUD's goals. Providing policy and guidance to the single family housing mortgage industry regarding changes in FHA's program is essential to protect the fund. This information collection request for OMB review seeks to combine the requirements of another existing OMB collection under one collection; it is OMB collection 2502–0349.

DATES: *Comments Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0429) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: FHA–Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation.

OMB Approval Number: 2502–0429.

Form Numbers: HUD–9519–A, Property Inspection Report, HUD–9539, Request for Occupied Conveyance, HUD–27011, Parts A, B, C, D, E, Single Family Application for Insurance Benefits, HUD–50002, Request to Exceed Cost Limits for Preservation and Protection, HUD–50012, Mortgagees Request for Extension of Time Requirements, HUD–91022, Mortgagee Notice of Foreclosure Sale.

Description of the Need for the Information and Its Proposed

FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and their neighborhoods. It is essential that FHA maintain a healthy mortgage insurance fund through premiums charged the borrower by FHA along with Federal budget receipts generated from those premiums to support HUD's goals. Providing policy and guidance to the single family housing mortgage industry regarding changes in FHA's program is essential to protect the fund. This information collection request for OMB review seeks to combine the requirements of another existing OMB collection under one collection; it is OMB collection 2502–0349.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 1,347,549, the number of respondents is 324, the number of responses is 1,087,913, the frequency of response is on occasion, and the burden hour per response is from less than a minute to 4 hours depending upon the activity.

Status: This is an extension of a currently approved collection OMB 2502–0429 that will be extended for another three years.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14524 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–38]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Housing Procedures for Projects Affected by Presidentially-Declared Disasters

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of this information collection is to ensure that owners follow HUD procedures, as laid out in HUD Housing Handbook 4350.1, chapter 38, regarding recovery efforts after a Presidentially declared disaster.

DATES: *Comments Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0582) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Housing Procedures for Projects Affected by Presidentially-Declared Disasters.

OMB Approval Number: 2502–0582.

Form Numbers: None.

Description of the Need for the Information and Its Proposed

The purpose of this information collection is to ensure that owners follow HUD

procedures, as laid out in HUD Housing Handbook 4350.1, chapter 38, regarding recovery efforts after a Presidentially declared disaster.

	Number of respondents	Annual responses	×	Hours per response	Burden hours
Reporting Burden	577	0.136		13.506	1,067

Total Estimated Burden Hours: 1,067.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended

Dated: June 7, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–14528 Filed 6–13–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5512–N–01]

Strong Cities, Strong Communities National Resource Network Pilot Program Advance Notice and Request for Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's intention to launch the Strong Cities, Strong Communities National Resource Network pilot program with its 19 federal agency and subagency partners of the White House Council on Strong Cities, Strong Communities (SC2). Through the SC2 National Resource Network, HUD and its partners will offer a central portal to connect America's most economically distressed local communities to national and local experts with wide-ranging experience and skills. The focus of the SC2 Network will be to strengthen the foundation for economic growth and resiliency in these communities—namely, local capacity, comprehensive planning, and regional collaboration. HUD will offer funding competitively through a Notice of Funding Availability (NOFA) for an intermediary to assist HUD with establishing and administering the program. As part of the Administration's efforts to increase transparency in government operations and to expand opportunities for stakeholders to engage in decision-making, HUD solicits comment through this notice on the proposed structure of the SC2 National Resource Network pilot program, and the criteria by which HUD and its interagency partners will select an intermediary for the pilot program. Feedback received in response to this notice will aid HUD and its partners in better understanding how this pilot program may help local communities respond to the strains of the current economic crisis. HUD is seeking input from local governments, philanthropic organizations, private companies, community development entities, and a broad range of other stakeholders on how the program should be structured in order to have the most meaningful impact in rebuilding and growing local government capacity for good governance and economic growth.

DATES: *Comment Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department

of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brittany Gibbs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202–402–2826 (this is not a toll-free number); email address: *SC2Network@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. More information on Strong Cities, Strong Communities and updates are also available at *http://www.huduser.org/portal/sc2/newsletter.html.*

SUPPLEMENTARY INFORMATION:

I. SC2 Network Pilot Program Overview

In July of 2011, the Obama Administration launched Strong Cities, Strong Communities (SC2), a new and customized pilot initiative to strengthen local capacity and spark economic growth in distressed local communities while ensuring taxpayer dollars are used wisely and efficiently. SC2 evolved from ongoing conversations with mayors, foundations, nonprofits, and Members of Congress working in economically distressed communities,who consistently highlight strains on local governments, the way disjointed programs do not work well for them, and a strong and clear desire for a coordinated, ongoing relationship with the federal government. SC2 focuses on five goals to change this:

- *Improve the relationship between local and federal government:* SC2 seeks to break down traditional local and federal government silos, allowing the federal government to partner more effectively with localities that have faced significant long-term challenges.
- *Provide coordination and support:* SC2 provides on-the-ground technical assistance and planning resources tailored to a city's needs, while also assisting them to use federal funds more efficiently and effectively. SC2 provides the necessary technical expertise to help cities focus efforts around populations served by both federal and local programs.
- *Partner for economic growth:* SC2 assists cities in developing critical partnerships that focus on job creation, workforce improvement and economic development with key local and regional stakeholders that include municipal and state governments, the business community, non-profits, faith-based institutions, and other public, private, and philanthropic leaders. SC2 provides a customized approach to supporting communities on the ground in their efforts to create jobs and revitalize their economies.
- *Enhance local capacity:* Every community is unique, with its own set of challenges and opportunities. The key to winning the future is empowering communities to frame their own economic vision and then partnering with them to identify, strengthen and leverage the tremendous physical, commercial, and social assets that they possess. SC2 provides a number of local capacity-building tools to test various models of place-based technical assistance to help cities and regions maximize the benefits from the federal funds they already receive and build resilient communities.
- *Encourage regional collaboration:* SC2 helps build regional relationships and foster new connections in order to strengthen regional economies to compete in an increasingly globalized world.

On March 15, 2012, President Obama signed an *Executive Order establishing a White House Council on Strong Cities, Strong Communities* composed of the heads of 19 agencies and sub-agencies along with 11 White House offices. Among other functions, the Council will:

- Coordinate agency efforts to ensure communities have access to comprehensive, localized technical assistance and planning resources to develop and execute their economic vision and strategies (including, where appropriate, efforts of existing committees or task forces related to providing technical assistance to local governments and improving their capacity to address economic issues);
- Provide recommendations to the President, through the Co Chairs on:

(i) Policies for building local expertise in strengthening local economies;

(ii) Changes to Federal policies and programs to address issues of special importance to cities and local governments that pertain to local capacity and economic growth;

(iii) Implementing best practices from the SC2 initiative Government-wide to better support cities and local governments; and

(iv) Opportunities to increase the flexible utilization of existing Federal program resources across agencies to enable more performance and outcome-based funding;

- Encourage the development of technical assistance, planning, and financing tools and implementation strategies that can be coordinated or aligned across agencies to assist communities in building local capacity to address economic issues, engaging in comprehensive planning, and advancing regional collaboration; and
- Facilitate the exchange of ideas and strategies to help communities address economic challenges and create sustained economic opportunity.

There are four complementary components of the Strong Cities, Strong Communities initiative:

1. *SC2 Community Solutions Teams:* Community Solutions Teams comprised of federal employees from several different agencies are working directly with cities to support mayors in Chester, PA; Detroit, MI; Fresno, CA; Memphis, TN; New Orleans, LA; and the Northeast Ohio region, including Cleveland and Youngstown, OH. Community Solutions Teams assist cities with issues mayors have identified as vital to their economic strategies, including efforts to build on local assets, strengthen regional economies, develop transportation infrastructure, improve job-training programs and support community revitalization.

2. *SC2 Fellowship Program* will select, train, and place early- to mid-career professionals in local government positions within the same six cities/regions to serve two-year terms and build additional ''bench-strength'' capacity. The German Marshall Fund was selected in December 2011 to run the fellowship program and will competitively select Fellows for a planned deployment in the fall of 2012. The Program is funded by the Rockefeller Foundation, which donated $2.5 million in initial funding to HUD.

Community Solutions teams and the Fellowship program are operating in the same six SC2 pilot cities/regions, which were selected on the basis of economic need, strong local leadership and collaboration, potential for economic growth, geographic diversity, and the ability to test the SC2 model across a range of environments. Federal assessment teams spent time on the ground working directly with mayors and other local officials to determine needs, opportunities and gather input for the pilot initiative.

3. *SC2 Economic Visioning Challenge:* In addition to the six pilot locations, later this year SC2 will launch an Economic Visioning Challenge designed to help additional cities develop economic blueprints. This national grant competition will enable cities to adopt and implement innovative economic development strategies to support comprehensive city and regional planning efforts. Six additional cities will be competitively selected to receive a grant of approximately $1 million that they will use to administer an ''X-prize style'' competition, whereby they will challenge multi-disciplinary teams of experts to develop comprehensive economic and land use proposals for their city. The Challenge will be administered by the Economic Development Administration (EDA) through a Federal Funding Notice (FFO) later this year, and EDA will assist cities in the administration of the competition.

4. *SC2 National Resource Network (SC2 Network):* The SC2 Network will take the model of Strong Cities, Strong Communities to a wider assortment of local governments, offering a single portal to a wide range of technical experts for shorter-term engagements. This resource will be available to governments who apply, prioritized by distress and readiness to act on the recommendations the SC2 Network provides to implement changes required. The extent of each engagement will be scaled to ensure a measurable impact, both for the community's growth and resilience and the efficiency of public funds, particularly the federal funding streams they already receive.

To maximize the resources flowing to local governments, an intermediary will be competitively selected to run the SC2 Network's daily operations. Using an outside platform can leverage the federal government's investment with considerable private and philanthropic resources and pro bono services—similar efforts have annually leveraged more than six times their base investment. It also taps existing philanthropic and non-profit expertise to engage with and help improve federal programs. HUD will retain oversight through a cooperative agreement.

The SC2 model reflects the idea that local issues do not stop at federal agency boundaries, and that effective technical assistance must also target issues that cross federal funding sources. HUD was chosen to host the SC2 Network, but the Network can help cities find expertise across the range of SC2 agencies and outside partners, and efforts will be coordinated with the three other components of SC2 and numerous other federal programs as appropriate. As an example, HUD, the Department of Justice (DOJ), the city government, and local philanthropy are working jointly in Youngstown, OH. Coordination and technical assistance through SC2/HUD helped the city partner with philanthropy to assess opportunities for effiency in the city's operations. SC2 then linked Youngstown to the DOJ's Diagnostic Center, which helps mayors, policymakers, and other local leaders identify their public safety needs and implement evidence-based strategies. Similarly, HUD and the EDA are leveraging mutual investments in SC2. EDA plans to offer $6 million to fund creation of economic blueprints for cities through the *SC2 Economic Visioning Challenge*, and the SC2 Network will provide each city with assessments and technical assistance needed to help move from plans to implementation, described further under Section IV.

SC2 Network assistance is not intended to replace any technical assistance already provided by the federal government or another party, but aims to build general local capacity to effectively access these programs. Through a comprehensive lens that crosses city departments and topics, the Network can help cities identify and coordinate simulataneous help from more specific programs such as DOJ's Diagnostic Center for public safety issuese or HUD's OneCPD program to deal with Community Development Block Grant (CDBG), HOME, Investment Partnerships (HOME), and homelessness programs, and address the city's underlying fiscal or operational capacity needs to make the best use of both. An SC2 Network engagement might also help a city government solve and move beyond internal fiscal problems so it can begin engaging with its neighbors in regional growth and planning efforts to eventually join the Sustainable Communities Initiative of HUD, Department of Transportation (DOT), and Environmental Protection Agency (EPA).

II. Background

Rising costs and declining revenues bring local governments closer to bankruptcy and further from solutions to the ever more complex challenges their communities face. Almost all state and local governments are required to balance their budgets, leaving no buffer during these very tough economic times.

Local governments have many partners to help, but a major impediment to supporting and developing the capacity of places with chronic challenges is the limited number of organizations with expertise in turning whole regions and cities around. The field is rich with organizations and intermediaries with experience in neighborhood development and revitalization, but very thin in organizations that take a holistic approach to urban and regional economic development. Much of this expertise is spread across a variety of organizations that play niche roles—public management, fiscal reform, land use development, business attraction and retention, workforce development, etc.

There are a number of federal programs dedicated to improving urban economic conditions, in some cases through a capacity-building strategy. Most of these efforts are not responsive to local needs and conditions. They require an extended time frame, and it

can be difficult for local governments to determine which agency and program to approach for aid when their challenges cut across agency topics. The SC2 Network will coordinate these separate pools of deep expertise with the needs of each community, deploying the tool that is actually needed and making the overall investment more effective and efficient. HUD will serve this coordinating role, building on its direct relationships with communities and founding mandate in the 1965 Department of Housing and Urban Development Act to ''Exercise leadership at the direction of the President in coordinating activities affecting housing and urban development; provide technical assistance and information, including a clearinghouse service to aid State, county, town, village, or other local governments in developing solutions to community and metropolitan development problems.'' [1]

III. SC2 Network Pilot Program Objectives

To achieve the goals of the program, HUD intends to select an intermediary through a competitive process. This intermediary must:

- Build and manage a team of expert technical service providers, potentially including consulting firms, practitioners, academics, intermediaries, and peer localities that represent the breadth of relevant expertise. Capacities should include, but are not limited to: Public budgeting, governance reform, system and process management, grants management, human capital policies and procedures, finance, economic development and redevelopment, staff capacity assessment, relationship assessment, and federal funding regulations;
- Effectively leverage philanthropic resources, both through building upon existing connections between foundations, issue area experts, and local governments and through forging new linkages and partnerships;
- Enlist the support of both paid and pro bono technical service providers, maximizing the program's reach;
- Carefully document and evaluate interventions to build a series of best practice strategies that can benefit places with similar challenges, and develop forums for sharing this knowledge;
- Create and support a peer-to-peer network to share lessons learned;
- Increase the capacity of participating governments in the area of intervention, not just provide a one-time service that they cannot replicate, including investing in an initial alignment effort for communities with potential private and philanthropic resources to sustain local capacity building over a longer term;
- Align with other federal, state, and, local programs to enhance coordination and avoid duplicating efforts—for example, regional planning through DOT/EPA/HUD Sustainable Communities Initiative, the Neighborhood Revitalization Initiative of HUD, Department of Education (ED), DOJ, Department of Health and Human Services (HHS), EDA's Regional Innovation Clusters, DOJ's Diagnostic Center, Federal Emergency Management Agency (FEMA) preparedness technical assistance, or HUD's OneCPD technical assistance;
- Identify for the SC2 Council how federal policy changes could help local governments better achieve their economic development visions, and other policies, systems, and practices that support holistic and sustainable economic development; and
- Generate a sustainable model that could, under appropriate conditions, be spun off into an independent entity.

IV. General SC2 Network Pilot Program Parameters

Final funding levels are not yet established, but HUD currently plans to launch the National Resource Network (SC2 Network) using approximately $5,000,000 from its fiscal year 2012 appropriation for the Transformation Initiative and will publish a Notice of Funding Availability (NOFA) later this year to select an intermediary who will administer the program. HUD's fiscal year 2013 budget also requests additional funds to serve more communities, subject to appropriations.

HUD intends to select a single grantee to administer the SC2 Network (''SC2 Network Administrator'') and will fund the successful SC2 Network grantee under a cooperative agreement. The comments received from this notice will inform the NOFA HUD publishes later this year, which will detail the program and application requirements for potential intermediary organizations. HUD anticipates having substantial involvement in the work being conducted under this forthcoming award to ensure that the purposes of the SC2 Network are being carried out and that technical service providers and units of local government are following through on their commitments to local and regional development. HUD's involvement includes monitoring that progress is being made in meeting established performance metrics and ensuring consistency in projects across participating jurisdictions.

To be able to respond to the varying needs of different localities, the SC2 Network will leverage the expertise of multiple federal agencies, the philanthropic community, the business community, anchor institutions, and lessons learned by other local governments. A primary focus of the Network's direct assistance will be basic operational issues such revenue/service analysis and performance management. Building capacity in these areas without necessarily focusing on a specific federal program is not targeted by any other federal technical assistance (TA) program, and since SC2 specifically targets low-capacity governments, HUD expects budget shortfalls and operational/program efficiency issues to be common across most, if not all, cities assisted. This also provides a solid base from which the Network can clearly identify other TA needs. It will also assist across a wide range of basic capacity issues as local needs dictate, connecting to existing programs whenever possible, such as: Economic Development (economic visioning, job market analysis, cluster analysis and engagement); Workforce Development (job training strategies, industry needs analysis, cradle-to-career education reform); Public Safety (juvenile justice, corrections restructuring, policing strategies); and Sustainable Land Use (brownfield redevelopment, corridor planning, consolidated transportation & housing plans).

As an example, a city might come to the SC2 Network for help with a structural budget deficit. The Network would tap its contracted or private partner experts in public management who would work with city leadership to develop sustainable revenue and spending plans. These plans might suggest a redevelopment of vacant industrial areas into technology parks, open space, or housing, requiring revisions to land use and zoning. The SC2 Network would identify whether HUD, EPA, or Commerce, for example, might be available to advise the city. If not and this was a crucial step for the city to reach its goals, the SC2 Network could directly engage a land use expert to assist with the physical layout, while ensuring coordination with its public management experts.

V. Eligible Applicants To Be SC2 Network Administrator

HUD plans that eligible applicants for the SC2 Network Administrator will include: Nonprofit organizations, foundations, educational institutions, for-profit companies, or consortia of

[1] 42 U.S.C. 44 3532(b).

these entities with demonstrated ability to raise philanthropic support. The Administrator must have a demonstrated ability to engage and maintain relationships with a diverse group of technical service providers across a broad range of disciplines and partner with philanthropies and units of general local government to advance the objectives of the SC2 Network program. The Administrator must also have a demonstrated ability to obtain other community, private sector, and federal resources that can be combined with HUD's program resources to achieve program objectives.

In addition, under the NOFA process, applicants to become the Administrator will be required to meet all threshold requirements contained in HUD's Fiscal Year 2012 NOFA General Section, including requirements addressing civil rights and other cross-cutting requirements applicable to federal funding.[2]

VI. Eligible Activities

The SC2 Network will carry out three categories of activities. The first involves establishing the organization, its procedures, and operationalizing further activities. The second involves limited-length engagements with individual local communities—the core of the SC2 Network's work. The third category targets a limited number of cities or counties where an alignment of organizations can sustain local capacity building over a longer term through Local Resource Networks. Applicants to be the SC2 Network Administrator will not be limited to the activities described below and may suggest additions within these categories.

Category 1: Establishing the SC2 Network

As a pilot, SC2 Network must establish its operating procedures to truly be a place-based single portal for technical assistance. HUD expects this category will form no more than 30 percent of the SC2 Network's activities in this first pilot phase, but would drop to no more than 15 percent after the first year of funding.

(1) Identify technical experts that can fulfill anticipated needs of applicants for SC2 Network services. Determine structures necessary to obtain, support and nurture a roster of both paid and pro-bono experts.

(2) Advertise the SC2 Network's availability to eligible local communities;

(3) Manage requests for assistance based on the priorities outlined in the applicant's proposal and agreed upon with HUD, working with the applicant to fully understand and document the scope of their proposed challenges, determining whether SC2 Network assistance is appropriate, and documenting recommendations;

(4) Identify and maintain a catalog of other technical assistance programs eligible to local governments, regularly communicate with staff of major programs on potentially alignment with the SC2 Network, and refer applying governments to them as applicable;

(5) Document and evaluate the effectiveness of the individual interventions and the SC2 Network as a whole;

(6) Maintain an easily accessible online resource bank of all materials generated that could have utility for other governments and practitioners and create a strong peer-to-peer network so information and experiences can be routinely transmitted and shared; and

(7) Regularly report to HUD and its interagency partners on potential regulatory barriers to be addressed and other potential improvements to federal programs identified through SC2 Network projects.

The peer-to-peer network is a particularly important part of this category for the goals of SC2. HUD envisions it would utilize three mediums—meetings, webinars and an online forum—to aggregate and distribute information and resources. Cities will have the opportunity to participate in various meetings and webinars, as well as have access to an online forum that will house relevant information and resources on the SC2 Initiative. In addition, these mediums will facilitate peer exchanges that help to promote knowledge sharing among cities and stakeholders that are working to devise solutions to address their economic challenges.

Category 2: Individual Local Government Engagements

Individual engagements with local communities are the core of the SC2 Network's work. While Category 1 will be emphasized in the first pilot phase starting in 2012, the SC2 Network must also use a minimum of 50 percent of its funds to perform the following Category 2 activities in local communities during the pilot. Category 2 is envisioned to become the bulk of the SC2 Network's activities after the first pilot year.

(8) Work with the technical assistance providers to help an applicant government articulate what it is trying to achieve from its request;

(9) Build a reasonable technical assistance plan to achieve those results;

(10) Provide funds to the appropriate technical assistance providers sufficient to administer the services set out in the technical assistance plan;

(11) Facilitate the deployment of permanent or part-time staff temporarily to the locality (fellows, volunteers, etc.), if available;

(12) Document the request, proposed scope of work, and expected result via a technical assistance plan; and

(13) Assist the local government in identifying other federal, state, local, and privately-funded programs and services that could be appropriate to support follow-on work.

Within Category 2, the SC2 Network must include assessments for all six cities receiving grants from EDA through the Economic Visioning Challenge. The Network will determine where outside expertise can best help these six cities act on their new economic blueprints, and will also advise and help connect cities to technical assistance programs they could engage. These assessments should comprise no more than 50 percent of resources used for Category 2 activities.

Category 3: Local Resource Networks

In a limited number of cities or regions, the SC2 Network may also create and support Local Resource Networks. HUD recognizes that some places have community or local foundations and engaged private industries able to provide resources that, if properly aligned, might replicate the objectives of the SC2 National Resource Network on a local level. These scaled versions of the SC2 Network would sustainably support local government capacity, and might free the SC2 Network and other federal resources to serve other economically-distressed communities. As described in Soundness of Approach section below, the SC2 Network must insure these places meet certain requirements. The SC2 Network may elect to use a small portion of its resources in this category, with no more than $500,000 provided to an individual city or region for the following activities.

(14) Identify cities or regions where LRNs may be viable and recruit potential local lead organizations;

(15) Provide funds to a local lead organization to create a business plan for the Local Resource Network, support assembling a leadership team from the public, private, and non-profit sectors, and recruit private or non-profit partners to dedicate pro bono teams;

[2] See *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail/nofa12/gensec* and *http://portal.hud.gov/hudportal/documents/huddoc?id=2012gensecNOFA.pdf.*

VII. Selection Criteria for SC2 Administrator

HUD is not proposing a fixed model for the SC2 Network, but will seek proposals for its structure from applicants. The SC2 Network Administrator will be selected through a competition that prioritizes prior experience in assisting economically-distressed cities across a wide range of places and issues, and delivering results to these communities on a specific timetable. The successful Administrator should be:

1. Place-based. The selected organization, buoyed by support of agencies and the philanthropic community, will already have experience working in many distressed cities, and will be able to match these cities to relevant technical experts quickly and efficiently.

2. Resource-maximizing. The selected organization will have a national scope and will be well-accustomed to the challenge of distributing scarce resources across cities with distinct needs. The ability to effectively evaluate requests for service will be paramount to using the SC2 Network's resources to their greatest potential. Maximizing resources means successfully obtaining philanthropic resources and pro bono services, balanced with paid consultants as needed.

3. Nimble, responsive, and service-oriented for cities. The SC2 Network will be designed to provide very timely assistance that can thoroughly understand and adapt to needs on the ground. Its deep team of technical experts will allow for subject area experts to be assigned quickly and, when necessary, for partnerships between experts on issues that require multiple skill sets and excellent customer service skills.

4. Objective. In some cases, procedures or regulations may be a barrier to local capacity-building action. The SC2 Network's external operation will grant a layer of objectivity to facilitate local partnering and honest feedback to HUD and the other SC2 agencies for relieving burdens on local governments, while retaining accountability for results.

5. Sustainable. The intermediary selected will have the nonprofit management expertise required to make the SC2 Network financially sustainable, and as an outside entity, this organization can attract philanthropic funding and potentially multiply HUD's investment several times over. This structure intentionally allows the SC2 Network to continue supporting local governments on as minimal an investment as possible. Rating factors for selecting the SC2 Administrator will therefore focus on the following criteria:

Capacity and Relevant Organizational Experience

HUD will carefully evaluate descriptions of the organizational structure of Administrator applicants for a demonstration that it can successfully implement the proposed activities in a timely manner. Applicants will need to describe their capacity to perform the activities of the SC2 Network and relevant experience within the last 3 years.

HUD is particularly interested in the Administrator's experience in leveraging philanthropic support, contracting with technical service providers, understanding available federal government resources, and working with local governments. The SC2 Network should create a balance of engaging paid experts when necessary while maximizing contributions of pro bono services to maximize the services the SC2 Network can provide.

The Administrator will need to demonstrate they either have sufficient personnel or the ability to procure qualified experts or professionals with the requisite knowledge, skills, and abilities in preparing and coordinating the development of the SC2 Network. The Administrator should be prepared to initiate eligible activities according to a specific timetable they propose and negotiate with HUD.

Need/Extent of the Problem

The SC2 Network Administrator must have an understanding of the problems necessitating assistance from the SC2 Network based on thorough, credible, and appropriate data and information. HUD will evaluate applicants on their documented description of significant obstacles to capacity building at the local government level. Applicants will be evaluated on their understanding of existing models of technical assistance provision and capacity building for local governments that might inform the SC2 Network, along with the limitations of these models.

Soundness of Approach

The structure for the SC2 Network proposed by Administrator applicants will be a major factor in HUD's selection. Applicants must propose how they will structure the SC2 Network and how the activities they will pursue address the problems identified in local government capacity. The Administrator will be required to develop a work plan that includes specific, measurable, and time-phased objectives for each activity.

Process To Develop and Maintain a Network of Expert Technical Service Providers

The SC2 Network Administrator will require in-house expertise and a process for obtaining the services of other qualified experts with the requisite knowledge, skills, and abilities as needed. The ability to work on a wide range of issues will be important, as well as the ability to work in a wide range of locations. In particular, the applicant should demonstrate an ability to collaborate and coordinate with other organizations, experts, and sectors in delivering assistance to local communities through the SC2 Network. Also important is the leverage of pro bono services from the private or non-profit sectors to serve these functions, but the plan must balance these with paid consultants from the non-profit and private sectors when local needs require them. The Administrator must develop plans for evaluating their team of experts, including measures that will be taken if an individual's work proves unsatisfactory.

Strategy for Evaluating Requests for Service

HUD expects that more local governments will request the services of the SC2 Network than the SC2 Network is able to engage, particularly in the first year. SC2 Network Administrator applicants must propose a prioritization system in their applications that could include:

- The community's ranking on a relative distress scale (using data provided by HUD and other SC2 agencies and from other sources as appropriate);
- Scope/cost of request;
- Letters of commitment for support/staff time from directors of offices;
- Willingness of the government to commit to attaining certain performance standards;
- Demonstration of partnerships/collaboration between local government offices;
- Referral from another SC2 agency technical assistance program that is assisting the local government but recommends broader assistance beyond its allowed scope;
- Evidence that the government has made/is making efforts to address the issue; and
- Other criteria the applicant deems important to creating the greatest impact in improved local capacity and use of funds, with a justification of its importance.

The criteria proposed should allow the SC2 Network to provide assistance to as many governments as possible while providing a meaningful intervention according to the program's objectives. Administrator applicants' descriptions of criteria should relate to the existing models of technical assistance provision and capacity building they describe under Need/Extent of the Problem. Applicants should describe why each criterion will succeed in targeting and overcoming the capacity problems they have documented.

Administrator applicants also must propose criteria for engaging in Category 3 activities to establish Local Resource Networks. At a minimum, these must include:

- Demonstration of sufficient private sector or non-profit partners with appropriate *pro bono* technical services to contribute;
- Demonstration of matching funds from a local non-profit or private source; and
- Demonstration of support from the local government.

Leverage

HUD has reoriented a part of its technical assistance funds to create the single comprehensive clearinghouse, and other agencies on the White House SC2 Council have identified linked technical assistance support. HUD and the SC2 Council cannot, and are not intending to, provide the full technical assistance resources necessary given the scope of local needs. This is intentional to make the investment go further through private leverage and make the SC2 Network less dependent on a single stream of funds. Moreover, leveraging outside investments builds in engagement of the expertise that already exists in the philanthropic, non-profit, and private sectors for this work, and creates a relationship between these efforts and government programs to encourage mutual improvement rather than working around each other and duplicating efforts. Applicants will be scored on firm commitments from other community, private sector, and federal resources that can be combined with HUD's program resources to achieve program objectives, and that are contingent only on the applicant's selection as the SC2 Network Administrator. Greater collaboration between government and other sectors is an SC2 Network goal, so resources must include in-kind *pro bono* contributions of services allocated to the proposed program and may also include cash. Financial resources must be shown to be dedicated solely to the efforts of the SC2 Network. In evaluating this factor, HUD will consider the extent to which the Administrator applicant has established working partnerships with other entities to get additional resources or commitments that increase the effectiveness of the proposed program activities. Resources may be provided by governmental entities, public or private organizations, or other entities.

Achieving Results and Program Evaluation

Because the SC2 Network seeks support to develop and implement long-range capacity improvements for local governments, not all outcomes will be realized during the duration of the grant period. Rather, Administrator applicants will be evaluated on their ability to identify the outcomes they seek to achieve and the specificity of the benchmarks that they establish to measure progress toward a completed product that guides all of the necessary work.

The White House SC2 Council is working to track the outcomes of its work on all components of SC2, and the SC2 Network Administrator will be required to coordinate with these efforts and track comparable outputs and outcomes in its work. These might include the number of Network recommendations implemented and how quickly, the pace of expenditure of federal funds, the number of successful applications for federal funds, and the extent of collaborative stakeholder network supporting implementation of the city's comprehensive economic strategy. The Network Administrator will be expected to develop and track specific measures for its works, including progress on budget deficits and municipal bond ratings. For every engagement, the Network Administrator must create a clear logic model describing issues targeted, what it seeks to achieve, the benchmarks that show success, and the steps the Network will take to reach success.

VIII. Solicitation of Comments on Proposed Program Structure

As noted above, HUD and its SC2 agency partners are soliciting comments through this Advance Notice on how the SC2 Network pilot program should be structured, what funding categories and activities are most appropriate to support, which entities should be eligible for SC2 Network Administrator, and how best to evaluate proposed SC2 Network structures in order to have the most meaningful impact in rebuilding and growing local government capacity for good governance and economic growth. The discussion below outlines in general terms the key questions HUD is considering in preparing the final NOFA for the program and identifies some specific issues for comment.

A. Eligible Activities

a. Given the limited resources available and potentially large demand for services from cities, are there certain activities the SC2 Network should focus on or prioritize, either by topic or by the four types of activities described: (1) Operational/program/fiscal assessments, (2) connection/clearinghouse for federal TA, (3) direct TA provision when necessary, and (4) Local Resource Networks?

b. Are there specific activities or criteria for funding Local Resource Networks that would increase the success of these efforts, and why?

c. Given limited funding for an initial pilot, what is a minimum funding amount necessary to make the Local Resource Network activities described viable for this stage of the program?

d. Are there currently efforts underway or proposed in individual cities or regions that would meet the criteria for Local Resource Networks, and if so, in which places?

B. Selection Criteria

a. What are the top capacity challenges governments in distressed communities face, and on what issues do they most require technical assistance?

b. What is an appropriate minimum level of assistance to make a meaningful impact for a given local government? Given the proposed funding levels, what is an appropriate maximum level of assistance, or how many governments might be assisted given the $5,000,000 total funding HUD has proposed?

c. What are current successful organizational models similar to the SC2 Network that might serve as guides for its structure? Which aspects of these models contribute most to their success (e.g., leveraging philanthropic support, engaging *pro bono* services, working in diverse communities, working on diverse topics)?

d. What are current successful technical assistance and/or capacity building models for local government and specific city case studies that the SC2 Network might use as best practices?

e. What are feasible 6-month, 1-year, 2-year, 5-year, and 10-year outcomes for local communities assisted by the SC2 Network? Are any of these outcomes universal for all sizes and places, or will they vary by the individual circumstances of each government?

What type of shorter-term benchmarks are most appropriate for evaluating success?

f. Which of the criteria listed for prioritizing requests from local governments are most important, and what are additional criteria that should be included?

g. What type of information will the Network need from cities to understand need and readiness, and to determine the proper extent of engagement with the Network?

While these are issues of particular interest, HUD encourages meaningful input on the proposed SC2 Network program more generally as well. If providing comments and addressing the comments for which HUD specificially solicits feedback, HUD requests that commenters please respond to the specified questions first in addition to other comments you would like to provide. HUD has provided the avenues for input in the **ADDRESSES** section of this notice.

Dated: June 7, 2012.

Erika C. Poethig,

Acting Assistant Secretary for Policy Development and Research.

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–788]

Certain Universal Serial Bus (''USB'') Portable Storage Devices, Including USB Flash Drives and Components Thereof Determination Not To Review Two Initial Determinations Terminating the Investigation as to All Remaining Respondents; 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 determined not to review two initial determinations (''IDs'') (Order Nos. 21 and 22) of the presiding administrative law judge (''ALJ'') terminating the investigation as to all remaining respondents.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3106. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on July 19, 2011, based on a complaint filed on behalf of Trek 2000 International Ltd. of Loyang Industrial Estate, Singapore; Trek Technology (Singapore) Pte. Ltd. of Genting Centre, Singapore; and S–Corn System (S) Pte. Ltd. of Genting Centre, Singapore (collectively, ''Trek''), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain universal serial bus (''USB'') portable storage devices, including USB flash drives and components thereof that infringe certain claims of U.S. Patent Nos. 6,880,054; 7,039,759; D463,426; and 7,549,161. 76 FR 42730 (July 19, 2011). The notice of investigation named as respondents Imation Corporation of Oakdale, Minnesota; IronKey, Inc. of Sunnyvale, California; Kingston Technology Company, Inc. of Fountain Valley, California; Patriot Memory, LLC of Fremont, California (''Patriot''); RITEK Corporation of Hsinchu, Taiwan and Advanced Media, Inc./RITEK USA of Diamond Bar, California (collectively, ''RITEK''); and Verbatim Corporation, Inc. of Charlotte, North Carolina and Verbatim Americas, LLC of Charlotte, North Carolina (collectively, ''Verbatim''). Subsequently, respondents RITEK, Verbatim, and Patriot were terminated from the investigation.

On May 4, 2012, complainants Trek moved to terminate the investigation in part and withdraw the allegations in the complaint of infringement of the '054, the '759, and the '426 patents by accused products of respondent IronKey, namely the S200 and D200 products and Trusted Access. Respondents Imation, IronKey, and Kingston did not oppose the motion. The Commission investigative staff (''Staff'') filed a response in support of the motion. On May 8, 2012, the presiding ALJ issued an ID (Order No. 21) granting the motion.

On May 8, 2012, complainants Trek filed an uncontested motion to withdraw the complaint and terminate the investigation as to the remaining respondents Kingston and Imation. Respondents Kingston and Imation did not oppose the motion. The Staff filed a response in support of the motion. On May 10, 2012, the ALJ issued an ID (Order No. 22) granting the motion. No party petitioned for review of either Order No. 21 or Order No. 22. The Commission has determined not to review the IDs. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in section 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.42(h).

By Order of the Commission.

Issued: June 8, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–14529 Filed 6–13–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Application

Correction

In notice document 2012–14161, appearing on pages 35020–35021 in the issue of Tuesday, June 12, 2012, make the following correction:

On page 35020, in the third column, in the fourth full paragraph, in the eighth and ninth lines, ''[insert date 30 days from date of publication]'' should read ''July 12, 2012''.

[FR Doc. C1–2012–14161 Filed 6–13–12; 8:45 am]

BILLING CODE 1505–01–D

LEGAL SERVICES CORPORATION

LSC Strategic Plan 2012–2016; Request for Comments

AGENCY: Legal Services Corporation.

ACTION: Request for comments.

SUMMARY: The Legal Services Corporation (''LSC'' or ''Corporation'') Board of Directors (''Board'') is soliciting public comment on the LSC Board's draft strategic plan for 2012–2016.

DATES: Written comments must be received by close of business July 11, 2012.

ADDRESSES: Written comments may be submitted by mail, fax, or email to Richard L. Sloane, Chief of Staff and Special Assistant to the President, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; (202) 295–7264 (fax), or *sloaner@lsc.gov.* Comments may also be submitted online at *http://www.lsc.gov/about/matters-comment/comment-submission-form-lsc-board-directors-draft-strategic-plan-2012-2016.*

FOR FURTHER INFORMATION CONTACT: Richard L. Sloane, Chief of Staff and Special Assistant to the President, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, (202) 295–1616 (phone), (202) 337–7264 (fax), or *sloaner@lsc.gov.*

SUPPLEMENTARY INFORMATION: The Board is developing a strategic plan for LSC for the years 2012–2016. The public is hereby formally invited to comment on the draft strategic plan, which is available at *http://www.lsc.gov/sites/default/files/LSC/pdfs/LSCStrategicPlan-DRAFTForFedRegComments June2012.PDF.* Comments may be submitted via mail, fax, or email to Richard L. Sloane, Chief of Staff and Special Assistant to the President, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, (202) 295–1616 (phone), (202) 337–7264 (fax), or *sloaner@lsc.gov.* Comments may also be submitted online at *http://www.lsc.gov/about/matters-comment/comment-submission-form-lsc-board-directors-draft-strategic-plan-2012-2016.* Comments will be accepted until the close of business on July 11, 2012.

Notice: All comments received will be posted and available at *www.lsc.gov.* Such comments are also subject to disclosure under FOIA. Personally identifiable information, such as phone numbers and addresses, may be redacted upon request.

Dated: June 8, 2012.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2012–14497 Filed 6–13–12; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts 176th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

DATES: June 28, 2012 from 1:00 p.m. to 2:15 p.m. in Room 527. This portion of the meeting will be closed for National Medal of Arts review and recommendations. June 29, 2012 from 9:00 a.m. to 11:30 a.m. (ending times are approximate). This portion of the meeting will be open.

FOR FURTHER INFORMATION CONTACT: Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: The meeting on Friday, June 29th will be open to the public on a space available basis. The meeting will begin with opening remarks, swearing in of new Council members, and voting on recommendations for funding and rejection and guidelines, followed by updates by the Chairman. There will also be the following presentations: From 9:45 a.m. to 10:30 a.m.—Citizens' Institute on Rural Design; from 10:30 a.m. to 11:00 a.m.—Association of Children's Museum; from 11:00 a.m. to 11:30 a.m.—NEA National Heritage Fellowships. The meeting will adjourn at 11:30 a.m.

For information about possible webcasting of the open session of this meeting, go to the Podcasts, Webcasts, & Webinars tab at *www.arts.gov.*

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the February 15, 2012 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Dated: June 8, 2012.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2012–14501 Filed 6–13–12; 8:45 am]

BILLING CODE 7537–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67165; File No. SR–BATS–2012–021]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rules Related to Risk Management Functionality for BATS Options

June 8, 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 June 1, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it 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 adopt Rule 21.16, entitled ''Risk Monitor Mechanism'', to codify the risk monitoring functionality offered to all Users[5] of the BATS equity options trading platform (''BATS Options'').

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] As defined in Exchange Rule 16.1(a)(63), a User is any Exchange member or sponsored participant authorized to obtain access to the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reflect in the Exchange's rules that Users are able to establish certain risk control parameters. Specifically, the Exchange proposes to adopt new Rule 21.16, Risk Monitor Mechanism, which is similar to NASDAQ Options Market (''NOM'') Chapter VI, Section 19 and the rules of other options exchanges (as explained in detail below). The Risk Monitor Mechanism provides protection from the risk of multiple executions across multiple series of an option or across multiple options. The risk to Users is not limited to a single series in an option or even to all series of an option; Users that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions.

In particular, the Risk Monitor Mechanism will be useful for market makers on BATS Options (''Market Makers''), who are required to continuously quote in assigned options. Quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large, unintended principal positions that expose the Market Maker to unnecessary market risk. The Risk Monitor Mechanism is intended to assist such Users in managing their market risk.

Though the Risk Monitor Mechanism will be most useful to Market Makers, the Exchange proposes to offer the functionality to all participant types. There are other firms that trade on a proprietary basis and provide liquidity to the Exchange; these firms could potentially benefit, similarly to Market Makers, from the Risk Monitor Mechanism. The Exchange believes that the Risk Monitor Mechanism should help liquidity providers generally, market makers and other participants alike, in managing risk and providing deep and liquid markets to investors.

Pursuant to new Rule 21.16, the Risk Monitor Mechanism operates by the System maintaining a counting program for each User. As proposed, a single User may configure a single counting program or multiple counting programs to govern its trading activity (i.e., on a per port basis). The counting program will count executions of contracts traded by each User and in specific Option Categories (as defined below) by each User. The counting program counts executions, contract volume and notional value, within a specified time period established by each User (the ''specified time period'') and on an absolute basis for the trading day (''absolute limits''). The specified time period will commence for an option when a transaction occurs in any series in such option. The counting program will count executions in the following ''Options Categories'': front-month puts, front-month calls, back-month puts, and back-month calls (each an ''Option Category''). The counting program will also count a User's executions, contract volume and notional value across all options which a User trades (''Firm Category''). For the purposes of new Rule 21.16, a front-month put or call is an option that expires within the next two calendar months, including weeklies and other non-standard expirations, and a back-month put or call is an option that expires in any month more than two calendar months away from the current month.

The System will engage the Risk Monitor Mechanism in a particular option when the counting program has determined that a User's trading has reached a Specified Engagement Trigger (as defined below) established by such User during the specified time period or on an absolute basis. When a Specified Engagement Trigger is reached in an Options Category, the Risk Monitor Mechanism will automatically remove such User's orders in all series of the particular option and reject any additional orders from a User in such option until the counting program has been reset in accordance with paragraph (d) of new Rule 21.16. Similarly, when a Specified Engagement Trigger is reached in the Firm Category, the Risk Monitor Mechanism will automatically remove such User's orders in all series of all options and reject any additional orders from a User until the counting program has been reset in accordance with paragraph (d) of new Rule 21.16. The Risk Monitor Mechanism will also attempt to cancel any orders that have been routed away to other options exchanges on behalf of the User.

As provided in proposed subparagraph (b)(ii), each User can, optionally, establish Specified Engagement Triggers in each Options Category, per option, or in the Firm Category. Specified Engagement Triggers can be set as follows: (A) A contract volume trigger, measured against the number of contracts executed (the ''volume trigger''); (B) A notional value trigger, measured against the notional value of executions [6] (''notional trigger''); and (C) An execution count trigger, measured against the number of executions (''count trigger''). Each of these triggers can be established in isolation (e.g., a User may choose only to implement a volume trigger) or a User can establish multiple separate triggers with different parameters. Also, as described above, the triggers can be implemented either as absolute limits or over a specified period of time.

For example, assume a User is quoting orders in several series of a particular option issue, and sets Specified Engagement Triggers in an Options Category as follows: (i) A volume trigger at 500 contracts per second, (ii) a count trigger at 100 executions per minute, and (iii) an absolute notional value trigger of $30,000. In this example, there are three Specified Engagement Triggers for the option issue, any one of which, if reached, would result in cancellations of any additional orders of the User in the specified option issue, rejection of additional orders by the User in that issue and attempted cancellation of any orders in the option issue already routed to an away options exchange on behalf of the User. The following examples illustrate the operation of each of the User's Specified Engagement Triggers:

Volume Specified Engagement Trigger in an Options Category

If within one second, executions against the User's quotations in any series of front-month calls of the option issue equaled or exceeded 500 contracts, the Risk Monitor Mechanism would be engaged. To illustrate this example, assume the following quotations and executions within the current second in front-month calls of the specified option issue:

[6] Notional value is calculated as the sum of all premiums paid times the number of contracts executed. For example, an option executed with a premium of $3.00 for 5 contracts would count as $15.00 notional value.

Price level	Series 1 quoted size	Series 2 quoted size	Number of contracts executed Series 1	Number of contracts executed Series 2
Level 1	100	50	100	50
Level 2	100	50	100	50
Level 3	150	50	150	0
Level 4	150	200	0	0
Level 5	150	200	0	0
Total	650	600	350	100

At this moment in time, the User has executed 450 contracts within the applicable second (350 contracts of Series 1 and 100 contracts of Series 2), which is less than the User's limit of 500 contracts per second. As such, the User's established volume trigger in an Options Category has not yet been reached. If, however, prior to the completion of the applicable second, an order executed against the User's Level 3 quotation in Series 2, the number of contracts executed in front-month calls of the option issue would be 500. The Risk Monitor would be engaged, and the User's remaining orders in all series of the option issue would be cancelled, additional orders by the User in that issue would be rejected, and the Exchange would attempt to cancel any orders in the option issue that had already been routed to an away options exchange on behalf of the User.

Execution Count Specified Engagement Trigger in an Options Category

If within one minute, executions against the User's quotations in any series of front-month puts of the option issue equaled or exceeded 100 executions per minute, the Risk Monitor Mechanism would be engaged. To illustrate this example, assume the following quotations and executions within the current minute in front-month puts of the specified option issue:

Price level	Number of executions Series 1	Number of executions Series 2
Level 1	40	20
Level 2	20	15
Level 3	0	0
Total	60	35

At this moment in time, the User has received 95 total executions within the applicable minute (60 executions in Series 1 options and 35 executions in Series 2 options), which is less than the User's limit of 100 executions per minute. As such, the User's established count trigger in an Options Category has not yet been reached. If, however, prior to the completion of the applicable minute, the User executed 5 more orders in either series, the number of executions in front-month puts of the option issue would be 100. The Risk Monitor would be engaged, and the User's remaining orders in all series of the option issue would be cancelled, additional orders by the User in that issue would be rejected, and the Exchange would attempt to cancel any orders in the option issue that had already been routed to an away options exchange on behalf of the User.

Notional Value Specified Engagement Trigger in an Options Category

If, as of any time during the trading day, executions against the User's quotations in any series of front-month calls of the option issue equaled or exceeded a notional value of $30,000, the Risk Monitor Mechanism would be engaged. To illustrate this example, assume the current notional value of all front-month calls in the option issue was $29,900 as of 1:30 p.m. Eastern Time and the following executions occurred:

Execution number	Price	Number of contracts	Series	Notional value
1	$5.00	5	Series 1	$25.00
2	3.00	15	Series 2	45.00
3	5.00	6	Series 1	30.00
Total				100.00

At this moment in time, execution number 3 has raised the total notional value of all front-month calls to $30,000 for the trading day. The Risk Monitor would be engaged, and the User's remaining orders in all series of the option issue would be cancelled, additional orders by the User in that issue would be rejected, and the Exchange would attempt to cancel any orders in the option issue that had already been routed to an away options exchange on behalf of the User.

As noted above, in addition to counting programs established across Options Categories, any of the available Specified Engagement Triggers are

configurable on a Firm Category level as well (either as absolute limits or over a specified time period). When a Firm Category risk limit is triggered, then all options orders of a User are cancelled, additional orders by the User are rejected and the Exchange will attempt to cancel any orders already routed to an away options exchange on behalf of the User.

While the Risk Monitor Mechanism is a useful feature that serves an important risk management purpose, it operates consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, proposed paragraph (c) provides that any marketable orders or quotes that are executable against a User's quotation that are received prior to the time the Risk Monitor Mechanism is engaged will be automatically executed at the price up to the User's size, regardless of whether such an execution results in executions in excess of the User's Specified Engagement Trigger. Accordingly, the Risk Monitor Mechanism cannot be used to circumvent a User's firm quote obligation.

If a User is quoting in two series of a particular option, at several price levels in each, and sets an Options Category volume trigger at 400 contracts, one contra side order can result in executions in excess of the Specified Engagement Trigger. Specifically, if a market order to sell 500 contracts is received in Series 1, the order will execute against the first four levels that the User is quoting, as follows:

Price level	Series 1 size	Series 2 size	Number of contracts executed Series 1	Number of contracts executed Series 2
Level 1	100	50	100	0
Level 2	100	50	100	0
Level 3	150	100	150	0
Level 4	150	200	150	0
Level 5	150	200	0	0
Total	650	600	500	0

Although the User set a volume trigger at 400 contracts, the contra side order executes in its entirety and the Risk Protection Mechanism is engaged after the resulting executions have surpassed the Specified Engagement Trigger. The remaining quoted contracts in Series 1 and all quoted contracts in Series 2 would then be cancelled.

Proposed Rule 21.16(d) further provides that the system will reset the counting period for absolute limits when a User refreshes its risk limit thresholds. In addition, proposed Rule 21.16(d) provides that the System will reset the counting program and commence a new specified time period when: (i) A previous counting period has expired and a transaction occurs in any series in such option; or (ii) A User refreshes its risk limit thresholds prior to the expiration of the specified time period. For example, assume that a User has set Options Category limits for a particular option as follows: Volume triggers at 500 contracts per second and 20,000 contracts per minute, a count trigger at 20 executions per second, and an absolute notional value trigger of $30,000. Assume that at a particular point in time, 400 front-month calls have executed in the current second, 19,000 front-month calls have executed in the current minute, 10 executions of front-month calls have occurred in the current second and a total of $25,000 notional has been executed in front-month calls over the course of the trading day. Next, an incoming order from another User of BATS Options is received that results in another 1,000 front-month call contracts executing within the current minute, thus triggering the volume trigger of 20,000 contracts per minute. If the User reset the risk limit threshold, all values, including the absolute notional calculation for the trading day, would be reset to zero.

2. Statutory Basis

The rule change proposed in this submission 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(b) of the Act.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the proposal is appropriate and reasonable, because it offers functionality for Users to manage their risk. Offering of a Risk Monitor Mechanism will allow Market Makers and other Users to quote aggressively which removes impediments to a free and open market and benefits all Users of BATS Options. The Exchange notes that a similar functionality is offered by NOM and other options exchanges.[9]

(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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes 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 [10] and Rule 19b–4(f)(6)(iii) thereunder.[11] In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* NOM Chapter VI, Section 19; *see also* NASDAQ OMX PHLX Rule 1093; CBOE Rule 8.18; NYSE AMEX Options Rule 928; NYSE ARCA Options Rule 6.40.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–BATS–2012–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2012–021. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2012–021 and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14530 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67168; File No. SR–ISE–2012–46]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Certain Fees

June 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange 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 ISE proposes to eliminate three fees from its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate three fees from the Exchange's Schedule of Fees. First, the Exchange currently has a fee of $0.25 per contract applicable to customers that transact in complex orders, *i.e.*, customer complex orders that interact with complex orders residing on the complex order book thereby taking liquidity from the complex order book (''Complex Order Taker Fee'').[3] This fee was introduced before the Exchange introduced the Professional Customer category with the intent to charge non-broker dealer customers that use highly developed trading systems and are quickly able to hit the bid or lift an offer thereby taking liquidity, *i.e.*, interacting with complex orders resident on the complex order book. The Exchange adopted this fee to put Professional Customers on more equal footing with broker dealer orders that were already subject to this fee. The purpose of this fee was not to charge retail investors, who are now known on the Exchange as Priority Customers, and therefore the Exchange adopted a waiver from this fee for the first 1,000 orders that a Member, acting on behalf of one or more of its customers, transacts in one month that takes liquidity from the complex order book. Now that the Exchange is able to distinguish between Priority and non-Priority Customers, the Exchange believes this fee is no longer necessary and proposes to eliminate it.

In 2010, the Exchange began assessing per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'')[4] in a number of options classes (the ''Select

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release Nos. 34–54751 (November 14, 2006), 71 FR 67667 (November 22, 2006) (SR–ISE–2006–56); 55247 (February 6, 2007), 72 FR 7099 (February 14, 2007) (SR–ISE–2007–03); 59576 (March 13, 2009), 74 FR 11982 (March 20, 2009) (SR–ISE–2009–07); and 60778 (October 2, 2009), 74 FR 51896 (October 8, 2009) (SR–ISE–2009–72).

[4] *See* Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

Symbols'').[5] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange subsequently adopted maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (Non-Select Penny Pilot Symbols)[6] and then adopted maker/taker fees and rebates for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[7] Now that the Exchange has adopted maker/taker fees and rebates, which are designed to attract complex orders to the Exchange, and has a specific taker fee for Customer (Professional) complex orders, the Complex Order Taker Fee has become a disincentive for Members to execute Priority Customer complex orders to take advantage of rebates offered by the Exchange because once Priority Customers orders reach the 1,000 order threshold, those orders become subject to the Complex Order Taker Fee. As noted above, the Exchange did not intend to charge Priority Customer orders the Complex Order Taker Fee and this proposed rule change will fully accomplish that goal. Therefore, the Exchange proposes to eliminate this fee and remove it from its Schedule of Fees.

Second, the Exchange currently has a fee pursuant to which Exchange Primary Market Makers (PMMs) are subject to a minimum fee of $50,000 per options group (''Minimum PMM Fee''). To the extent that aggregate execution fees in a group or bin of options do not total at least $50,000 per month, the PMM for that bin must pay a fee representing the difference between $50,000 and the aggregate actual execution fees. The Exchange adopted this fee during its early years in order to encourage PMMs to ramp up their operations as quickly as possible and to avoid a potential revenue shortfall. ISE's PMMs have been fully operating all of their PMM trading rights for a number of years and generate revenue greater than the Minimum PMM Fee. The Exchange does not believe there is a need for this fee any more. Therefore, the Exchange proposes to eliminate this fee and remove it from its Schedule of Fees.

Finally, when the Exchange adopted its maker/taker fees and rebates, it also adopted a distinction between small size Priority Customer orders, *i.e.*, Priority Customer orders of less than 100 contracts, and large size Priority Customer orders, *i.e.*, Priority Customer orders of 100 or more contracts.[8] The purpose for this distinction was to allow the Exchange to charge small size Priority Customer orders and large size Priority Customer orders different rates. And for a period of time, the Exchange charged a higher fee for large size Priority Customer orders.[9] However, in January 2011, the Exchange standardized the fee for Priority Customer orders[10] and no longer charges different rates for these orders. The Exchange now proposes to eliminate this distinction from its Schedule of Fees and will continue to apply the same level of fees to Priority Customer orders, regardless of size.

2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Exchange Act'')[11] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[12] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes it is reasonable to remove the three fees that are the subject of this proposed rule change from the Exchange's Schedule of Fees because they are either no longer applicable, in the case of the Minimum PMM fee and the fee for Priority Customer orders, or are a disincentive for order flow, as in the case of the Complex Order Taker Fee. The Complex Order Taker Fee, since its adoption, was intended for Professional Customer orders, as evidenced by the waiver the Exchange adopted that waived this fee for the first 1,000 orders from customers that take liquidity from the complex order book. The presumption was that Priority Customer orders would not exceed this threshold and thus would not be subject to the fee. This proposed rule change accomplishes that goal because Professional Customer complex orders that take liquidity are now charged a fee under the Exchange's maker/taker fees and by removing this fee from the Exchange's Schedule of Fees, Priority Customer orders will no longer be subject to this fee.

The Exchange believes that this proposed rule change which seeks to amend the text of the Schedule of Fees to clarify the applicability of certain fees is also both reasonable and equitable because Members would benefit from clear guidance in the rule text describing the manner in which the Exchange would assess fees. The Exchange further believes the proposed rule change is reasonable because removing these fees from the Schedule of Fees will provide clarity and greater transparency regarding the Exchange's fees. The Exchange notes that the proposed rule change is also equitably allocated and not unfairly discriminatory in that it treats similarly situated market participants in the same manner, *i.e.* the removal of the three fees will impact all market participants equally on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[13] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[5] The Select Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

[6] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[7] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); and 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06).

[8] *See supra* note 4 [sic].

[9] *See supra* note 4 [sic].

[10] *See* Exchange Act Release No. 63664 (January 6, 2011), 76 FR 2170 (January 12, 2011) (SR–ISE–2010–120).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2012–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–46 and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14533 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67169; File No. SR–Phlx–2012–40]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Quarterly Trading Requirements Applicable to Registered Options Traders

June 8, 2012.

I. Introduction

On March 26, 2012, NASDAQ OMX PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to change trading requirements applicable to certain Registered Options Traders trading electronically. The proposed rule change was published for comment in the **Federal Register** on April 13, 2012.[3] The Commission received no comments on the proposal. On June 6, the Exchange filed Amendment No. 1 to the proposal.[4] This order approves the proposal, as modified by Amendment No. 1.

II. Description

The Exchange proposed to amend the trading requirements imposed on certain Exchange market makers[5] arising from their use of electronic orders to trade on the Exchange.

First, the Exchange proposed to amend Exchange Rule 1014, Commentary .13, which provides that within each quarter an ROT must execute in person, and not through the use of orders, a specified number of contracts, with such number to be determined from time to time by the Exchange. Pursuant to Commentary .13, Options Floor Procedure Advice B–3 requires that an ROT (other than an RSQT or a Remote Specialist) trade in person, and not through the use of orders, the greater of 1000 contracts or 50% of its contract volume on the Exchange each quarter. The Exchange proposed to amend both Commentary .13 and Options Floor Procedure Advice B–3 to permit non-SQT ROTs to meet the in-person trading requirements set forth in those sections using orders entered in person, for the same reasons that the Exchange recently modified the 80% in-person test set forth in Commentary .01 to Rule 1014.[6]

The Exchange also proposed to amend Exchange Rule 1014(b)(ii)(E) to eliminate the requirement that non-SQT ROTs who transact more than 20% of their contract volume in an option electronically during any calendar quarter submit two-sided electronic quotations (also known as ''streaming quotes'') in a designated percentage of series within options in which such non-SQT ROT is assigned (the ''20% test''). The Exchange stated that streaming quotes is burdensome to non-SQT ROTs, who are generally not equipped to undertake this form of trading, and could result in a significant

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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.

[3] *See* Securities Exchange Act Release No. 66767 (April 6, 2012), 77 FR 22365. The Exchange subsequently extended the date for Commission action to June 4, 2012, and then to June 8, 2012.

[4] The amendment is technical in nature, and is thus not subject to notice and comment.

[5] The general term ''market makers'' on the Exchange includes specialists and registered options traders (''ROTs''). An ROT is a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii). ROTs can be Streaming Quote Traders (''SQTs''), Remote Streaming Quote Traders (''RSQTs''), or non-Streaming Quote Trader ROTs (''non-SQT ROTs'') which by definition are neither SQTs nor RSQTs. An ROT is a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii). An SQT is defined as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. *See* Exchange Rule 1014 (b)(ii)(A).

[6] Prior to being amended, Commentary .01 required that in order for an ROT (other than an RSQT or a Remote Specialist) to receive specialist margin treatment for off-floor orders in any calendar quarter, the ROT was required, among other things, to execute the greater of 1,000 contracts or 80% of his total contracts that quarter in person and not through the use of orders (the ''80% in-person test''). The only way to participate in trades other than through the use of orders is by quoting. In amending this provision, the Exchange explained that the limitation on the use of orders to satisfy the 80% in-person test with respect to non-SQT ROTs was obsolete as, given the movement toward more electronic trading in options, it had become difficult for such ROTs to comply with the trading requirement without using orders. The Exchange observed that non-SQT ROTs could only meet the 80% in person test by participating in crowd trades which they cannot control in terms of frequency, and proposed that the 80% in-person test be amended to permit non-SQT ROTs to count orders entered in person to meet the requirement. *See* Securities Exchange Act Release No. 65644 (October 27, 2011), 76 FR 67786 (November 2, 2011) (SR–Phlx–2011–123).

increase in fixed costs to these non-SQT ROTs. The Exchange stated that continuing to require non-SQT ROTs that execute more than 20% of their contract volume electronically to stream quotes would likely result in those ROTs leaving the trading floor in that option. The Exchange stated that price improvement, quality of execution, and especially price discovery would suffer if these non-SQT ROTs were forced out of open outcry market making. The Exchange therefore proposed to eliminate the 20% test and its associated requirements as a vestige of the early days of electronic trading.[7] Instead, all non-SQT ROTs, regardless of their volume of electronic transactions, would be subject to the continuous open outcry quoting obligation that is currently only applicable to those non-SQT ROTs that trade less than 20% of their contract volume electronically. The Exchange represented that this proposal would affect a relatively small number of non-SQT ROTs. The Exchange also represented that this change would not detract from the current electronic trading environment.

The Exchange also proposed conforming changes to Exchange Rule 1014(b)(ii)(E)(1) to conform that provision to the recent amendment by the Exchange of Rule 1014, Commentary .01. Specifically, the Exchange proposed to delete Exchange Rule 1014(b)(ii)(E)(1)(c), which provides that any volume transacted electronically will not count towards a non-SQT ROT's 80% in-person test contained in Commentary .01 to Rule 1014. As described above, recently amended Commentary .01 eliminated this restriction and the Exchange stated that Exchange Rule 1014(b)(ii)(E)(1)(c) was no longer necessary.

Finally, the Exchange proposed to eliminate a reference from Rule 1093(a), the Phlx XL Risk Monitor Mechanism, which refers to non-SQT ROTs that are required to stream two-sided quotes electronically pursuant to Rule 1014(b)(ii)(E). As described above, the Exchange proposes to remove the requirement from Rule 1014(b)(ii)(E) that non-SQT ROTs stream quotes electronically, and is making this conforming change to Rule 1093(a).

III. Discussion and Commission Findings

After careful review, 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[8] and, in particular, the requirements of Section 6(b)(5) of the Act.[9] Specifically, the Commission finds that the proposed rule change is designed 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 proposal eliminates the potentially burdensome requirements that are triggered when a non-SQT ROT executes more than 20% of its volume electronically, eliminates restrictions on non-SQT ROTs' use of orders to meet various in-person trading requirements, and makes clarifying and conforming changes to previously amended rule text.

With respect to the elimination of the requirement that non-SQT ROTs stream quotes electronically if they transact more than 20% of their contract volume electronically, the Commission notes that the Exchange recently amended its rules to require ROTs (other than RSQTs and Remote Specialists) to execute a minimum of 1,000 contracts and 300 transactions on the Exchange each quarter.[10] Given that a non-SQT ROT cannot control the size or frequency of crowd trades, the non-SQT ROT may have to use more electronic orders to meet this transaction requirement, making it more likely that such non-SQT ROT would trigger the 20% threshold for streaming quotes electronically. To the extent that a non-SQT ROT that meets this threshold may be unable or unwilling to invest the resources necessary for streaming quotes, and may exit open-outcry market making in that option rather than stream quotes, this may impact price improvement, quality of execution, and price discovery on the Exchange. The Commission believes it is reasonable to revise the quoting requirements for non-SQT ROTs accordingly to enable such non-SQT ROTs to continue making markets in open outcry, to the benefit of investors. In making this finding, the Commission notes that this proposal would affect a relatively small number of non-SQT ROTs, and that this change should not detract from the current electronic trading environment. Moreover, to the extent that this rule change imposes a continuous open outcry quoting obligation on all non-SQT ROTs, regardless of electronic transaction volume, the Commission notes that this proposal may potentially contribute to a more robust trading crowd in a given option.[11]

Given that the Exchange is eliminating the continuous electronic quoting obligations for non-SQT ROTs, the Commission finds that it is consistent with the Act for the Exchange to eliminate a corresponding reference to this requirement in Rule 1093(a).

The Commission finds that the changes to Rule 1014, Commentary .13, and to the Options Floor Procedure Advice B–3 to permit non-SQT ROTs to use orders to meet in-person trading requirements are also consistent with the Act. Those changes are consistent with the recent changes to Commentary .01 to Rule 1014, which were approved by the Commission, to permit the use of orders entered in person to count towards the 80% in-person requirement of that Commentary.[12] As the Exchange noted in that rule change, non-SQT ROTs could have difficulty meeting the non-SQT ROT in-person trading requirements without counting orders entered electronically, given that non-SQT ROTs' ability to trade other than by the use of orders has substantially diminished over the years with the increasing prominence of electronic trading. The Commission finds that rationale equally applicable here. Similarly, the deletion of Rule 1014(b)(ii)(E)(1)(c) is also consistent with those changes to Commentary .01 to Rule 1014.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the

[7] In addition to deleting Exchange Rule 1014(b)(ii)(E)(2), the Exchange proposed to delete introductory language from the beginning of Exchange Rule 1014(b)(ii)(E) that would no longer be necessary. The substantive provisions of Exchange Rule 1014(b)(ii)(E)(1) governing non-SQT ROT obligations, as proposed to be renumbered and amended, would continue to apply.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release No. 65644 (October 27, 2011), 76 FR 67786 (November 2, 2011) (SR–Phlx–2011–123). Transactions executed in the trading crowd where the contra-side is an ROT, however, do not count towards this requirement. *See* Rule 1014, Commentary .01.

[11] Currently, non-SQT ROTs that are under the 20% threshold quote in open outcry, while non-SQT ROTs that exceed the 20% threshold stream quotes electronically (or exit open-outcry market making in that option). This proposed change would impose the continuous open outcry obligation on all non-SQT ROTs.

[12] *See* Securities Exchange Act Release No. 65644 (October 27, 2011), 76 FR 67786 (November 2, 2011) (SR–Phlx–2011–123).

[13] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–Phlx–2012–40), as modified by Amendment No.1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14534 Filed 6–13–12; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67166; File No. SR–ISE–2012–48]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Rebates for Certain Complex Orders

June 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to make a change to its schedule of fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'')[4] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5] Maker/taker fees and rebates for complex orders are assessed on the following order-type categories: ISE Market Maker,[6] Market Maker Plus,[7] Firm Proprietary, Customer (Professional),[8] Non-ISE Market Maker,[9] and Priority Customer.[10] The Exchange is proposing to increase certain rebate amounts for complex orders in options on the Select Symbols, the Non-Select Penny Pilot Symbols, the Non-Penny Pilot Symbols and in options on one Select Symbol—SPY—which has a distinct rebate amount.

Specifically, the Exchange now proposes to increase certain rebates associated with complex order volume tiers. In the Select Symbols, the Exchange currently provides a base rebate of $0.32 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain average daily volume (ADV) thresholds on a month-to-month basis, as follows: If a Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount for such option contracts is $0.33 per contract per leg; if a Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount for such option contracts is $0.34 per contract per leg. The Exchange now proposes to adopt a new tier for Priority Customer complex order contracts in the Select Symbols of 250,000 contracts such that if a Member achieves an ADV of 250,000 Priority Customer complex order contracts, the rebate amount for such option contracts shall be $0.345 per contract per leg. The highest rebate amount achieved by a Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by a Member during such calendar month.

In the Non-Select Penny Pilot Symbols, the Exchange currently provides a base rebate of $0.28 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); and 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38).

[6] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[7] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so qualifies a Market Maker for the rebate. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[8] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[9] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[10] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

Additionally, Members can earn a higher rebate amount on a month-to-month basis, as follows: If a Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount for such option contracts is $0.30 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount for such option contracts is $0.32 per contract per leg. The Exchange now proposes to adopt a new tier for Priority Customer complex order contracts in the Non-Select Penny Pilot Symbols of 250,000 contracts such that if a Member achieves an ADV of 250,000 Priority Customer complex order contracts, the rebate amount for such option contracts shall be $0.325 per contract per leg. The highest rebate amount achieved by a Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by a Member during such calendar month.

In the Non-Penny Pilot Symbols, the Exchange currently provides a base rebate of $0.57 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount on a month-to-month basis, as follows: If a Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount for such option contracts is $0.59 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount for such option contracts is $0.61 per contract per leg. The Exchange now proposes to adopt a new tier for Priority Customer complex order contracts in the Non-Penny Pilot Symbols of 250,000 contracts such that if a Member achieves an ADV of 250,000 Priority Customer complex order contracts, the rebate amount for such option contracts shall be $0.615 per contract per leg. The highest rebate amount achieved by a Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by a Member during such calendar month.

Finally, for SPY, the Exchange currently provides a base rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount on a month-to-month basis, as follows: If a Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount for such option contracts is $0.34 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount for such option contracts is $0.35 per contract per leg. The Exchange now proposes to adopt a new tier for Priority Customer complex order contracts in SPY of 250,000 contracts such that if a Member achieves an ADV of 250,000 Priority Customer complex order contracts, the rebate amount for such option contracts shall be $0.355 per contract per leg. The highest rebate amount achieved by a Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by a Member during such calendar month.

The Exchange is not proposing any other changes in this filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [12] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to interact with and respond to certain types of orders.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange has already established a volume-based incentive program, and is now merely proposing to adopt an additional tier to that program. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that increasing its complex order rebates will attract additional complex order business.

The Exchange further believes that the Exchange's maker/taker fees and rebates are not unfairly discriminatory because those structures are consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed rebates are fair, equitable and not unfairly discriminatory because the proposed rebates are consistent with price differentiation that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebate levels at a particular exchange to be low. With this proposed rebate change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[13] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–48 and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14531 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67167; File No. SR–ISE–2012–47]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees

June 8, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to change the treatment of certain orders executed in the Exchange's Facilitation and Solicited Order Mechanisms. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

In 2010, the Exchange began assessing per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'')[3] in a number of options classes (the ''Select Symbols'').[4] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange subsequently adopted maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'')[5] and then adopted maker/taker fees and rebates for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[6]

Pursuant to Commission approval, the Exchange will soon introduce a new order type called ''Add Liquidity Order'' or ''ALO.''[7] ALOs are limit orders that will only be executed as a ''maker'' on the Exchange. An ALO allows market participants to specify that they only seek to provide liquidity, thus avoiding taker fees. Currently, when a Facilitation or Solicitation order interacts with pre-existing orders and quotes, the pre-existing order or quote is treated as taker of liquidity and the Facilitation or Solicitation order that interacts with the pre-existing order or quote is provided with a rebate.[8] The Exchange believes that all pre-existing orders and quotes in the Select Symbols, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols should be

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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.

[3] *See* Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

[4] The Select Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

[5] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[6] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); and 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06).

[7] *See* Exchange Act Release No. 66617 (March 19, 2012), 77 FR 17102 (March 23, 2012) (SR–ISE–2012–20). The Exchange expects to launch ALO on June 4, 2012.

[8] Currently, the Exchange provides a rebate of $0.15 to contracts that do not trade with the contra order in the Facilitation Mechanism and Solicited Order Mechanism. This rebate currently applies to the Select Symbols and to Non-Select Penny Pilot Symbols and does not apply to Non-Penny Pilot Symbols.

treated as ''maker,'' not ''taker,'' and this distinction becomes more pertinent when the Exchange introduces ALO. As proposed, Facilitation and Solicitation orders that previously received a ''break-up'' rebate when they interacted with pre-existing orders and quotes that were being treated as ''taker'' will no longer receive such a rebate. The Exchange believes it is appropriate, and generally expected by market participants, to treat pre-existing orders and quotes as maker, rather than taker. The Exchange proposes to adopt rule text in its Schedule of Fees to make clear that incoming Facilitation and Solicitation orders that interact with pre-existing orders and quotes on the Exchange's orderbooks will not receive the ''break-up'' rebate for contracts they don't interact with. With this proposed rule change, pre-existing orders and quotes, when interacting with Facilitation and Solicitation orders in the Select Symbols, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols will be subject to the Exchange's maker fee, as noted in the Exchange's Schedule of Fees. Orders and quotes which arrive at the exchange after the commencement of a Facilitation or Solicitation order will continue to be charged taker fees.

Further, the ''break-up'' rebate noted in footnote 2 on page 19 of the Exchange's Schedule of Fees relates to orders executed on the Exchange's Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism and does not apply to complex orders executed on the Exchange. Therefore, the Exchange proposes to remove the reference to footnote 2 from all the complex order fee columns on page 19 of the Exchange's Schedule of Fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Exchange Act'') [9] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [10] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to treat pre-existing orders and quotes as maker, rather than taker, and thus charge the appropriate maker fees. The Exchange believes that the proposed fees it charges for options overlying the Select Symbols, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols remain competitive with fees charged by other exchanges and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The Exchange further notes that market participants generally expect pre-existing orders and quotes in the Exchange's Facilitation Mechanism and Solicited Order Mechanism to be treated as maker not taker. The Exchange believes this distinction is even more pertinent in the context of the Exchange's planned launch of the ALO order type. Market participants who choose to utilize ALO will fully expect the Exchange to treat their orders as providers of liquidity; to treat these orders differently will be contrary to the intent of the ALO order type and the expectation of these market participants.

The Exchange believes that treating a Facilitation or Solicitation order that interacts with pre-existing orders and quotes as takers of liquidity (as opposed to makers of liquidity which is how these orders are currently treated), thus charging these orders a taker fee furthers the objectives of Section 6(b)(5) of the Exchange Act, in that it is designed to make the Exchange's fee structure for ALO orders consistent with its overall maker/taker fee structure, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes it is reasonable and equitable to remove footnote 2 from the complex order fee columns on the Exchange's Schedule of Fees because doing so will clarify that footnote 2 is not applicable to complex orders executed on the Exchange and therefore, Members would benefit from clear guidance in the rule text describing the manner in which Exchange fees and rebates are assessed. The Exchange further believes the proposed rule change is reasonable because removing footnote 2 from the complex order fee columns on the Schedule of Fees will provide clarity and greater transparency regarding the Exchange's fees and rebates. The Exchange notes that the proposed rule change is also equitably allocated and not unfairly discriminatory in that it treats similarly situated market participants in the same manner, i.e., the removal of footnote 2 from the complex order fee column will impact all market participants equally on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[11] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2012–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–47. This file number should be included on the subject line if email is used. To help the

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–47 and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14532 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67173; File No. SR–CBOE–2012–054]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

June 8, 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 June 1, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently amended the Customer Large Trade Discount in its Fees Schedule to state that for any Trading Permit Holder that executes 750,000 or more customer VIX options contracts in a month, regular customer transaction fees will only be charged up to the first 7,500 VIX options contracts per order in that month (the ''Amendment'').[3] The Amendment was to take effect on June 1, 2012. However, since submitting the Amendment, the Exchange has learned that a number of technical and billing issues would prevent the effective institution of the Amendment. As such, the Exchange hereby proposes to remove from the Fees Schedule the language added by the Amendment. The Exchange may, at some point in the future, re-add such language (or similar language) when such issues have been resolved.

[3] *See* Securities Exchange Act Release No. 67065 (May 25, 2012), 77 FR 32707 (June 1, 2012) (SR–CBOE–2012–047).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The removal of the language in the Amendment removes impediments to and perfects the mechanism for a free and open market by eliminating potential issues that would otherwise prevent the effective institution of the Amendment.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

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–CBOE–2012–054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–054, and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14574 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67171; File No. SR–NASDAQ–2012–068]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NDX Pricing

June 8, 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 May 30, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 NASDAQ Stock Market LLC proposes to modify pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NASDAQ proposes to amend Chapter XV, Section 2 entitled ''NASDAQ Options Market—Fees and Rebates'' to adopt rebates and fees relating to options on the Nasdaq 100 Index traded under the symbol NDX (''NDX'').

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to amend Chapter XV, Section 2 to adopt rebates and fees relating to NDX options. NASDAQ currently assesses the same rebates and fees for NDX and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX (''MNX'') as follows:

	Customer	Professional	Firm	Non-NOM market maker	NOM market maker
NDX and MNX:					
Rebate to Add Liquidity	$0.10	$0.10	$0.10	$0.10	$0.20
Fee for Removing Liquidity	0.50	0.50	0.50	0.50	0.40

The Exchange proposes to assess the following Rebate to Remove Liquidity, Rebates to Add Liquidity,[3] Fees to Add Liquidity and Fees for Removing Liquidity[4] for transactions in NDX:

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An order that adds liquidity is one that is entered into NOM and rests on the NOM book.

[4] An order that removes liquidity is one that is entered into NOM and that executes against an order resting on the NOM book.

	Customer	Professional	Firm	Non-NOM market maker	NOM market maker
NDX:					
Rebate to Remove Liquidity	$0.40	$0.00	$0.00	$0.00	$0.00
Rebate to Add Liquidity	[1]	0.00	0.00	0.00	[1]
Fee to Add Liquidity	[1]	0.70	0.70	0.70	[1]
Fee for Removing Liquidity	0.00	0.70	0.70	0.70	0.70

[1] A Customer and NOM Market Maker will either receive a Rebate to Add Liquidity of $0.20 per contract when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker or will pay a Fee to Add Liquidity of $0.65 per contract when trading against a Customer.

A Customer or a NOM Market Maker [5] would therefore be entitled to receive a Rebate to Add Liquidity or would pay a Fee to Add Liquidity depending on the contra-party to the transaction. The Exchange also proposes to amend Chapter XV, Section 2 to remove the term ''NDX and'' in NDX and MNX title of the rebates and fees currently in the Rule.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that its proposal to adopt separate fees and rebates for transactions in NDX is reasonable because the Exchange has previously distinguished other index products.[8] The Exchange is proposing to assess certain participants higher Fees to Add and Remove Liquidity for NDX and pay a higher Customer Rebate to Remove Liquidity ($0.40 per contract). The Exchange believes that its success at attracting Customer order flow benefits all market participants by improving the quality of order interaction and executions at the Exchange. Additionally, these proposed fees and rebates for NDX are also similar to complex order fees currently in place at the International Securities Exchange, LLC (''ISE'').[9]

The Exchange believes that its proposal to adopt separate fees and rebates for transactions in NDX is equitable and not unfairly discriminatory because Customers will receive a $0.40 per contract Rebate to Remove Liquidity, which in turn will attract Customer order flow to the Exchange to the benefit of all market participants through increased liquidity. Further, the Exchange also believes it is reasonable, equitable and not unfairly discriminatory to only offer rebates for removing liquidity to Customers and not other market participants as an incentive to attract Customer order flow in NDX to the Exchange. It is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders.

The Exchange's proposal to pay a $0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker,[10] and assess a Fee to Add Liquidity of $0.65 per contract when trading against a Customer is reasonable because the Exchange believes that providing Customers and Market Makers with the opportunity to either earn a rebate or pay a lower fee should incentivize these critical market participants to post liquidity on NOM. While the Customer and NOM Market Maker are unaware at the time they enter a transaction whether they would earn a rebate or pay a lower fee, the Exchange believes that the possibility of earning a $0.20 per contract Rebate to Add Liquidity when trading against a non-Customer (Professional, Firm, NOM Market Maker or Non-NOM Market Maker) or the opportunity to pay a lower fee, as compared to other market participants,[11] when trading against a Customer should incentivize both Customers and Market Makers to add liquidity. Increased liquidity benefits all market participants.

The Exchange's proposal to pay a $0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker, and assess a Fee to Add Liquidity of $0.65 per contract when trading against a Customer is equitable and not unfairly discriminatory because Customers and NOM Market Makers differ from other market participants. Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. NOM Market Makers have obligations to the market and regulatory requirements,[12] which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions

[5] NOM Market Makers must be registered as such pursuant to Chapter VII, Section 2 of the Nasdaq Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Chapter XV, Section 2(1) fees. The Exchange currently assesses different fees and rebates for other indexes such as HGX, SOX and OSX. Also, the Exchange assesses different fees for Penny Pilot transactions and non-Penny Pilot transactions. In addition, some market participants, such as market makers, have obligations pursuant to Exchange rules which the Exchange recognizes in its pricing.

[9] *See* ISE's Fee Schedule. ISE recently adopted fees for complex orders in two of the most actively-traded index option products, the NASDAQ 100 Index option (''NDX'') and the Russell 2000 Index option (''RUT''). Specifically, ISE charges ISE market maker orders, firm proprietary orders and Customer (Professional Orders) $0.25 per contract for providing liquidity on the complex order book in NDX and RUT and $0.70 per contract for taking liquidity from the complex order book in NDX and RUT. Non-ISE Market Makers are charged $0.25 per contract for providing liquidity and $0.75 per contract for taking liquidity from the complex order book in NDX and RUT. Priority Customer orders are not charged a fee for trading in the complex order book in NDX and RUT and receive a rebate of $0.50 per contract when those orders trade with non-Priority Customer orders in the complex order book in NDX and RUT. In comparison, NOM has proposed to adopt a similar fee structure, although not related to complex orders as is the case at ISE, with respect to paying a rebate and assessing a fee depending on the contra-party to the transaction and whether the participant is adding or removing liquidity. In addition, the proposed NOM Fees for Removing Liquidity are similar to those adopted by ISE.

[10] Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM.

[11] Professionals, Firms and Non-NOM Market Makers are assessed a $0.70 per contract Fee to Add Liquidity.

[12] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

that are inconsistent with course of dealings. The proposed differentiation as between Customers and NOM Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and NOM Market Makers, as well as the differing mix of orders entered. Further, as noted herein, the Customer and NOM Market Maker are unaware at the time the order is entered whether they would receive the $0.20 per contract Rebate to Add Liquidity or pay the $0.65 per contract Fee to Add Liquidity because they are aware of the identity of the contra-party, which would determine whether they receive a rebate or pay a fee. The Exchange believes that the Customer and NOM Market Maker rebate or fee pricing structure is equitable and not unfairly discriminatory because the Rebate to Add Liquidity, which is only being offered to Customers and NOM Market Makers, would reward these participants for posting liquidity that interacts with a non-Customer order (Professionals, Firms, NOM Market Makers and Non-NOM Market Makers). Also, the Customer and NOM Market Maker Fees to Add Liquidity ($0.65 per contract), when trading with a Customer, are equitable and not unfairly discriminatory because the fees are lower as compared to other market participants.[13] The $0.65 per contract Customer and NOM Market Maker Fee to Add Liquidity seeks to recoup the $0.22 license fee [14] and fund the $0.40 Customer Rebate to Remove Liquidity, which attracts liquidity to the Exchange and benefits all participants. The Exchange believes the combination of fees and rebates for Customers and NOM Market Makers to add liquidity will incentivize these participants to add liquidity in NDX and will also serve to fund the $0.22 license fee.

The Exchange's proposal to assess Professionals, Firms, and Non-NOM Market Makers a $0.70 per contract Fee to Add Liquidity is reasonable because the higher fees would enable the Exchange to reward Customers that remove liquidity with rebates. The advantage of increased Customer order flow benefits all market participants. The Exchange's proposal to assess Professionals, Firms, and Non-NOM Market Makers a $0.70 per contract Fee to Add Liquidity is equitable and not unfairly discriminatory because all other market participants (Professionals, Firms, and Non-NOM Market Makers), other than Customers and NOM Market Makers which are distinguished above, would be assessed the same Fee to Add Liquidity. Also, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to not offer a Rebate to Add Liquidity to Professionals, Firms and Non-NOM Market Makers because these participants do not bring the unique benefits that Customer order flow provides the market nor do these participants have the obligations that were described herein for NOM Market Makers.

The Exchange's proposal to assess all market participants except Customers a $0.70 per contract Fee for Removing Liquidity is equitable and not unfairly discriminatory because Professionals, Firms, NOM Market Makers and Non-NOM Market Makers would be assessed the same Fee for Removing Liquidity. Also, the Exchange believes the $0.70 per contract Fees for Removing Liquidity are reasonable because the Exchange currently pays a license fee [15] to list NDX on NOM and is seeking to recoup that fee and to pay the proposed $0.20 per contract Rebate to Add Liquidity to Customers and NOM Market Makers in NDX. In addition, the Exchange believes that these remove fees are within the range of fees for removing liquidity assessed by other exchanges.[16]

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee and rebate scheme is competitive and similar to other fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, NASDAQ has designed its fees and rebates to compete effectively for the execution and routing of options contracts and to reduce the overall cost to investors of options trading. The Exchange believes that the proposed fee/rebate pricing structure would attract liquidity to and benefit order interaction at the Exchange to the benefit of all market participants.[17]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18] 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–NASDAQ–2012–068 on the subject line.

[13] Professionals, Firms and Non-NOM Market Makers are assessed a $0.70 per Contract Fee to Add Liquidity.

[14] NOM is assessed a license fee of $0.22 per contract to list NDX.

[15] *Id.*

[16] *See* BATS Exchange, Inc.'s Fee Schedule. Professional, Firm and Market Maker orders are assessed a fee of $0.80 per contract to remove liquidity from the BATS Options order book. Customer orders are assessed a fee of $0.75 per contract to remove liquidity from the BATS Options order book. BATS also offers liquidity rebates for all other securities of $0.70 per contract for a Professional, Firm or Market Maker order that adds liquidity to the BATS Options order book and $0.75 per contract for a Customer order that adds liquidity to the BATS Options order book. The Exchange is proposing to assess Professional, Firms and Non-NOM Market Makers $0.70 per contract fees to add and remove liquidity, but no rebates and assess Customers and NOM Market Makers $0.65 per contact when trading against a Customer or a $0.20 per contract rebate when trading against a Professional, Firm, NOM Market Maker or Non-NOM Market Maker.

[17] *See* June 7, 2012 Email from Jonathan Cayne, Associate General Counsel, The Nasdaq OMX Group, Inc. to Stephanie Mumford, Special Counsel, Division of Trading and Markets, Securities and Exchange Commission.

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–068. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–068 and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14573 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67172; File No. SR–BATS–2012–020]

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.

June 8, 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 May 31, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2012.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the ''Options Pricing'' section of its fee schedule to: (i) modify the rebates provided by the Exchange for Customer[6] orders that add liquidity to Exchange's options platform (''BATS Options'') in options classes subject to the penny pilot program as described below (''Penny Pilot Securities''),[7] and (ii) modify the BATS Options NBBO Setter Program[8] by adopting enhanced rebates for liquidity resulting from orders with a significant level of displayed size. The Exchange also proposes minor structural changes to the Options Pricing section of the Exchange's fee schedule, including movement and re-numbering of certain footnotes.

(i) Customer Rebates for Adding Liquidity

The Exchange currently provides rebates for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities pursuant to a tiered pricing structure, as described below. The Exchange proposes to modify this tiered pricing structure, which will result in the potential for Customer orders to receive larger rebates per contract.

The Exchange currently provides a rebate of $0.30 per contract for Customer orders that add liquidity to the BATS Options order book to the extent a Member of BATS Options does not qualify for a higher rebate based on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined on the Exchange's fee schedule, a ''Customer'' order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), except for those designated as ''Professional''.

[7] The Exchange currently charges different fees and provides different rebates depending on whether an options class is an options class that qualifies as a Penny Pilot Security pursuant to Exchange Rule 21.5, Interpretation and Policy .01 or is a non-penny options class.

[8] The NBBO Setter Program is a program that provides additional rebates for executions resulting from orders that add liquidity that set either the national best bid (''NBB'') or national best offer (''NBO'').

their average daily volume (''ADV'').[9] The Exchange also currently provides Members with an ADV equal to or greater than 0.30% of average total consolidated volume (''TCV'') [10] with a rebate of $0.42 per contract for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities and a rebate of $0.44 per contract for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities for Members with an ADV equal to or greater than 1% of average TCV. Finally, the Exchange currently offers its Grow with Us pricing program to Customer orders that add liquidity by providing a Member with enhanced rebates (and lower execution fees) to the extent such Member shows a minimum of 5 basis points TCV improvement over the Member's previous highest monthly TCV on BATS Options, or ''High Water Mark.'' The Exchange has defined High Water Mark as the greater of a Member's fourth quarter 2011 TCV or a Member's best monthly TCV on BATS Options thereafter.[11] Under the current pricing structure, a Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but achieves at least a 5 basis point increase over its previous High Water Mark is provided a rebate of $0.36 per contract for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities. A Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but not the 1% of average TCV tier that achieves at least a 5 basis point increase over its previous High Water Mark is provided a rebate of $0.43 per contract for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities.

The Exchange proposes to increase the current Grow with Us rebates and to adopt a new Grow with Us rebate for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities, as described below.

The Exchange proposes to increase its rebate for a Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but achieves at least a 5 basis point increase over its previous High Water Mark from a rebate of $0.36 per contract to a rebate of $0.38 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities. Similarly, the Exchange proposes to increase its rebate for a Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but not the 1% of average TCV tier that achieves at least a 5 basis point increase over its previous High Water Mark from a rebate of $0.43 per contract to a rebate of $0.45 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities. Finally, the Exchange proposes to adopt a new Grow with Us rebate for Members that have an ADV greater than 1% of average TCV by providing a rebate to those Members that meet this tier but are also increasing their participation on BATS Options as demonstrated by achievement of at least a 5 basis point increase over its previous High Water Mark. The Exchange proposes to provide such Members with a rebate of $0.46 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities.

The Exchange is not proposing any changes to the tiered rebate structure for Customer orders entered by Members that do not qualify for Grow with Us pricing nor is the Exchange proposing to modify the rebates provided for Professional,[12] Firm and Market Maker [13] orders.

(ii) Enhanced NBBO Setter Rebate for Orders Meeting Size Requirements

The Exchange's NBBO Setter Program is a program intended to incentivize aggressive quoting on BATS Options by providing an additional rebate upon execution for all orders that add liquidity that set either the NBB or NBO (the ''NBBO Setter Rebate''),[14] subject to certain volume requirements. The Exchange currently provides an additional $0.06 per contract rebate for executions of Professional, Firm and Market Maker orders that qualify for the NBBO Setter Rebate by Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and an additional $0.10 per contract for qualifying executions of Professional, Firm and Market Maker orders by Members with an ADV equal to or greater than 1% of TCV. The Exchange also applies its Grow with Us pricing program to the NBBO Setter Rebate. Accordingly, a Member that does not qualify for NBBO Setter Rebates applicable to Members with an ADV equal to or greater than 0.30% of average TCV but achieves at least a 5 basis point increase over its previous High Water Mark receives NBBO Setter Rebates of $0.03 per contract for qualifying executions. Similarly, a Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but not the 1% of average TCV tier that achieves at least a 5 basis point increase over its previous High Water Mark is provided a NBBO Setter Rebate of $0.08 per contract for qualifying executions.

In order to further incentivize aggressive liquidity by incenting displayed size of contracts, the Exchange proposes to provide twice the rebate for executions that qualify for an NBBO Setter Rebate and result from an order with a displayed size that equals or exceeds 25 contracts. Accordingly, rather than NBBO Setter Rebates of $0.03, $0.06, $0.08 and $0.10 per contract, as described above, the Exchange proposes to provide enhanced NBBO Setter Rebates of $0.06, $0.12, $0.16 and $0.20, respectively, for executions that meet the size threshold. The Exchange proposes to limit the enhanced rebate to executions up to 200 contracts. For any executions above 200 contracts, the Exchange will provide the enhanced rebate based on order size for the first 200 contracts executed, and the standard NBBO Setter Rebate for all remaining contracts executed on that order.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[9] As defined on the Exchange's fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

[10] As defined on the Exchange's fee schedule, TCV is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

[11] For example, assume that for the fourth quarter of 2011, a Member has an ADV of 0.10% of average TCV. Such Member would not qualify for volume tier pricing applicable to Members with an ADV of 0.30% of average TCV. However, if, in June of 2012, such Member achieves an average TCV of 0.15% on BATS Options, such Member will receive one-half of the economic benefit such Member would receive if the Member had reached the 0.30% TCV volume tier and the Member's new High Water Mark will now be 0.15%.

[12] As defined in Rule 16.1, the term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[13] As set forth on the Exchange's fee schedule, and consistent with the definition of a Customer order, classification as a ''Firm'' or ''Market Maker'' order depends on the identification by a Member of the applicable clearing range at the OCC.

[14] An order that is entered at the most aggressive price both on the BATS Options book and according to then current OPRA data will be determined to have set the NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

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.[15] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

Volume-based rebates such as the ones maintained by the Exchange have been widely adopted in the cash equities markets and are increasingly in use by the options exchanges, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Accordingly, the Exchange believes that the continued offering of volume-based rebates for Customer orders in Penny Pilot Securities is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality. Similarly, the Exchange believes that continuing to base its tiered fee structure based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing.

The Exchange believes that continuing to provide additional financial incentives to Members that demonstrate a 5 basis point increase over their previous High Water Mark offers an additional, flexible way to achieve financial incentives from the Exchange and encourages Members to add increasing amounts of liquidity to BATS Options each month. The Grow with Us pricing program, therefore, is reasonable in that it rewards a Member's growth patterns. Such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. The increased liquidity also benefits all investors by deepening the BATS Options liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Grow with Us program is also fair and equitable and not unreasonably discriminatory in that it is available to all Members, even for Members that do not meet the Exchange's volume based tiers.

More specifically, the increase to Grow with Us rebates for Customer orders in Penny Pilot Securities is reasonable as it is a small increase that encourages growth by Members, which will, in turn, benefit all participants on BATS Options. The proposed rebates are fair and equitable and not unreasonably discriminatory due to the fact that Grow with Us pricing is available to all Members, even those that do not qualify for the Exchange's lowest volume tier. The Exchange notes that, as proposed, BATS Options will be providing a rebate to Members that qualify for the lower tier and Grow with Us pricing (such Members will receive a $0.45 per contract rebate for Customer orders) that is higher than the rebate provided to Members that qualify for the higher tier (1% or more) but do not qualify for Grow with Us pricing (such Members will receive a $0.44 per contract rebate for Customer orders). The Exchange believes that this pricing structure is reasonable and not unreasonably discriminatory because the Exchange is incentivizing Members to increase their activity on BATS Options, to the benefit of other BATS Options participants. Also, consistent with this objective, the Exchange has adopted a new Grow with Us category for Members that qualify for the higher tier and also qualify for Grow with Us pricing (such Members will receive a $0.46 per contract rebate for Customer orders).

The enhanced NBBO Setter program that focuses on the size of contracts has the potential of increasing the available liquidity at the Exchange. Accordingly, the proposed adoption of a program to provide enhanced NBBO Setter Rebates for executions from orders that qualify based on their size is fair and equitable and not unreasonably discriminatory because such a program is consistent with the overall goals of enhancing market quality and will benefit all investors by deepening the BATS Options liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange notes that it does not currently operate any auctions through which orders are held and broadcast to its membership, nor does the Exchange engage in any payment for order flow practices. Rather, the Exchange is proposing to enhance its transparent market structure with an easy to understand and transparent pricing structure by adding incentives for aggressive quoting with size. The Exchange also believes that the rebates as proposed are reasonable in that they significantly incentivize aggressive quoting with respect to both price and size.

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[17] and Rule 19b–4(f)(2) thereunder,[18] 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

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

Number SR–BATS–2012–020 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–2012–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2012–020 and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67170; File No. SR–CME–2012–20]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Extension of Fee Waiver Program Relating to Its Cleared-only OTC FX Clearing Offering

June 8, 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 June 5, 2012, Chicago Mercantile Exchange, Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[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 parties.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME is proposing to make certain changes to an existing fee waiver program that currently applies to its cleared-only OTC foreign exchange (''FX'') swap clearing offering.[5] The text of the proposed changes is as follows with additions italicized and deletions in brackets.

* * * * *

Program Purpose

The purpose of this Program is to incentivize market participants to submit transaction in the OTC FX products listed below to the Clearing House for clearing. The resulting increase in volume benefits all participant segments in the market.

Product Scope

The following cleared only OTC FX products (''Products''):

1. CME Cleared OTC FX—Emerging Markets

a. USDBRL, USDCLP, USDCNY, USDCOP, USDIDR, USDINR, USDKRW, USDMYR, USDPEN, USDPHP, USDRUB, USDTWD Non-Deliverable Forwards

b. USDCZK, USDHUF, USDHKD, USDILS, USDMXN, USDPLN, USDSGD, USDTHB, USDTRY, USDZAR Cash-Settled Forwards

2. CME Cleared OTC FX—Majors

a. AUDJPY, AUDUSD, CADJPY, EURAUD, EURCHF, EURGBP, EURJPY, EURUSD, GBPUSD, NZDUSD, USDCAD, USDCHF, USDDKK, USDJPY, USDNOK, USDSEK Cash-Settled Forwards.

Eligible Participants

The temporary reduction in fees will be open to all market participants and will automatically be applied to any transaction in the Products submitted to the Clearing House for clearing.

Program Term

Start date is February 1, 2012. End date is [June 30] *December 31,* 2012.

Hours

The Program will be applicable regardless of the transaction time.

Program Incentives

Fee Waivers. All market participants that clear the Products will have their clearing fees waived.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[6]

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

CME currently offers clearing for certain cleared-only OTC FX swap products. The filing proposes to extend a current fee waiver program that will apply to the following cleared-only OTC FX products (''Products''):

1. CME Cleared OTC FX—Emerging Markets

a. USDBRL, USDCLP, USDCNY, USDCOP, USDIDR, USDINR, USDKRW, USDMYR, USDPEN, USDPHP,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] CME previously amended the fee program in another rule filing. *See* Exchange Act Release No. 34–66261 (January 26, 2012), 77 FR 5283 (February 2, 2012) [CME–2012–02].

[6] The Commission has modified the text of the summaries prepared by CME.

USDRUB, USDTWD Non-Deliverable Forwards

b. USDCZK, USDHUF, USDHKD, USDILS, USDMXN, USDPLN, USDSGD, USDTHB, USDTRY, USDZAR Cash-Settled Forwards

2. CME Cleared OTC FX—Majors

a. AUDJPY, AUDUSD, CADJPY, EURAUD, EURCHF, EURGBP, EURJPY, EURUSD, GBPUSD, NZDUSD, USDCAD, USDCHF, USDDKK, USDJPY, USDNOK, USDSEK Cash-Settled Forwards.

The fee waiver is open to all market participants and will continue to be so during the extension period. The fee waiver will automatically be applied to any transaction in the products submitted to CME's clearinghouse for clearing.

Pursuant to Commodity Futures Trading Commission (''CFTC'') regulations, the rule changes are subject to CFTC Regulation 40.6(d), requiring a self-certification filing to the CFTC, although no change to text of the CME rulebook is required. CME notes that it has already certified the proposed changes that are the subject of this filing to the CFTC.

The proposed changes establish or change a member due, fee or other charge imposed by CME under Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder. CME believes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, to Section 17A(b)(3)(D) [7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among participants. CME notes that it operates in a highly competitive market in which market participants can readily direct business to competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

[7] 15 U.S.C. 78q–1(b)(3)(D).

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)(ii) [8] of the Act and Rule 19b–4(f)(2) [9] thereunder and thus became effective upon filing because it establishes or changes a due, fee, or other charge applicable to a member. 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 may be submitted by using 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 No. SR–CME–2012–20 on the subject line.
- Paper comments should be sent 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–CME–2012–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2012–20 and should be submitted on or before July 5, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14535 Filed 6–13–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C, 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OPLM.RCO@ssa.gov.*

SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30

days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 16, 2012. Individuals can obtain copies of the OMB clearance packages by writing to *OPLM.RCO@ssa.gov*.

1. *Waiver of Right to Appear—Disability Hearing—20 CFR 404.913–404.914, 404.916(b)(5), 416.1413–416.1414, 416.1416(b)(5)—0960–0534.* Claimants for Social Security disability payments or their representatives can use Form SSA–773 to officially waive their right to appear at a disability hearing. The disability hearing officer uses the signed form as a basis for not holding a hearing, and for preparing a written decision on the claimant's request for disability payments based solely on the evidence of record. The respondents are claimants for disability payments under title II and title XVI of the Social Security Act (Act), or their representatives, who wish to waive their right to appear at a disability hearing.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–773	200	1	3	10

2. *Youth Transition Process Demonstration Evaluation Data Collection—0960–0687.*

Background

The purpose of the Youth Transition Demonstration (YTD) project is to help young people with disabilities make the transition from school to work. While participating in the project, youth can continue to work or continue their education because SSA waives certain disability program rules and offers services to youth who are receiving disability benefits or have a high probability of receiving them. We are currently implementing YTD projects in three sites across the country. Three other sites completed service delivery and closed. The evaluation will produce empirical evidence on the effects of the waivers and project services including (1) educational attainment, (2) employment, (3) earnings, (4) receipt of benefits by youth with disabilities, and (5) Social Security Trust Fund and Federal income tax revenues. Sections 1110 and 234 of the Act authorize this project.

Project Description

Given the importance of estimating YTD effects as accurately as possible, we are evaluating the project using rigorous analytic methods based on randomly assigning youth to a treatment or control group. We conducted several data collections. These included: (1) Baseline interviews with youth and their parents or guardians prior to random assignment; (2) follow-up interviews at 12 months after random assignment; (3) interviews and roundtable discussions with local program administrators, program supervisors, and service delivery staff; and (4) focus groups of youths, their parents, and service providers. We are currently collecting follow-up interviews at 36 months after random assignment. We began collecting information for YTD in 2007, and we will conclude data collection for the project in 2013. The respondents are youths with disabilities enrolled in the project; their parents or guardians; program staff; and service providers.

Type of Request: Extension of an OMB-approved information collection.

FY 2012 DATA

Data collection year	Collection	Number of respondents	Responses per respondent	Average burden per response (hours)	Total response burden (hours)
2012	36 Month Follow-up	364	1	0.83	302
Total					302

COMBINED DATA FROM 2007—2013

Data collection year	Collection	Number of respondents	Responses per respondent	Average burden per response (hours)	Total response burden (hours)
All Years	Baseline	5,651	1	0.55	3,108
	Informed Consent	5,651	1	.083	469
	12 Month Follow-up	4,752	1	.83	3,944
	In-depth Interviews	240	1	.42	101
	Focus Group	440	1	1.5	660
	Program Staff/Service Provider	192	1	1	192
	36 Month Follow-up	3,962	1	.83	3,288
Grand Total					11,762

3. *Identifying Information for Possible Direct Payment of Authorized Fees—0960–0730.* SSA collects information from claimants' appointed representatives on Form SSA–1695 to (1) process and facilitate direct payment of authorized fees; (2) issue a Form 1099–MISC, if applicable; and (3) establish a link between each claim for benefits and the data we collect on the SSA–1699 for our appointed representative database. The

respondents are attorneys and other individuals who represent claimants for benefits before SSA.

Type of Request: Revision of an OMB approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1695	10,000	40	10	66,667

4. *Electronic Records Express—0960–0753.* Electronic Records Express (ERE) is a web-based SSA program allowing medical providers to electronically submit disability claimant data to SSA. Both medical providers and other third parties with connections to disability applicants or recipients can use this system. The respondents are medical providers who evaluate or treat disability claimants or recipients and are ERE users.

Type of Request: Extension of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
ERE	3,552,176	1	10	592,029

5. *Request to Pay Civil Monetary Penalty by Installment Agreement—20 CFR 498—0960–0776.* When SSA imposes a civil monetary penalty (CMP) for various fraudulent conduct related to SSA-administrated programs on individuals, those individuals may ask to pay the CMP through an installment agreement. For SSA to negotiate a monthly payment amount fair to both the individual and the agency, SSA needs financial information from the individual. The agency uses Form SSA–640 to obtain the information necessary to determine a repayment rate for individuals owing a CMP. The respondents are recipients of Social Security benefits and non-entitled individuals who must repay a CMP to the agency and want to do so using an installment plan.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–640	400	1	120	800

Dated: June 11, 2012.

Faye Lipsky,

Reports Clearance Director, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2012–14550 Filed 6–13–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–24216]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated May 11, 2012, the Sacramento Regional Transit District (SRTD) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222, Use Of Locomotive Horns at Public Highway-Rail Grade Crossings; Part 229, Locomotive Safety Standards; and Part 234, Grade Crossing Signal System Safety and State Action Plans. FRA assigned the petition Docket Number FRA–2006–24216.

In a letter dated September 3, 2003, FRA granted SRTD conditional relief from 49 CFR Sections 229.125 and 234.105(c)(3) on SRTD's Blue and Gold Lines. In a letter dated July 28, 2006, FRA granted SRTD conditional relief from 49 CFR Part 222 at 17 shared highway-rail grade crossings. In a letter dated June 22, 2011, FRA extended the existing terms and conditions of SRTD's waivers for an 18-month period. FRA could not conclude that granting relief for a 5-year period was justified because FRA's field investigation revealed SRTD failed to comply with other applicable rail safety regulations.

In a petition dated May 11, 2012, SRTD stated they are not proposing any change of scope in their request for an extension. SRTD affirmed that 49 CFR 229.125 and 234.105(c)(3) would still apply to all shared highway-rail grade crossings on SRTD's Blue and Gold Lines. SRTD confirmed that 49 CFR part 222 would still apply to the 17 shared highway-rail grade crossings. SRTD explained that their request is consistent with the waiver process for shared use. (See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000)).

In the petition, SRTD acknowledged noncompliance with 49 CFR part 225, Railroad Accidents/Incidents: Reports Classification, and Investigations; and 49 CFR part 228, Hours of Service of Railroad Employees; Recordkeeping and Reporting; Sleeping Quarters. SRTD

stated they have been working diligently to address deficiencies and are fully compliant. SRTD also stated they believe granting this waiver extension is in the public interest and consistent with railroad safety.

SRTD operates 37.5 miles of light rail (including 48 light rail stops or stations) 365 days a year using 76 light rail vehicles. Light rail trains begin operation at 4 a.m. with 14 trains running every 15 minutes during the day and 7 trains running every 30 minutes in the evening and on weekends. Blue Line and Gold Line trains operate until 10:30 p.m., and the Gold Line to Folsom, CA, operates until 7 p.m. SRTD operates three- and four-car trains during the peak periods and two-car trains during the off-peak hours. Single-car trains provide late evening and Sunday service. The end-to-end running time on the light rail Blue Line between Meadowview and Watt/Interstate 80 is 48 minutes. The running time for the Gold Line between Sacramento Valley Station and Folsom is 55 minutes. Weekday light rail ridership averages about 55,000.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 30, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on June 5, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–14549 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0069]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before August 13, 2012.

FOR FURTHER INFORMATION CONTACT: Jerome Davis, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–0688; or EMAIL: *jerome.davis@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: ''Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen Owned Documented Vessels.''

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0006.

Form Numbers: MA–29, MA–29A, and MA–29B.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This collection provides information necessary for MARAD to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens; or the transfer of such vessels to foreign registry and flag; or the transfer of foreign flag vessels by their owners as required by various contractual requirements.

Need and Use of the Information: The information will enable MARAD to determine whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulations.

Description of Respondents: Respondents are vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Annual Responses: 85 responses.

Annual Burden: 170 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume

65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov*.

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: June 8, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–14508 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0066]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel S/V SHENANIGANS; 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 July 16, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0066. 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 S/V SHENANIGANS is:

Intended Commercial Use of Vessel: ''Pleasure charter within the harbor and near coastal waters of Charleston, SC with occasional short-term extents to Georgia and Florida waters.''

Geographic Region: ''South Carolina, Georgia, Florida.''

The complete application is given in DOT docket MARAD–2012–0066 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: June 7, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–14488 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0067]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SECOND CHANCE; 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 July 16, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0067. 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 SECOND CHANCE is:

Intended Commercial Use of Vessel: ''Small group charters.''

Geographic Region: ''Hawaii.''

The complete application is given in DOT docket MARAD–2012–0067 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: June 7, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–14489 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2012 0065]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ORIENTAL MYSTIQUE; 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 July 16, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0065. 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 ORIENTAL MYSTIQUE is:

Intended Commercial Use of Vessel: ''The intended commercial use of the vessel will be to run crewed rentals and short day cruises on the stretch of the Willamette River between Portland, Oregon and Oregon, City. The theme of these cruises will be on Chinese culture and nautical exploration and invention as well as enabling passenger to enjoy the natural beauty of the area.''

Geographic Region: ''Oregon.''

The complete application is given in DOT docket MARAD–2012–0065 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: June 7, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–14506 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0064]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel REEL NAUTI; 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 July 16, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0064. 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 REEL NAUTI is:

Intended Commercial Use of Vessel: ''Charter boat.''

Geographic Region: ''Virginia and North Carolina.''

The complete application is given in DOT docket MARAD–2012–0064 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: June 7, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–14492 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0068]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SMOKE AND ROSES; 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 July 16, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0068. 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 SMOKE AND ROSES is:

INTENDED COMMERCIAL USE OF VESSEL: ''We intend to carry up to 10 passengers for hire for sunset and wildlife sightseeing tours. Also, overnight and week long tours for up to 6 passengers touring the southwest coast of Florida.''

GEOGRAPHIC REGION: ''Florida.''

The complete application is given in DOT docket MARAD–2012–0068 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: June 7, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–14495 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0062]

Highway Safety Programs; Conforming Products List of Screening Devices To Measure Alcohol in Bodily Fluids

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice updates the Conforming Products List (CPL) published in the **Federal Register** on December 15, 2009 (74 FR 66398) for instruments that conform to the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids dated, March 31, 2008 (73 FR 16956).

DATES: *Effective Date:* June 14, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Ms. De Carlo Ciccel, Behavioral Research Division, NTI–131, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: (202) 366–1694. *For legal issues:* Ms. Jin Kim, Office of Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION: On August 2, 1994, the National Highway Traffic Safety Administration (NHTSA) published Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (59 FR 39382). These specifications established performance criteria and methods for testing alcohol screening devices to measure alcohol content. The specifications support State laws that target youthful offenders (e.g., ''zero tolerance'' laws) and the Department of Transportation's workplace alcohol testing program. NHTSA published its first Conforming Products List (CPL) for screening devices on December 2, 1994 (59 FR 61923), with corrections on December 16, 1994 (59 FR 65128), identifying the devices that meet NHTSA's Model Specifications for Screening Devices to

Measure Alcohol in Bodily Fluids. Five devices appeared on that first list. Thereafter, NHTSA updated the CPL on August 15, 1995 (60 FR 42214), May 4, 2001 (66 FR 22639), September 19, 2005 (70 FR 54972), with corrections on December 5, 2005 (70 FR 72502), and January 31, 2007 (72 FR 4559).

On March 31, 2008, NHTSA published revised Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids (73 FR 16956). These specifications removed testing of interpretive screening devices (ISDs) because ISDs did not provide an unambiguous test result. These specifications also removed from use the Breath Alcohol Sample Simulator as it is not necessary for testing breath alcohol screening devices. All other performance criteria and test methods were maintained. NHTSA last published an update to the CPL on December 15, 2009 (74 FR 66398). It listed 39 devices.

Today, NHTSA adds nine (9) additional alcohol screening devices that have been evaluated and found to conform to the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids. One device is distributed by two different companies, so it has been listed twice, for a total of ten (10) new entries on this CPL.

(1) AK Solutions USA, LLC, submitted the AlcoMate SafeGuard (Model AL–2500, aka: AlcoScan AL–2500) alcohol screening device. This is a handheld, battery powered device with a semiconductor sensor.

(2) Alcohol Countermeasure Systems Corp., submitted the DRIVESAFE alcohol screening device. This is a handheld, battery powered device with a fuel cell sensor.

(3) KHN Solutions, LLC, submitted 2 screening devices for testing. Their trade names are: BACTRACK Element and the BACTRACK S75 Pro. Both devices are handheld, battery powered with fuel cell sensors.

(4) PAS Systems International, Inc. submitted the Alcovisor MARS screening device. This is a handheld, battery powered device with a fuel cell sensor.

(5) Q3 Innovations, Inc. submitted the CA2010 screening device. This is a handheld, battery powered device with a semiconductor sensor.

(6) Skyfine Inc. Ltd. submitted 3 devices (AT577, AT578, and AT579). All three devices are handheld, battery powered, and use fuel cell sensors. The AT578 is also distributed by Express Diagnostics Int'l, Blue Earth, Minnesota under the trade name of AlcoCheck FC90, so it has been listed twice on the CPL, once under each of its distributors/manufacturers.

All of the above devices meet the NHTSA Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

Consistent with the above, NHTSA updates the Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids to read as follows:

CONFORMING PRODUCTS LIST OF ALCOHOL SCREENING DEVICES

Distributors/manufacturers	Devices
AK Solutions, USA, LLC., Palisades Park, New Jersey [1]	• AlcoScan AL–2500. • SafeMate.[2] • SafeDrive. • AlcoMate.[3] (aka: AlcoHAWK Pro by Q3 Innovations). • AlcoMate Accu Cell AL–9000. • AlcoMate Pro.[3] • AlcoMate Core.[4] • AlcoMate Premium AL–7000, with replaceable Premium Sensor Modules (SM–7000).[4 5] • AlcoMate Prestige AL–6000, with replaceable Prestige Sensor Modules (SM–6000).[4 6] • AlcoMate SafeGuard (Model AL–2500, aka: AlcoScan AL–2500).
Alco Check International, Hudsonville, Michigan	Alco Check 3000 D.O.T.[7] Alco Check 9000.[7]
Akers Biosciences, Inc., Thorofare, New Jersey	Breath Alcohol ✓ .02 Detection System.[8]
Alcohol Countermeasure Systems Corp., Toronto, Ontario, Canada	DRIVESAFE.
BAC Solutions, Inc., Birmingham, Michigan	BACmaster.
B.E.S.T. Labs., Boardman, Ohio	PB 9000e.
Chematics, Inc., North Webster, Indiana	ALCO–SCREEN 02™[9].
CMI, Inc., Owensboro, Kentucky	Intoxilyzer 500 (aka: Alcometer 500—Lion Laboratories).
Express Diagnostics Int'l, Inc., Blue Earth, Minnesota	AlcoCheck FC90 (aka: AT578 by Skyfine).
First Innovative Technology Group, Ltd., Hong Kong	AAT198—Pro.
Guth Laboratories, Inc., Harrisburg, Pennsylvania	• Alco Tector Mark X. • Mark X Alcohol Checker. • Alcotector WAT89EC–1. • Alcotector WAT90.
Han International Co., Ltd.,[2] Seoul, Korea	A.B.I. (Alcohol Breath Indicator) (aka: AlcoHAWK ABI by Q3 Innovations).
KHN Solutions, LLC, San Francisco, California	• BACTRACK Select S50.[10] • BACTRACK Select S80.[10] • BACTRACK Element. • BACTRACK S 75 Pro.
Lion Laboratories, Ltd., Wales, United Kingdom	Alcometer 500 (aka: Intoxilyzer 500—CMI, Inc.).
OraSure Technologies, Inc., Bethlehem, Pennsylvania	Q.E.D. A150 Saliva Alcohol Test.
PAS Systems International, Inc., Fredericksburg, Virginia	• PAS Vr. • Alcovisor MARS.
Q3 Innovations, Inc., Independence, Iowa	• AlcoHAWK Precision. • AlcoHAWK Slim. • AlcoHAWK Slim 2. • AlcoHAWK Elite. • AlcoHAWK ABI (aka: A.B.I. (Alcohol Breath Indicator) by Han Intl.). • AlcoHAWK Micro. • AlcoHAWK PRO (aka: AlcoMate by AK Solutions).

CONFORMING PRODUCTS LIST OF ALCOHOL SCREENING DEVICES—Continued

Distributors/manufacturers	Devices
	• AlcoHAWK PT 500.
	• CA2010.
Repco Marketing, Inc., Raleigh, North Carolina	Alco Tec III.
Seju Engineering Co., Taejeon, Korea	Safe-Slim.
Skyfine Inc., Ltd., Kwai Chung, NT, Hong Kong	• AT577.
	• AT578 (aka: AlcoCheck FC90).
	• AT579.
Sound Off, Inc., Hudsonville, Michigan	Digitox D.O.T.[7]
Varian, Inc., Lake Forest, California	On-Site Alcohol.[10]

[1] The AlcoMate was manufactured by Han International of Seoul, Korea, but marketed and sold in the U.S. by AK Solutions.
[2] Manufactured by Seju Engineering, Korea.
[3] Han International does not market or sell devices directly in the U.S. market. Other devices manufactured by Han International are listed under AK Solutions, Inc. and Q3 Innovations, Inc.
[4] Manufactured by Sentech Korea Corp.
[5] These devices utilize replaceable semiconductor detectors. Instead of re-calibrating the device, a new calibrated detector can be installed. The device comes with 4 detectors including the one that was already installed.
[6] These devices utilize replaceable semiconductor detectors. Instead of re-calibrating the device, a new calibrated detector can be installed. This device comes with 5 detectors including the one that was already installed.
[7] While these devices are still being sold, they are no longer manufactured or supported.
[8] The Breath Alcohol ✓ .02 Detection System consists of a single-use disposable breath tube used in conjunction with an electronic analyzer that determines the test result. The electronic analyzer and the disposable breath tubes are lot specific and manufactured to remain calibrated throughout the shelf-life of the device. This screening device cannot be used after the expiration date.
[9] While the ALCO–SCREEN 02™ saliva-alcohol screening device manufactured by Chematics, Inc. passed the requirements of the Model Specifications when tested at 40 °C (104 °F), the manufacturer has indicated that the device cannot exceed storage temperatures of 27 °C (80 °F). Instructions to this effect are stated on all packaging accompanying the device. Accordingly, the device should not be stored at temperatures above 27 °C (80 °F). If the device is stored at or below 27 °C (80 °F) and used at higher temperatures (i.e., within a minute), the device meets the Model Specifications and the results persist for 10–15 minutes. If the device is stored at or below 27 °C (80 °F) and equilibrated at 40 °C (104 °F) for an hour prior to sample application, the device fails to meet the Model Specifications. Storage at temperatures above 27 °C (80 °F), for even brief periods of time, may result in false negative readings.
[10] While this device passed all of the requirements of the Model Specifications, readings should be taken only after the time specified by the manufacturer. For valid readings, the user should follow the manufacturer's instructions. Readings should be taken one (1) minute after a sample is introduced at or above 30 °C (86 °F); readings should be taken after two (2) minutes at 18 °C–29 °C (64.4 °F–84.2 °F); and readings should be taken after five (5) minutes when testing at temperatures at or below 17 °C (62.6 °F). If the reading is taken before five (5) minutes has elapsed under the cold conditions, the user is likely to obtain a reading that underestimates the actual saliva-alcohol level.

Authority: 23 U.S.C. 403; 49 CFR 1.50; 49 CFR part 501.

Issued on: June 11, 2012.

Jeff Michael,

Associate Administrator, Research and Program Development, National Highway Traffic Safety Administration.

[FR Doc. 2012–14582 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0061]

Highway Safety Programs; Conforming Products List of Evidential Breath Alcohol Measurement Devices

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: This notice updates the Conforming Products List (CPL) published in the **Federal Register** on March 11, 2010 (75 FR 11624) for instruments that conform to the Model Specifications for Evidential Breath Alcohol Measurement Devices dated, September 17, 1993 (58 FR 48705).

DATES: *Effective Date:* June 14, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Ms. De Carlo Ciccel, Behavioral Research Division, NTI–131, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone; (202) 366–1694. *For legal issues:* Ms. Jin Kim, Office of Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION: On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices (Model Specifications), and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice. Those instruments are identified on the CPL with an asterisk.

On September 17, 1993, NHTSA published a notice to amend the Model Specifications (58 FR 48705) and to update the CPL. That notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000, 0.020, 0.040, 0.080, and 0.160 BAC, respectively. It also included a test for the presence of acetone and an expanded definition of alcohol to include other low molecular weight alcohols, e.g., methyl or isopropyl. Since that time, the CPL has been annotated to indicate which instruments have been determined to meet the Model Specifications published in 1984, and which have been determined to meet the Model Specifications, as revised and published in 1993. Thereafter, NHTSA has periodically updated the CPL with those breath instruments found to conform to the Model Specifications. The most recent update to the CPL was published March 11, 2010 (75 FR 11624).

The CPL published today adds nine (9) new instruments that have been evaluated and found to conform to the Model Specifications, as amended on September 17, 1993 for mobile and non-mobile use. One instrument is distributed by two different companies, so it has been listed twice, for a total of

ten (10) new entries on this CPL. In alphabetical order by company, they are:

(1) The ''SAF'IR Evolution'' manufactured by Alcohol Countermeasure Systems Corp. Toronto, Ontario, Canada. This is a hand-held instrument intended for use in stationary or mobile operations. It uses an infrared sensor and powered by internal batteries.

(2) The ''Intoxilyzer 600'' manufactured by CMI, Inc., Owensboro, Kentucky. This is a hand-held instrument intended for use in stationary or mobile operations. It uses a fuel cell sensor and powered by an internal battery. The Intoxilyzer 600 is also distributed as the Alcolmeter 600 by Lion Laboratories outside the U.S., so it has been listed twice on the CPL, once under each of its distributors/manufacturers.

(3) The ''Guth 38'' manufactured by Guth Laboratories, Inc., Harrisburg, Pennsylvania. This is a hand-held instrument intended for use in stationary or mobile operations. It uses a fuel cell sensor and is powered by internal batteries.

(4) The ''Alco-Sensor V XL'' manufactured by Intoximeters, Inc., St. Louis, Missouri. This is a hand-held instrument intended for use in stationary or mobile operations. It uses a fuel cell sensor and is powered by internal batteries.

(5) The ''LifeGuard Pro'' manufactured by Lifeloc Technologies, Inc., Wheat Ridge, Colorado. This is a hand-held instrument intended for use in stationary or mobile operations. It uses a fuel cell sensor and is powered by internal batteries.

(6) The ''DataMaster DMT with fuel cell option series number (SN) 555555'' and the ''DataMaster DMT with fuel cell option series number (SN) 100630'' manufactured by National Patent Analytical Systems, Inc., Mansfield, Ohio. These instruments can be used in stationary and mobile operations. These instruments use both infrared and fuel cell sensors. These instruments can be powered by either 110 volts alternate current or 12 volts direct current.

(7) The ''Alcovisor Jupiter'' and the ''Alcovisor Mercury'' manufactured by PAS International, Fredericksburg, Virginia. These are hand-held instruments intended for use in stationary or mobile operations. Both instruments use a fuel cell sensor and are powered by internal batteries.

This update also removes four (4) instruments no longer supported by the manufacturer and makes one minor change.

The following instruments (PBA 3000 B, PBA 3000–P, PBA 3000 C and Alcohol Data Sensor), manufactured by Lifeloc Technologies, Inc., Wheat Ridge, Colorado, are being removed from the CPL because these instruments were determined to be obsolete. These instruments are no longer manufactured, in use or being maintained by the manufacturer.

The minor change includes a change of address for Alcohol Countermeasure Systems Corp., from Mississauga, Ontario, Canada to Toronto, Ontario, Canada.

In accordance with the foregoing, the CPL is updated, as set forth below.

Conforming Products List of Evidential Breath Measurement Devices

Manufacturer/distributor and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp., Toronto, Ontario, Canada:		
Alert J3AD *	X	X
Alert J4X.ec	X	X
PBA3000C	X	X
SAF'IR Evolution	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer *	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer *	X	X
CMI, Inc., Owensboro, Kentucky:		
Intoxilyzer Model:		
200	X	X
200D	X	X
240 (aka: Lion Alcolmeter 400+ outside the U.S.)	X	X
300	X	X
400	X	X
400PA	X	X
600 (aka: Lion Alcolmeter 600 outside the U.S.)	X	X
1400	X	X
4011 *	X	X
4011A *	X	X
4011AS *	X	X
4011AS–A *	X	X
4011AS–AQ *	X	X
4011 AW *	X	X
4011A27–10100 *	X	X
4011A27–10100 with filter *	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/⅜″ ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
8000	X	X
PAC 1200 *	X	X
S–D2	X	X
S–D5 (aka: Lion Alcolmeter SD–5 outside the U.S.)	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer/distributor and model	Mobile	Nonmobile
Draeger Safety, Inc. (aka: National Draeger) Irving, Texas:		
Alcotest Model:		
6510	X	X
6810	X	X
7010*	X	X
7110*	X	X
7110 MKIII	X	X
7110 MKIII–C	X	X
7410	X	X
7410 Plus	X	X
7510	X	X
9510	X	X
Breathalyzer Model:		
900	X	X
900A*	X	X
900BG*	X	X
7410	X	X
7410–II	X	X
EnviteC by Honeywell GmbH, Fond du Lac, Wisconsin:		
AlcoQuant 6020	X	X
Gall's Inc., Lexington, Kentucky:		
Alcohol Detection System—A.D.S. 500	X	X
Guth Laboratories, Inc., Harrisburg, Pennsylvania:		
Alcotector BAC–100	X	X
Alcotector C2H5OH	X	X
Guth 38	X	X
Intoximeters, Inc., St. Louis, Missouri:		
Photo Electric Intoximeter*		X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/FM option*	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor		X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000)	X	X
Alco-Sensor IV	X	X
Alco-Sensor IV XL	X	X
Alco-Sensor V	X	X
Alco-Sensor V XL	X	X
Alco-Sensor AZ	X	X
Alco-Sensor FST	X	X
Intox EC/IR	X	X
Intox EC/IR II	X	X
Intox EC/IR II (Enhanced with serial number 10,000 or higher)		X
Portable Intox EC/IR	X	X
RBT–AZ	X	X
RBT–III	X	X
RBT III–A	X	X
RBT IV	X	X
RBT IV with CEM (cell enhancement module)	X	X
Komyo Kitagawa, Kogyo, K.K., Japan:		
Alcolyzer DPA–2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, Colorado:		
LifeGuard Pro	X	X
Phoenix	X	X
Phoenix 6.0	X	X
EV 30	X	X
FC 10	X	X
FC 20	X	X
Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom:		
Alcolmeter Model:		
300	X	X

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer/distributor and model	Mobile	Nonmobile
400	X	X
400+ (aka: Intoxilyzer 240 in the U.S.)	X	X
600 (aka: Intoxilyzer 600 in the U.S.)	X	X
SD–2 *	X	X
SD–5 (aka: S–D5 in the U.S.)	X	X
EBA *	X	X
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernardino, California:.		
Alco-Analyzer Model:.		
1000 *		X
2000 *		X
Nanopuls AB, Uppsala, Sweden:		
Evidenzer	X	X
National Patent Analytical Systems, Inc., Mansfield, Ohio:		
BAC DataMaster (with or without the Delta-1 accessory)	X	X
BAC Verifier DataMaster (w/ or without the Delta-1 accessory)	X	X
DataMaster cdm (w/ or without the Delta-1 accessory)	X	X
DataMaster DMT	X	X
DataMaster DMT w/ Fuel Cell option SN: 555555	X	X
DataMaster DMT w/ Fuel Cell option SN: 100630	X	X
Omicron Systems, Palo Alto, California:		
Intoxilyzer Model:		
4011 *	X	X
4011AW *	X	X
PAS International, Fredericksburg, Virginia:		
Mark V Alcovisor	X	X
Alcovisor Jupiter	X	X
Alcovisor Mercury	X	X
Plus 4 Engineering, Minturn, Colorado:		
5000 Plus 4 *	X	X
Seres, Paris, France:		
Alco Master	X	X
Alcopro	X	X
Siemans-Allis, Cherry Hill, New Jersey:		
Alcomat *	X	X
Alcomat F *	X	X
Smith and Wesson Electronics, Springfield, Massachusetts:		
Breathalyzer Model:		
900 *	X	X
900A *	X	X
1000 *	X	X
2000 *	X	X
2000 (non-Humidity Sensor) *	X	X
Sound-Off, Inc., Hudsonville, Michigan:		
AlcoData	X	X
Seres Alco Master	X	X
Seres Alcopro	X	X
Stephenson Corp.:		
Breathalyzer 900 *	X	X
Tokai-Denshi Inc., Tokyo, Japan:		
ALC–PRO II (U.S.)	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, California:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, New York:		
BAC Verifier *	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II *	X	X

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC). Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

Authority: 23 U.S.C. 403; 49 CFR 1.50; 49 CFR part 501.

Issued on: June 11, 2012.

Jeff Michael,

Associate Administrator, Research and Program Development, National Highway Traffic Safety Administration.

[FR Doc. 2012–14581 Filed 6–13–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 303 (Sub-No. 39X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Manitowoc County, WI

Wisconsin Central Ltd. (WCL) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 6.8 miles of rail line extending from milepost 69.0 in Newton to milepost 62.2 in Cleveland in Manitowoc County, WI. The line traverses United States Postal Service Zip Codes 53015 and 53063, and there are no stations on the line.

WCL has certified that: (1) No local traffic has moved over the line for at least two years; (2) any overhead traffic previously handled on the line could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 14, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 25, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 5, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WCL's representative: Jeremy M. Berman, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WCL has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by June 19, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by June 14, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

Decided: June 11, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–14575 Filed 6–13–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21043]

Academy Express, L.L.C.—Acquisition of the Properties of Entertainment Tours, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: Academy Express, L.L.C., a motor carrier of passengers (Academy), has filed an application under 49 U.S.C. 14303 for its acquisition of the properties of Entertainment Tours, Inc., also a motor carrier of passengers (Entertainment).[1] The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by July 27, 2012. Academy may file a reply by August 13, 2012. If no comments are filed by July 27, 2012, this notice shall be effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21043 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Academy's representative: Fritz R. Kahn, Fritz R. Kahn, P.C., 1919 M Street NW., 7th Floor, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245–0359. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

[1] Academy filed its application for acquisition of the properties of Entertainment on April 5, 2012. However, the Board determined that the information provided was not sufficiently complete to provide the required notice to the Board and to the public as to the nature of the proposed transaction. In a Board decision served on May 4, 2012, Academy was directed to supplement its application, which it did on May 15, 2012. The filing date of an application is deemed to be the date on which the complete information is filed. *See* 49 CFR 1182.4(a). Thus, we will treat Academy's application as having been filed on May 15, 2012.

SUPPLEMENTARY INFORMATION: Academy is a limited liability company established under the laws of New Jersey. It holds authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier providing interstate charter passenger services to the public (MC–413682). Academy is indirectly controlled by the Tedesco Family ESB Trust, which directly controls the following noncarriers: Academy Bus, L.L.C.; Franmar Leasing, Inc.; Franmar Logistics, Inc.; Academy Services, Inc.; and Log Re, Inc. The Tedesco Family ESB Trust also indirectly controls Academy Lines, L.L.C., a motor carrier of passengers principally rendering commuter operations, and No. 22 Hillside, L.L.C., a motor carrier of passengers rendering a variety of services. Entertainment, a corporation established under Massachusetts law, also holds a FMCSA license (MC–262973) and owns Coach NE., L.L.C., a noncarrier.

Academy is largely focused on providing charter bus and contract carrier services. It offers university transportation shuttles and transports sports teams as a contract bus carrier, and transports groups for churches, clubs, small third-party groups, and other organizations as a charter bus operator. Academy operates mostly in interstate commerce and to a lesser extent in intrastate commerce in the District of Columbia, Virginia, New Jersey, New York, Connecticut, Rhode Island and Massachusetts. Entertainment essentially is a charter bus operator, transporting groups for churches, clubs, and other organizations mostly in intrastate commerce in Massachusetts and, to a lesser extent, in Connecticut and New Hampshire.

Under the proposed transaction, Academy seeks permission to acquire the properties of Entertainment—namely, its equipment, customer list, and goodwill, as well as Entertainment's authority to render motor carrier operations in Massachusetts, Connecticut, and New Hampshire. According to the application, the closing occurred on March 30, 2012. Academy states that all of the authorized and outstanding stock of Entertainment was transferred to an independent voting trust, pursuant to a Voting Trust Agreement. Academy submits that, should the Board approve the proposed transaction, the trustee would reconvey the stock to the stockholder of Entertainment, which then would transfer the purchased properties to Academy. According to Academy, Entertainment would remain an independent entity, but would be expected to surrender its interstate operating authority.[2]

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Academy has submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), and a statement that the 12-month aggregate gross operating revenues of Academy and Entertainment exceeded $2 million.

With respect to the effect of the transaction on the adequacy of transportation to the public, Academy states that the proposed acquisition would greatly benefit Entertainment's patrons. According to Academy, passengers would be able to travel in newer, cleaner buses, and would have a far greater selection of tours and special operations than was previously afforded to them. Academy further states that the proposed transaction would have no effect on total fixed charges. Further, Academy states that the transaction would have no adverse effect upon Entertainment's employees, as these employees would be offered employment with Academy. Academy notes that, excluding itself, the American Bus Association has identified 29 charter bus companies operating in Massachusetts, 10 charter bus companies operating in Connecticut, and eight charter bus companies operating in New Hampshire. Academy states that, if the proposed transaction were approved, there would be little or no reduction of competitive conditions in the aforementioned states, especially because Academy would hope to succeed to the business previously conducted by Entertainment in those states. Additional information, including a copy of the application, may be obtained from Academy's representative.

On the basis of the application, the Board finds that the proposed acquisition of control is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

The party's application and Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective July 27, 2012, unless opposing comments are timely filed.

4. A copy of this decision will be served on: (1) U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

Decided: June 7, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–14565 Filed 6–13–12; 8:45 am]

BILLING CODE 4915–01–P

[2] Our voting trust rules at 49 CFR part 1013 contemplate the use of voting trusts to facilitate tentative stock transfers before a transaction involving an acquisition of control is approved. The transaction here, however, is not an acquisition of control, but an acquisition of assets. The use of a voting trust in this circumstance appears to be novel, and the Board was not asked for an informal opinion on its suitability here prior to the acquisition. Nonetheless, we will allow this case to proceed because we encourage parties to seek appropriate Board authority (even if they should have done so before undertaking a course of action), and the record does not suggest that the applicants here intended to evade our authority or undermine the integrity of our processes.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Senior Executive Service Performance Review Board

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice.

SUMMARY: The Surface Transportation Board (STB) publishes the names of the

Persons selected to serve on its Senior Executive Service Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Paula Chandler, Director of Human Resources, (202) 245–0340.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4314 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on STB's PRB.

Leland L. Gardner, Director, Office of the Managing Director.
Rachel D. Campbell, Director, Office of Proceedings.
Raymond A. Atkins, General Counsel.
Lucille Marvin, Director, Office of Public Assistance, Governmental Affairs and Compliance.

Dated: June 8, 2012.

Jeffery Herzig,

Clearance Clerk.

[FR Doc. 2012–14557 Filed 6–13–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 11, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 16, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–1528.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 97–15, Section 103—Remedial Payment Closing Agreement Program.

Abstract: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145, and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer of certain state or local bonds and to establish the closing agreement amount.

Affected Public: State, Local, or Tribal Governments.

Estimated Total Burden Hours: 75.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–14538 Filed 6–13–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 11, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 16, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request may be found at *www.reginfo.gov.*

Office of the Procurement Executive

OMB Number: 1505–0080.

Type of Review: Revision of a currently approved collection.

Title: Post-Contract Award Information.

Abstract: Information requested of contractors is specific to each contract and is required for Treasury to properly evaluate the progress made and/or management controls used by contractors providing supplies or services to the Government, and to determine contractors' compliance with the contracts, in order to protect the Government's interest.

Affected Public: Private Sector: businesses or other for-profits.

Estimated Total Annual Burden Hours: 221,112.

OMB Number: 1505–0081.

Type of Review: Revision of a currently approved collection.

Title: Solicitation of Proposal Information for Award of Public Contracts.

Abstract: Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposal most benefit the Government.

Affected Public: Private Sector: businesses or other for-profits.

Estimated Total Annual Burden Hours: 291,105.

OMB Number: 1505–0107.

Type of Review: Revision of a currently approved collection.

Title: Regulation Agency Protests.

Abstract: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.

Affected Public: Private Sector: businesses or other for-profits.

Estimated Total Annual Burden Hours: 50.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–14561 Filed 6–13–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

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 Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning an information collection required by the allocation agreement that is entered into by the CDFI Fund and each recipient of tax credit allocations authority through the New Markets Tax Credit (NMTC) Program. The specific information collection relates to the allocation agreement requirement that allocatees provide notice to the CDFI Fund of the receipt of Qualified Equity Investments, as defined at 24 CFR part 45D(c). The CDFI Fund has published separate notices seeking public comments regarding other information collections contained in the allocation agreement (e.g., use of Qualified Equity Investment proceeds).

DATES: Written comments should be received on or before August 13, 2012 to be assured of consideration.

ADDRESSES: Direct all comments to Robert Mulderig, Manager for Certification, Compliance Monitoring and Evaluation, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, by email to *ccme@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: A draft of the information collection may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Trefor Henry, Associate Program Manager for Certification, Compliance Monitoring and Evaluation, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, or by phone to (202) 622–4130. Please note this is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Title: New Markets Tax Credit Allocation Tracking System.

OMB Number: 1559–0024.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC § 45D, New Markets Tax Credit. Pursuant to IRC § 45D, the Department of the Treasury, through the CDFI Fund, administers the NMTC Program, which provides an incentive to investors in the form of tax credits over seven years and stimulates the provision of private investment capital that, in turn, facilitates economic and community development in low-income communities. In order to qualify for an allocation of NMTC authority, an entity must be certified as a qualified community development entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund conducts a competitive review process to evaluate applications for the receipt of NMTC allocations. Entities selected to receive an NMTC allocation must enter into an allocation agreement with the CDFI Fund. The allocation agreement contains the terms and conditions, including all reporting requirements, associated with the receipt of a NMTC allocation. The CDFI Fund requires each allocatee to use an electronic data collection and submission system, known as the Allocation Tracking System (ATS), to report on the information related to its receipt of a Qualified Equity Investment.

The CDFI Fund has developed the ATS to, among other things: (1) Enhance the allocatee's ability to report to the CDFI Fund timely information regarding the issuance of its Qualified Equity Investments; (2) enhance the CDFI Fund's ability to monitor the issuance of Qualified Equity Investments to ensure that no allocatee exceeds its allocation authority and to ensure that Qualified Equity Investments are issued within the timeframes required by the allocation agreement and IRC § 45D; and (3) provide the CDFI Fund with basic investor data which may be aggregated and analyzed in connection with NMTC evaluation efforts.

Current Actions: NMTC Program allocatees.

Type of review: Revision.

Affected Public: Business or other for-profit institutions, not-for-profit institutions, and State, local and Tribal entities.

Estimated Number of Respondents: 658.

Estimated Annual Time per Respondent: 18 hours.

Estimated Total Annual Burden Hours: 11,844 hours.

Requests 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. The specific section of the allocation agreement for which comments are sought is the reporting requirement that allocatees provide notice to the CDFI Fund, through the CDFI Fund's Allocation Tracking System, of the receipt of a Qualified Equity Investment. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 12 U.S.C. 4701 *et seq.;* 26 U.S.C. 45D.

Dated: June 11, 2012.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–14554 Filed 6–13–12; 8:45 am]

BILLING CODE 4810–70–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—June 14, 2012, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Dennis Shea, Chairman of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the

Commission will hold a public hearing in Washington, DC on June 14, 2012, ''Evolving U.S.-China Trade and Investment Relationship.''

BACKGROUND: This is the sixth public hearing the Commission will hold during its 2012 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The June 14 hearing is aimed at sharpening our understanding of contemporary Chinese trade and investment challenges, and will include testimony on the implications of employing value added measurements of trade; the BIT and the U.S. investment regime; as well as case stories of U.S. companies' China trade challenges. The hearing will be co-chaired by Commissioners Hon. William A. Reinsch and Daniel M. Slane. Any interested party may file a written statement by June 14, 2012, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

DATES: *Location, Date and Time:* 562 Dirksen Senate Office Building. Thursday, June 14, 2012, 8:45 a.m.–2:45 p.m. Eastern Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *www.uscc.gov* as soon as available. Please check our Web site at *www.uscc.gov* for possible changes to the hearing schedule. Reservations are not required to attend the hearing.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Gavin Williams, 444 North Capitol Street NW., Suite 602, Washington DC 20001; phone: 202–624–1492, or via email at *gwilliams@uscc.gov.* Reservations are not required to attend the hearing.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Pub. L. 109–108 (November 22, 2005).

Dated: June 11, 2012.

Kathleen Wilson,

Finance and Operations Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2012–14559 Filed 6–13–12; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Agency Information Collection (Application for Burial Benefits) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 16, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0003'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7634 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0003.''

SUPPLEMENTARY INFORMATION:

Title: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21–530.

OMB Control Number: 2900–0003.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–530 to apply for burial benefits, including transportation for deceased veterans. VA will use the information collected to determine the veteran's eligibility for burial benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 5, 2008, at pages 74231–74232.

Affected Public: Individuals or households.

Estimated Annual Burden: 110,000 hours.

Estimated Average Burden per Respondent: 22 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 300,000.

Dated: June 11, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–14563 Filed 6–13–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 115 June 14, 2012

Part II

Department of Education

Final Priorities, Requirements, Definitions, and Selection Criteria—Teacher Incentive Fund (TIF) Program; Notice

DEPARTMENT OF EDUCATION

[Docket ID ED–2012–OESE–0001]

RIN 1810–AB12

Final Priorities, Requirements, Definitions, and Selection Criteria—Teacher Incentive Fund (TIF) Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

CFDA Numbers: 84.374A and 84.374B

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, definitions, and selection criteria under the TIF program. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2012 and later years. We are taking this action so that TIF-funded performance-based compensation systems (PBCSs) will be successful and sustained mechanisms that contribute to continual improvement of instruction, to increases in teacher and principal effectiveness, and, ultimately, to improvements in student achievement in high-need schools. To accomplish these goals, we are establishing priorities, requirements, definitions, and selection criteria that are designed to ensure that TIF grantees use high-quality LEA-wide evaluation and support systems that identify effective educators in order to improve instruction by informing performance-based compensation and other key human capital decisions.

DATES: *Effective Date:* These priorities, requirements, and definitions are effective July 16, 2012.

FOR FURTHER INFORMATION CONTACT: Miriam Lund, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E245, Washington, DC 20202–6450. Telephone: (202) 401–2871 or by email: *miriam.lund@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the TIF program is to support the development and implementation of sustainable PBCSs for teachers, principals, and other personnel in high-need schools in order to increase educator effectiveness and student achievement in those schools.

Program Authority: The Department of Education Appropriations Act, 2012 (Division F, Title III of Pub. L. 112–74).

The Statutory Requirements

The Department's FY 2012 appropriation provides TIF funds for competitive grants to eligible entities to develop and implement PBCSs for teachers, principals, and other personnel in high-need schools. Eligible entities for these funds are:

(a) Local educational agencies (LEAs), including charter schools that are LEAs.

(b) States.

(c) Partnerships of—

(1) An LEA, a State, or both; and

(2) At least one nonprofit organization.

Eligible entities must use TIF funds to develop and implement, in high-need schools, a PBCS that—

(a) Considers gains in student academic achievement, as well as classroom evaluations conducted multiple times during each school year, among other factors; and

(b) Provides educators with incentives to take on additional responsibilities and leadership roles.

A grantee (1) must demonstrate that its PBCS is developed with the input of teachers and school leaders in the schools and LEAs that the grant will serve, and (2) may use TIF funds to develop or improve systems and tools that would enhance the quality and success of the PBCS, such as high-quality teacher evaluations and tools that measure growth in student achievement. In addition, an applicant must include a plan to sustain financially the activities conducted and the systems developed under the grant once the grant period has expired.

We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the **Federal Register** on February 29, 2012 (77 FR 12257) (NPP). The NPP contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria.

There are differences between the NPP and this notice of final priorities, requirements, definitions, and selection criteria (NFP) as discussed in the *Major Changes in the Final Priorities, Requirements, Definitions, and Selection Criteria* and *Analysis of Comments and Changes* sections elsewhere in this notice.

Public Comment: In response to our invitation in the NPP, 32 parties submitted comments on the proposed priorities, requirements, definitions, and selection criteria. We used these comments to revise, improve, and clarify the priorities, requirements, definitions, and selection criteria.

We group major issues according to subject and discuss other substantive issues under the title of the item to which they pertain. Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities, requirements, definitions, or selection criteria.

Major Changes in the Final Priorities, Requirements, Definitions, and Selection Criteria

In addition to minor technical and editorial changes, there are several substantive differences between the priorities, requirements, definitions, and selection criteria proposed in the NPP and the final priorities, requirements, definitions, and selection criteria that we establish in this notice. Those substantive changes are summarized in this section and discussed in greater detail in the *Analysis of Comments and Changes* section that follows.

Priorities

We have made the following changes to the priorities for this program:

- We have revised *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* to clarify that the LEA-wide evaluation system must use classroom-level growth data to evaluate teachers (as defined in this notice) with regular instructional responsibilities consistent with paragraph (2)(ii) of the priority. An applicant must use classroom-level growth, rather than school-level or grade-level growth, in significant part, when evaluating teachers with regular instructional responsibilities because we believe classroom-level student growth data is the most appropriate for evaluating the individual effectiveness of these teachers. If an applicant wishes to use school-level or grade-level growth to evaluate teachers with regular instructional responsibilities, it may do so, but the Department will consider the use of those data to be the use of ''additional factors'' under paragraph (2)(iii) of Priority 2.
- We have revised paragraph (2) of *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM*), to better align this priority with the language in *Selection Criterion (g)—Comprehensive Approach To Improving STEM Instruction.* With this change, while applicants will be required to describe how each participating LEA will identify and develop the unique competencies that characterize effective STEM teachers, they will not need to describe how those LEAs will evaluate those competencies to meet this priority.

• We have amended *Priority 4—New or Rural Applicants to the Teacher Incentive Fund,* (referred to as *Priority 4—New Applicants to the Teacher Incentive Fund in the NPP*) to give priority to projects serving rural LEAs (as defined in this notice). An applicant can meet this priority if it provides—and the Department accepts—an assurance that each LEA to be served by the project is a rural LEA or an LEA not served by a current or past TIF grant.

• We have revised *Priority 5—An Educator Salary Structure Based on Effectiveness,* by removing the language requiring applicants to propose a comprehensive revision to each participating LEA's salary structure. The revised priority no longer requires an applicant to describe the salary increase that educators (as defined in this notice) with an evaluation rating of effective or higher would receive, or how TIF funds used for salary increases would be used only to support the additional cost of the revised salaries. Instead, the priority now requires that the applicant propose a timeline for implementing a salary structure based on educator effectiveness, and describe the extent to which and how each LEA will use overall evaluation ratings to determine educator salaries as well as how TIF funds will support the salary structure based on effectiveness in high-need schools identified in response to *Requirement 3—Documentation of High-Need Schools.* While we have eased the application requirements related to this priority, to implement their new salary structures many applicants after award will need to design and implement comprehensive revisions to their salary structures. Further, we have amended the priority to require applicants to describe the feasibility of implementing the proposed salary structure and by removing language requiring that implementation begin no later than the third year of the project period.

Requirements

We have made the following changes to the requirements for this program:

• We have revised *Requirement 5—Limitations on Multiple Applications,* to specify that an LEA may participate in no more than one application in any fiscal year, an SEA may participate in no more than one group application for the General TIF Competition and no more than one group application for the TIF Competition with a Focus on STEM in any fiscal year, and a nonprofit organization may participate in multiple group applications under either one or both competitions in any fiscal year.

• We have revised *Requirement 6—Use of TIF Funds to Support the PBCS,* to clarify that TIF funds may be used to support the costs of both salaries and salary augmentations for teachers who take on additional responsibilities and leadership roles (as defined in this notice), including career ladder positions (as defined in this notice), up to the salary cost of 1 full-time equivalent position for every 12 teachers who are not in a career ladder position in the high-need schools (as defined in this notice) identified in response to *Requirement 3—Documentation of High-Need Schools.* Further, we have added an exception to the limitation on educator compensation to allow applicants to compensate educators who attend TIF-supported professional development outside of official duty hours.

Definitions

• We have defined ''rural local educational agency'', to mean an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under Title VI, Part B of the ESEA.

Selection Criteria

We have made the following changes to the selection criteria for this program:

• We have amended *Selection Criterion (a)(2)(iii)—A Coherent and Comprehensive Human Capital Management System,* to evaluate the feasibility of an applicant's proposed human capital management system (HCMS) (as defined in this notice) based, in part, on any applicable LEA-level policies that might inhibit or facilitate the use of educator effectiveness as a factor in human capital decisions.

• We have amended *Selection Criterion (b)(2)(ii)—Rigorous, Valid, and Reliable Educator Evaluation Systems* to evaluate the quality of each participating LEA's evaluation system based, in part, on the evidence provided by an applicant to demonstrate the rigor and comparability of the assessment tools used for educator evaluation.

• We have amended *Selection Criterion (c)—Professional Development Systems To Support the Needs of Teachers and Principals Identified Through the Evaluation Process,* to evaluate the quality of each participating LEA's plan for professional development based, in part, on the extent to which the plan provides for school-based, job-embedded opportunities for educators to transfer new knowledge into practice.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the NPP follows.

General Comments

Comment: Several commenters expressed strong support for the TIF program, as outlined in the NPP, both for its overall effort to improve evaluation, to provide educators with support, and to provide additional compensation for effective educators and for specific components of the NPP, including the emphasis on STEM under *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM).*

Discussion: The Department appreciates the support of these commenters for the priorities, requirements, definitions, and selection criteria proposed in the NPP.

Changes: None.

Comment: Several commenters recommended designations of absolute, competitive preference, or invitational for the proposed priorities.

Discussion: The Department appreciates these recommendations, and has considered them in developing the notice inviting applications for the fiscal year 2012 TIF competition (NIA). To preserve future flexibility to adjust priority designations as needed to better serve the needs of LEAs, the Department is not designating in this notice whether priorities are absolute, competitive preference, or invitational.

Changes: None.

Comment: We received several comments regarding the LEA-wide provisions, such as *Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center* and *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* included in the NPP. One commenter expressed support for Priority 1, and recommended that we designate it as absolute. According to the commenter, the priority underscores the importance of comprehensive approaches to human capital management and takes advantage of economies of scale in promoting LEA-wide strategies.

However, several commenters opposed the LEA-wide provisions in Priority 1 and Priority 2, and requested that we remove from the notice any requirement that applicants implement LEA-wide human capital management and educator evaluation systems. One commenter stated that it would be premature to require LEAs to undertake LEA-wide human capital management

reform while also working to implement a new PBCS. Another commenter argued that LEA-wide requirements may discourage LEAs from attempting new reforms. According to this and other commenters, pilot efforts are a preferable alternative to requiring LEA-wide reform because pilot efforts introduce change in manageable steps, and LEAs are often willing to bring reforms to scale after implementing a pilot demonstration.

Further, one commenter argued against requiring an LEA-wide evaluation system and PBCS, because, according to the commenter, performance-based compensation and evaluation reforms work best for high-need schools when they provide opportunities to educators in those schools that are not also available to educators in non-high-need schools.

Finally, some commenters expressed concern that an LEA-wide approach may encourage applicants to abandon rigorous measures of educator buy-in, such as teacher votes, in favor of less rigorous measures. One commenter expressed concern that Priority 1 promotes a top-down approach to human capital management reform, when, according to the commenter, these efforts are most effectively driven by teachers. One commenter predicted that these provisions would essentially eliminate applications from strong union areas.

Discussion: As noted in the NPP, we believe that, to be successful and sustainable, any PBCS must be an integral part of an HCMS that is well-designed and implemented LEA-wide. In the absence of sustainable, LEA-wide educator evaluation systems that focus on educator effectiveness and underlie key parts of the LEA's HCMS, the TIF-supported PBCS is not likely to be sustainable. For this reason, we believe it to be both reasonable and advantageous to require LEAs to undertake, under *Priority 1—An LEA-wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center* and *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* LEA-wide human capital management reforms that support each LEA's PBCSs. Further, while we agree that pilot projects may provide an LEA with the opportunity to explore the benefits of an innovative approach, and may create the possibility for long-term, large-scale implementation, we disagree with the assertion that the LEA-wide implementation requirements in this notice will discourage LEAs from attempting reform. We have designed the priorities, requirements, and definitions included in this notice to align with the provisions of the Department's Elementary and Secondary Education Act of 1965, as amended (ESEA) Flexibility initiative. Under that initiative, States that receive flexibility must agree to implement LEA-wide educator evaluation systems, and, to date, the Department has received 38 requests from States for flexibility and has granted 11 requests. Based on our experience with the ESEA Flexibility initiative, we believe that requiring LEA-wide implementation will further, rather than inhibit, LEA reform efforts.

While we wish to clarify that nothing in this notice requires applicants to implement an LEA-wide PBCS, we disagree with the assertion that an LEA-wide PBCS and evaluation system would provide fewer benefits to high-need schools than would a smaller-scale implementation plan that focuses solely on high-need schools. To the contrary, we believe that an LEA-wide evaluation system will strengthen the capacity of high-need schools, which are the only schools that may implement a TIF-funded PBCS, to use performance-based compensation to identify and attract educators from other schools in an LEA. Further, for an applicant that proposes to expand its PBCS to educators in non-high-need schools in the LEA, using non-TIF funds, nothing in this notice would preclude the applicant from designing its PBCSs to offer educators in high-need schools larger salary augmentations than those educators in non-high-need schools.

With regard to educator evaluation reform, we believe that evaluation systems are more likely to receive the broad LEA commitment that is crucial to their success and sustainability if those systems are used to evaluate every educator within the LEA. We designed the priorities, requirements, definitions, and selection criteria in this notice so that applications will be evaluated based on the extent to which the proposed project has educator involvement and support. Therefore, applicants will be less likely to receive funding if they abandon rigorous measures of teacher buy-in or use a top-down approach to project development and implementation that does not include high-quality teacher and principal involvement. Furthermore, we disagree with the assertion that the LEA-wide provisions included in this notice will inhibit unionized LEAs from applying. The Department believes that for those LEAs the process for securing widespread, high-quality educator support is more straightforward than for LEAs where unions are not designated as the exclusive representative of educators for the purposes of collective bargaining.

For these reasons, the Department declines to revise the provisions in Priorities 1 and 2 that require applicants to implement an LEA-wide HCMS and educator evaluation systems.

Changes: None.

Comment: One commenter noted that it may be difficult for charter school consortia to satisfy *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center.* The commenter expressed concern that, because charter schools are LEAs, we would require each charter school to develop its own HCMS.

Discussion: For charter-school LEAs, the HCMS described in response to *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center* must apply to the entire charter school, but, depending on the organization of the charter consortia or the involvement of a charter management organization, the HCMS may extend to more than one charter school. In the case of a charter-school LEA consortium with a single shared HCMS, an applicant could describe how the various components of the HCMS apply to each charter-school LEA, and would not need to implement a separate HCMS for each individual charter school.

Changes: None.

Comment: One commenter stated that there is insufficient evidence that evaluation systems are ready for large-scale implementation, and no evidence that evaluation systems are more important for school improvement than other investments. This commenter argued that we can help LEAs to implement educator incentive programs without requiring evaluation systems, which, according to the commenter, will be unsustainable without continued Federal assistance.

Discussion: The Department rejects the contention that there is insufficient evidence that reformed educator evaluation systems can be implemented at scale; the current efforts of numerous States and LEAs to reform their evaluation systems provide ample evidence of the viability of this strategy. The Department also does not agree that it would be worthwhile to invest in educator incentive programs that are not linked to a comprehensive educator evaluation system that meaningfully differentiates educator performance. Performance-based compensation systems (as defined in this notice) that are disconnected from an LEA's official evaluation system have proven difficult

to sustain and require a costly and burdensome duplication of effort.

Changes: None.

Comment: A few commenters stated that our encouragement of LEA-wide performance systems was laudable, but unrealistic, as TIF provides funding for only a portion of an LEA's schools. Further, one commenter argued that implementing LEA-wide educator evaluation systems would place a large financial burden on LEAs during tight budget times.

Discussion: TIF funds may be used for the development or improvement of systems and tools that would enhance the quality and success of the PBCS and benefit the entire LEA. TIF is, therefore, a potential source of funding for LEAs seeking to reform their HCMS and educator evaluation systems in what one commenter noted are tight budget times. With these and other resources, we believe that the development and implementation of LEA-wide performance systems is a very attainable goal.

Changes: None.

Comment: A few commenters noted that the LEA-wide provisions in this notice would favor small districts, charter schools, and charter management organizations over large districts because larger districts would face difficulty securing the educator support and outreach needed for implementation. To avoid penalizing larger LEAs, one commenter recommended that we relax the LEA-wide provisions of the notice to allow LEAs to participate if a substantial number of their schools, to be determined by the Department, agree to participate in the TIF-supported PBCS.

Discussion: The Department does not agree that the LEA-wide provisions in this notice disadvantage large districts. Larger LEAs typically have greater human capital, technology, and other resources needed to implement the systemic reforms promoted by the TIF program than smaller LEAs have. We also note that, to address difficulties in implementation in any type of LEA, we permit the LEA-wide educator evaluation system requirements to be phased in over time, with full implementation required at the beginning of the third project year. We decline to accept the commenter's recommendation that the Department permit an LEA to implement reformed educator evaluation systems on a non-LEA-wide basis because this approach would not result in the system-wide change we believe is necessary to support the sustainability and success of the TIF-funded PBCS.

Changes: None.

Comment: Two commenters recommended that we amend the priorities, requirements, definitions, and selection criteria so as to more strongly emphasize educator development and support as the central purpose of human capital management. One of the commenters suggested that we amend paragraph (3) of *Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center,* to require applicants to describe human capital strategies the LEA uses or will use to ensure that high-need schools are able to support effective teachers. Further, the commenter recommended that we add a new paragraph in Priority 2 to require applicants to describe how the LEA's evaluation systems will be used to identify and address the professional development needs of educators.

A second commenter stated that evidence-based professional development is more effective in improving student outcomes than performance-based compensation, and, therefore, should be the foundation of proposed HCMSs. According to this commenter, an HCMS should focus on diagnosing areas in need of improvement, providing timely and targeted professional development to address those areas, and monitoring progress to ensure the success of educators and students. Further, this commenter noted that punitive HCMS that focus on educator dismissal are ineffective for promoting educator competency or student growth.

Discussion: The Department fully agrees that professional development must be a key component of any HCMS, and that evaluation systems are critical tools that should guide LEA- and school-level decisions regarding instructional supports. In this notice, as in the NPP, we clarify that a well-designed HCMS, including the evaluation system supporting it, must be aligned with the LEA's vision of instructional improvement (as defined in this notice) that summarizes: (1) The key competencies and behaviors of effective teaching needed to produce high levels of student achievement, and (2) how educators acquire or improve these competencies and behaviors. Accordingly, the Department believes that LEA-wide evaluation systems aligned with this vision are an extremely valuable tool for professional development and improvement. When the evaluation rubrics used in these systems include the key competencies the LEA has identified in its vision of instructional improvement, the feedback and professional learning inherent in the evaluation process will give all educators a clearer understanding of what the LEA has identified as the key competencies needed to be effective educators. Given these linkages between evaluation, professional development, and vision of instructional improvement that are provided for in this notice, we believe it is unnecessary to modify the priorities, requirements, definitions, and selection criteria to further highlight the use of evaluation information for providing educator support.

The Department disagrees with the second commenter's assertion that professional development alone is more effective in improving student outcomes than a PBCS that recognizes and rewards educators who have an impact on student achievement. Rather, it is the Department's view that student outcomes are most likely to improve when an LEA implements a coherent and comprehensive HCMS that is aligned to its vision of instructional improvement and that integrates both professional development and a PBCS.

Changes: None.

Comment: Three commenters provided feedback regarding the timeline for implementing TIF-funded projects that was included in the NPP. One commenter recommended that we revise the priorities, requirements, definitions, and selection criteria so that the first year of a TIF-funded project's implementation would take place in 2013–2014 following an optional planning period of one year. The commenter stated that this shift in the timeline would be appropriate given that the Department is likely to award grants during the most difficult time of year for applicants to begin implementation. A second commenter encouraged us to allow LEAs to pilot evaluation systems in a sample of schools prior to full implementation, rather than require LEAs to fully implement the evaluation systems in all schools simultaneously. A third commenter expressed support for the timeline for implementing of the evaluation system, and stated that the requirements provided applicants with adequate time to gain competence in building and using the new evaluation system before the LEA uses the evaluations to make decisions.

Discussion: Under the proposed priorities, requirements, definitions, and selection criteria, a grantee must begin the implementation of its TIF project at the beginning of the first year of the project period. However, we have included provisions in *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center* and *Priority 2—LEA-Wide Educator*

Evaluation Systems Based, in Significant Part, on Student Growth to allow grantees to delay the implementation of certain components of their projects. For example, under Priority 2, a grantee must implement its proposed evaluation system in at least a subset of an LEA's schools, as the official system for assigning overall evaluation ratings, by no later than the beginning of the second year of the project period. Because LEA-wide implementation would not need to begin for another year, we believe that the flexibility included in these priorities already addresses the concerns raised by the commenter because it allows for implementation of the LEA-wide evaluation system over a long period of time.

Further, the Department understands that the implementation of effective and sustained TIF-funded PBCSs requires substantial effort on the part of its grantees. For this reason, applicants under a TIF competition using the priorities, requirements, definitions, and selection criteria in this notice will be asked to provide additional information regarding their capacity for implementation (e.g., on the extent to which they have developed their evaluation system rubric, and on the extent to which they have obtained educator support), which will allow reviewers to evaluate the strength of their applications. Applicants will also provide timelines for their projects to satisfy the provisions of Priority 1 and Priority 2; these timelines will better meet local needs than would a uniform planning period for all grantees. For these reasons, we decline to allow applicants an optional planning period prior to implementation.

Changes: None.

Comment: A few commenters encouraged us to require that applicants use performance measures that are valid and reliable for use in educator evaluation, while one commenter stressed that performance measures should be validated and found reliable for each type of human capital decision prior to their use for that decision.

Discussion: The Department believes that the validity and reliability of performance measures for the determination of educator effectiveness are key for maintaining the credibility of the measures, first, among stakeholders who will use them to inform their practice and manage human capital, and, second, among the educators affected by the outcome of the evaluation using the measures and any consequences or rewards that follow. With this in mind, the Department will evaluate applicants, under *Selection Criterion (b)(2)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* based on the extent to which they have provided (1) a clear rationale to support their approach to differentiating performance levels based on the level of student growth (as defined in this notice) achieved and (2) evidence, such as current research and best practices, that supports the LEA's choice of student growth models and demonstrates the rigor and comparability of assessment tools. Further, the Department will evaluate applicants, under Selection Criterion (b)(3), based on the extent to which they have made substantial progress in developing a high-quality plan for multiple teacher and principal (as defined in this notice) observations, including the procedures for ensuring a high-degree of inter-rater reliability.

We do not believe it is necessary to require that measures validated for use in evaluation be validated further for use in other human capital decisions. Rather, once measures are used to develop an educator's overall evaluation rating, we expect that the rating will be used to inform other human capital decisions in accordance with the LEA's vision of instructional improvement.

Changes: None.

Comment: We received many comments regarding the use of student growth measures to inform human capital decisions, such as the requirement, under *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* to use these measures as a significant factor in educator evaluation systems. Three commenters expressed support for the use of student growth for informing educator evaluation, though one stated that student growth should not be used for other types of human capital decisions, including decisions regarding compensation.

One commenter stated that student growth should be introduced gradually into educator evaluation systems, and that both the weight given to student growth and the prevalence of its use among educators should increase following the availability of new assessments for evaluating educators and the availability of professional development aligned with the evaluation system.

Several other commenters expressed concern that the NPP relied excessively on indicators of student achievement and student growth as predictors of teacher and principal effectiveness, and offered arguments against the use of student growth to inform human capital management. One commenter, in particular, recommended that we neither require nor encourage the use of student growth in educator evaluation, and advised that we, at most, allow grantees the option of incorporating student growth into educator evaluation. A few commenters stated that the NPP put a disproportionate weight on student growth as compared with performance measures that the commenters regarded as more reliable, such as classroom observations and student surveys.

The commenters provided a number of arguments against the use of student growth. First, a few commenters cautioned against the use of value-added measures due to inaccuracy, bias, instability, and lack of precision, while others cautioned against the use of student growth, irrespective of the model used, for any human capital decision-making, including for evaluation. Second, commenters argued that the use of student growth for human capital decisions would make educators reluctant to teach or enroll English learners, students with disabilities, students of color, low-income students, and students connected with either child welfare or released from juvenile detention, or otherwise encourage educators to push students out of school using formal disenrollment, discouragement, or the excessive and disparate use of discipline. Third, some commenters stressed that an emphasis on student growth would encourage educators to teach to the test, engage in cheating behaviors, and narrow the scope of the curriculum offered to students.

Discussion: To meet *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* an applicant must describe its timeline for implementing its proposed LEA-wide educator evaluation systems. Consistent with this priority, an applicant must implement the evaluation system for at least a subset of educators or in at least a subset of schools no later than the beginning of the second year of the grant's project period, and must use the evaluation system to evaluate all educators in the LEA by no later than the beginning of the third year of the grant's project period. We find this timeline, which allows for gradual implementation, to be consistent with the recommendation presented by one of the commenters. However, from the start of this implementation, each educator's overall evaluation rating must be based, in significant part, on student growth. We believe that student growth data is a meaningful measure of educator effectiveness and that its use in TIF projects is wholly consistent with the

statutory requirement that TIF-funded PBCSs consider gains in student academic achievement. We wish to clarify for the commenters that, for the purposes of this notice, ''student growth'' means the change in student achievement for an individual student between two or more points in time, and, further, that nothing in this notice requires an applicant to use value-added measures to assess student growth.

Furthermore, student growth is just one of the multiple measures that are required under the rigorous, valid, and reliable educator evaluation systems required under Priority 2; this priority also requires two or more observations during each evaluation period and the use of additional factors determined by the LEA. While the Department agrees with commenters that student growth should not be used in isolation to make human capital management decisions, we also believe that student growth, as a meaningful measure of effectiveness, should be weighed significantly when making a number of human capital decisions, including decisions on professional development and performance-based compensation. The Department further believes that, from the start of the evaluation system's implementation, including student growth as one of multiple measures is important so that human capital decisions, such as those regarding professional development, are based upon a range of measures and do not consider any one measure in isolation. We believe the use of multiple measures, as provided for under Priority 2, ensures that no one measure is relied upon disproportionately, as some commenters fear might occur.

Further, the use of multiple measures is essential to evaluate educators based on a range of important measures, beyond student achievement, so that they may improve instruction for students with diverse learning needs and provide all students with a well-rounded, complete education that will prepare them for college and a career. Accordingly, the Department will evaluate applicants, under paragraphs (5) and (6) of *Selection Criterion (b)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* based on whether the proposed educator evaluation systems evaluate the practice of teachers and principals in meeting the needs of special student populations, such as students with disabilities and English learners. While we find it worthwhile to highlight the needs of these two student subgroups, we would encourage applicants to consider how their evaluation systems might assess the competencies and behaviors of teachers, principals, and other personnel (as defined in this notice) so as to improve the capacity of school staff to instruct and support various types of students. In response to the commenters' concerns regarding school pushout and excessive or disparate use of discipline, we believe that the priorities, requirements, definitions, and selection criteria in this notice provide applicants with a unique opportunity to build comprehensive and robust evaluation systems that may monitor for these behaviors and provide the professional development that teachers and principals need to end these practices. In particular, we encourage applicants to consider how the ''additional factors'' requirement, under paragraph (2)(iii) of Priority 2, will allow for comprehensive assessments.

Regarding the comments about the use of standardized tests and potentially encouraging dishonest behavior among educators, the Department strongly disagrees with the notion that the existence of cheating or ''teaching to the test'' reflects on the merits of standardized testing or the use of standardized test data for accountability purposes. Instead, cheating robs students of their fair shot at a world-class education, and cheating reflects a willingness to lie at children's expense to avoid accountability. It is the Department's belief that standardized testing is no more vulnerable to cheating behaviors than other forms of instructional accountability; rather, under any educational performance assessment designed for either schools or educators, we must work to develop high-quality, rigorous assessment tools and work to ensure that performance metrics are fair, transparent, and rigorous.

Lastly, we disagree with the commenters' assertion that the use of student growth in educator evaluation, as provided for in the priorities, requirements, definitions, and selection criteria included in this notice, may lead to a narrowing of student curriculum. To meet Priority 2, an applicant must propose LEA-wide educator evaluation systems that generate an overall evaluation rating for every teacher in the LEA, irrespective of grade or subject taught and in accordance with applicable State and local definitions of ''teacher''. Because TIF funds may be used, under *Requirement 6—Use of TIF Funds to Support the PBCS,* to develop and improve systems and tools, such as assessments, that support the PBCS and benefit the entire LEA, TIF presents a unique opportunity for applicants to modify their existing evaluation systems so that they properly account for the full range of curriculum, be it math instruction, health instruction, arts instruction, or instruction in other subjects. It is our belief that the priorities and requirements in this notice will encourage applicants to design evaluation systems that use a range of performance assessments, both in subjects in which assessments are required and not required under section 1111(b)(3) of ESEA, to evaluate educator effectiveness. Therefore, there is no reason to assume that the use of student growth, as a factor in determining overall evaluation ratings, will lead to a narrowing of student curriculum.

Changes: None.

Comment: Four commenters recommended that we invest in research related to the impact of various human capital management decisions on educators and students. One commenter encouraged us to invest in research on effective, evaluation-driven professional development. Another commenter expressed support for the continued evaluation of TIF-funded projects. Two other commenters requested that we conduct research to determine whether performance-based compensation has had disparate impact, considering graduation rates and disciplinary action, on students of color, students from low-income communities, English learners, or students with disabilities.

Discussion: The Department recognizes that there are many aspects of performance-based compensation and human capital management systems in LEAs and schools that would benefit from additional research. The Department will continue to look to recommendations from the field, such as those made by the commenters, when determining which research questions are of the greatest significance.

Changes: None.

Comment: One commenter strongly opposed the proposed priorities, requirements, definitions, and selection criteria due to a concern that, according to the commenter, they would directly affect issues and provisions that are subject to collective bargaining under State statutes. The commenter stated that the proposed action may encourage applicants to circumvent the provisions of collectively bargained agreements, where they exist, or exclude stakeholders from providing ongoing input into subjects governed by these provisions. A second commenter recommended that we require that the elements of the applicant's proposed HCMS, including the student growth measures and their use for human capital management, be collectively bargained where unions have been

designated the exclusive representative of educators for the purposes of collective bargaining.

Discussion: The Department frequently issues regulations that may impact education-related matters that are subject to collective bargaining. Further, we disagree with the commenter's speculation that the TIF program may encourage applicants to circumvent the provisions of collectively bargained agreements or exclude stakeholders from providing ongoing input into subjects governed by these provisions. To the contrary, applicants must provide evidence that educator involvement in the design of the PBCS and the educator evaluation systems has been extensive and will continue to be extensive during the grant period. To clarify the relationship between other Federal, State, and local laws and the regulations that govern the TIF program, we have added a ''Note'' to *Requirement 2—Involvement and Support of Teachers and Principals* to inform applicants of their responsibilities if they become grantees under the TIF program. The note states that it is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between those employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. The note goes on to clarify that in the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

With regard to the request that we require that the elements of an applicant's HCMS, including student growth measures and their use, be collectively bargained, we decline to make this change because we believe it would constitute inappropriate Federal involvement in local matters.

Changes: We have added a *Note* to Requirement 2 that clarifies the relationship between existing Federal, State, and local law and collective bargaining agreements and similar agreements between employees and employers, and the priorities, requirements, and definitions established in this notice.

Comment: Five commenters opposed the Department using Federal funds to support performance-based compensation. These commenters stated that there is a lack of evidence demonstrating that additional educator compensation results in improved academic outcomes for students. Of these commenters, four also objected to funding performance-based compensation systems due to concerns that a PBCS might encourage teachers and principals to push struggling and at-risk youth out of their classrooms and schools.

Discussion: The Department acknowledges the concerns raised by these commenters, and continues to invest in the research to assess the impact of performance-based compensation systems on student growth and educator behavior. However, in The Department of Education Appropriations Act, 2012 (Division F, Title III of Public Law 112–74), Congress authorized and appropriated funding for the TIF program specifically to support the development and use of PBCSs in high-need schools. Through the TIF program, the Department is implementing the provisions of this law.

Changes: None.

Comment: Two commenters recommended that the Department revise the priorities, requirements, definitions, and selection criteria to promote evidence-based programs. These commenters stated that, in making these changes, we would encourage applicants to direct their scarce resources toward programs that are evidence-based, sustainable, and scalable.

Discussion: The Department fully agrees that applicants should use TIF funds to support evidence-based, sustainable, and scalable approaches for improving educator effectiveness. To meet *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center* and *Priority 2—LEA–Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* applicants must implement an LEA-wide HCMS, including LEA-wide evaluation systems, which will support the implementation of a PBCS to be implemented in high-need schools under the grant. As mentioned elsewhere in this notice, it is the Department's belief that these LEA-wide systems will support the sustainability and scalability of all TIF-funded PBCSs. Moreover, we also intend, under *Selection Criterion (f)—Sustainability,* to award points to applicants that develop a feasible sustainability plan that identifies non-TIF resources that would support the PBCS and evaluations systems during and after the grant period. As Congress has authorized and appropriated funding for the TIF program specifically to support the development and implementation of PBCSs in high-need schools, we encourage applicants to embed evidence-based approaches into their plans to evaluate, develop, and reward educators as they respond to the priorities, requirements, definitions, and selection criteria in this notice. Under *Selection Criterion (b)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* in particular, we intend to award points to those applicants that provide evidence supporting the LEA's (or LEAs') selection of student growth models and assessments, and to those applicants that have made substantial progress in developing procedures for ensuring a high-degree of inter-rater reliability between observers. For these reasons, we do not believe any changes are necessary; we believe that that priorities and selection criteria already address the concerns raised by the commenters.

Changes: None.

Comment: Two commenters requested that the Department further clarify the local match requirements applicable to this program.

Discussion: Nothing in the NPP or this notice requires applicants to provide a non-Federal or non-TIF match, local or otherwise, for their TIF projects. That said, it is true that we have designed the selection criteria to award points to applicants that will leverage non-TIF funds to support their projects. We have done this in view of the statutory requirement that applications for TIF grants include a plan to sustain financially the activities conducted and systems developed under the grant once the grant period has ended, and because we believe that applicants should work to ensure that TIF-funded PBCSs, and the evaluation systems that support them, are themselves sustainable. Specifically, under *Selection Criterion (f)—Sustainability,* we will award points to applicants that develop a feasible sustainability plan that identifies non-TIF resources that will be used to support the PBCS and evaluations systems during and after the grant period. In addition, for applicants applying to the TIF Competition with a Focus on STEM, under *Selection Criterion (g)—Comprehensive Approach to Improving STEM Instruction,* we will award points to applicants that propose to significantly leverage STEM-related funds across other Federal, State, and local programs when implementing a high-quality and comprehensive STEM plan.

Changes: None.

Comment: One commenter encouraged us to safeguard the privacy of educators, and the integrity of performance evaluations, by taking a stand against the publishing of individual evaluation data. The commenter expressed concern that providing individual evaluation data to the public injures the professional relationship needed to conduct meaningful evaluations and provide substantive feedback to educators. Further, in cases where evaluation systems are still under development, the data may not yet provide an accurate assessment of individual effectiveness.

Discussion: While the Department acknowledges the concerns raised by the commenter, we decline to address the release of individual educator's evaluation data in this notice. The release of this type of data is governed by State or local law and policies. We believe that directing grantees to release or withhold this type of information would constitute inappropriate Federal involvement in State and local matters.

Changes: None.

Comment: One commenter recommended that, in funding TIF applications, we give priority to applicant capacity over the quality of project design or project scope, and fund those applicants that can demonstrate the capacity to implement high-quality project design or project scope above applicants without this capacity.

Discussion: While the Department fully agrees that TIF should support applicants that have the capacity to implement an effective and sustainable PBCS, we also believe it is important to encourage applicants to propose high-quality project designs. For example, under *Selection Criterion (a)(2)(iii)—A Coherent and Comprehensive Human Capital Management System,* we will evaluate applications based on the extent to which the participating LEAs have experience using evaluation data to inform human capital decision-making. Further, under *Selection Criterion (b)(3)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* we will award points to those applications that demonstrate that the participating LEAs have made substantial progress in developing a high-quality plan for completing multiple teacher and principal observations. Lastly, we have devoted all of *Selection Criterion (e)—Project Management* to project management, and will give points to applicants that have carefully considered issues such as staff and timeline for implementation.

Further, we do not designate in this notice the point values for these selection criteria. With this approach, we retain the flexibility to adjust the point allocation in future TIF competitions to achieve the appropriate balance between capacity for implementation and quality of project design in any given year. For the 2012 competition, the Department has considered the commenter's recommendations in designating point values in the NIA.

Changes: None.

Comment: One commenter requested that we broaden the eligibility requirements for the TIF program to allow more schools and LEAs to participate in TIF-funded projects. Specifically, the commenter stated that we should allow schools and LEAs located in economically depressed counties (*i.e.,* counties identified by the U.S. Department of Commerce as having a per-capita personal income below the national average, below the State average, and ranked in the bottom twenty-five percent of counties within the State in per-capita income) to be eligible for TIF funding. The commenter stated that, by broadening eligibility in this way, TIF could better assist high-need areas where Federal aid participation is low due to the cultural stigma associated with public assistance.

Discussion: While we acknowledge the concerns raised by the commenter, we decline to change the definition of *high-need school* or otherwise change the eligibility requirements. Congress has authorized and appropriated funding for the TIF program specifically to support the development and use of PBCSs in high-need schools, as opposed to schools in high-need regions, and has designated all LEAs that have those schools as entities eligible to receive TIF funds.

Changes: None.

Comment: Two commenters requested that we clarify the implications of the priorities for nonprofit applicants. Specifically, the commenters asked (1) whether, for the purposes of *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center, Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* and *Priority 5—An Educator Salary Structure Based on Effectiveness,* nonprofit applicants partnering with charter schools that are considered LEAs under State law (charter-school LEAs) are required to describe and propose reforms for the LEAs in which the charter school partners reside; (2) whether nonprofit applicants may provide a table or chart to summarize each LEA partner's HCMS in order to remain within maximum page limits; and (3) whether nonprofit applicants partnering with more than one charter school may, for the purposes of *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center,* describe how each charter school's HCMS aligns with a vision of instructional improvement shared across the consortium.

Discussion: To meet the priorities in this notice, nonprofit applicants that partner with charter-school LEAs must describe the vision of instructional improvement and HMCS, including the evaluation systems and professional development, of each charter school included in a group application. Because the charter-school LEA is not administered by the LEA within whose boundaries the charter school is located, an applicant need not, in these cases, provide a description of the HCMS (or other features) of that LEA beyond what the applicant considers to be useful in explaining the project proposal. Regarding the details of application submission, which are not addressed in this notice, we encourage interested applicants to read the TIF Application Package for the 2012 competition.

Changes: None.

Comment: One commenter suggested that the proposed priorities, requirements, definitions, and selection criteria include provisions that exceed the scope of the TIF authorizing language. Another commenter observed that the focus of TIF has moved from performance-based compensation to developing human management systems based on educator evaluation.

Discussion: Congress has authorized and appropriated funding for the TIF program specifically to support the development and use of effective and sustainable PBCSs. As we explain in the NPP and this notice, the purpose of these priorities, requirements, definitions, and selection criteria is to ensure that TIF-funded PBCSs will be successful and sustained mechanisms that contribute to continual improvement of instruction, to increases in teacher and principal effectiveness and, ultimately, to improvements in student achievement in high-need schools. To accomplish these goals, we have designed the priorities, requirements, definitions, and selection criteria to ensure that TIF grantees use high-quality LEA-wide evaluation and support systems that identify effective educators in order to improve instruction by informing performance-based compensation and other key human capital decisions.

Changes: None.

Comment: One commenter requested that we allow STEM specialty schools to participate in TIF projects, even if they are located in LEAs that are not engaged in system-wide compensation reforms.

Discussion: In years when we designate *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center* and *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth* as absolute, all applicants must implement LEA-wide HCMSs and LEA-wide evaluation systems. If the STEM specialty schools are charter-school LEAs, then they may satisfy Priority 1 and Priority 2 by implementing school-wide HCMSs and evaluation systems. However, if the STEM specialty schools are not themselves LEAs, they may not participate in the TIF project unless the LEA of which they are a part participates in the project. Because we believe that LEA-wide HCMSs and educator evaluation systems are critical for the sustainability and success of TIF-supported PBCSs, we decline to create an exception for single schools that, whether they are specialty schools or not, are not themselves LEAs so that they may participate in TIF projects in years we designate either Priority 1 or Priority 2 as absolute.

Further, given the commenter's reference to system-wide compensation reform, we wish to clarify that it is not our intent to require applicants to implement an LEA-wide PBCS. Under *Requirement 1—Performance Based Compensation for Teachers, Principals, and Other Personnel* and *Requirement 6—Use of TIF Funds To Support the PBCS,* applicants must implement a PBCS, but may only use TIF funds to provide additional compensation to educators in high-need schools identified in the application in response to *Requirement 3—Documentation of High-Need Schools.*

Changes: None.

Comment: One commenter recommended that we encourage applicants to propose evaluation systems that use consistent and sustainable observation methods implemented by school leadership. According to the commenter, the formal training of principals, including their certification and testing, is necessary for developing and sustaining an effective teaching force, and will ensure that judgments about the quality of teachers' practice are valid and reliable for use in various human capital decisions. To embed this approach into TIF projects, the commenter recommended that we encourage applicants to construct evaluation systems that measure principal effectiveness using, in part, meaningful evidence of regular teacher observations.

Discussion: The Department agrees that the training of principals may be one approach for ensuring high-quality, reliable observations, but declines to prescribe that this method be used by all grantees. While some LEAs may select principals to be the observers for teacher observations, it is also likely that other LEAs will assign that responsibility to external observers, or to those peers taking on career ladder positions. In either case, applicants should carefully consider the implications of their proposal for observation quality and sustainability; applicants will receive additional points for their proposed project based, under *Selection Criterion (b)(3)—Rigorous, Valid, and Reliable Educator Evaluation Systems,* on whether they have made substantial progress in developing a high-quality plan for conducting teacher and principal observations.

Changes: None.

Comment: A few commenters suggested that we require grantees to collect and report the discipline indicators included in the Department's Civil Rights Data Collection, and require them to take measures to improve their performance as measured by those indicators. Two commenters encouraged the Department to promote equity in schools by requiring applicants to monitor school discipline indicators and use that data to guide professional development.

Discussion: The Department fully agrees that schools should monitor student outcome data—including discipline indicators—and use those data to inform improvement efforts. Starting with the 2011–2012 school year, the Department will conduct a Civil Rights Data Collection every two years that includes every school district in the Nation where data for any one school year are collected and reported the subsequent year. As the discipline indicators included in the Civil Rights Data Collection will be provided to the public, disaggregated by LEA and by school, we find it unnecessary and burdensome to require TIF applicants to duplicate their reporting for the purposes of this program. While we encourage applicants to monitor school discipline indicators and develop appropriate human capital strategies to address this important area and thereby promote equity and improve practice in their high-need schools, we do not agree that the Department should mandate the specific additional factors that LEAs include in their educator evaluation systems. Thus, we decline to make the suggested changes, but we encourage LEAs to carefully consider how school and classroom discipline will be incorporated into evaluation and educator support systems, including professional development.

Changes: None.

Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center

Comment: One commenter recommended that we require applicants to involve the curriculum and instructional staff of the LEA in the management, design, and implementation of the PBCS.

Discussion: The Department agrees that these central office staff are essential to the development of a well-designed and well-implemented HCMS. The knowledge and expertise needed to design and implement an LEA's HCMS will come from many individuals within the central office, including those responsible for curriculum and instruction. However, the Department believes each LEA should be free to identify the central office staff who will be best able to design and implement whatever HCMS changes may be necessary. Given the variation in organizational structure among LEAs throughout the country, we have determined that individual LEAs—not the Department—should identify the appropriate personnel for this task.

Changes: None.

Comment: One commenter recommended that we require TIF projects to have HCMSs that provide a minimum level of compensation for new teachers and paraprofessionals and a minimum rate of increase in compensation based on their years of service.

Discussion: To attract high-quality candidates into teaching and to retain effective educators in the profession (and, in particular, in high-need schools), the Department believes that compensation for educators must be competitive with other professions requiring a similar level of skill and educational attainment. Even so, compensation at the local level will vary depending on the cost of living, the labor market, and other factors unique to that area. LEAs must consider these local factors when determining the levels of compensation that will attract and retain the best and brightest to the teaching profession. Moreover, the Nation does not have a single labor market for educators. Not only will there be different geographic labor markets, but there may be (and arguably should be) different labor markets by

content area, as evidenced by shortages in particular subjects.

Further, we do not believe it is consistent with TIF's statutorily-defined purpose—supporting performance-based compensation—to require that applicants provide educators a specified salary or a specified rate of salary increase based on years of service. Congress authorized TIF to assist LEAs in developing and implementing PBCSs and, through this final notice, the Department recognizes that TIF-supported PBCSs should align with a broader HCMS if they are to be successful and sustainable. We believe that HCMSs are likely, over time, to offer competitive salaries when they are designed to attract and retain effective teachers consistent with *Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center.*

Changes: None.

Comment: One commenter recommended that we add language to the NFP to clarify that the rights, remedies, and procedures, including due process rights, afforded school or school district employees under existing Federal, State, or local laws supersede any and all provisions established in this notice, and that, in instances where a conflict exists, non-compliance with the TIF final priorities, requirements, definitions, and selection criteria will not result in grant termination.

Discussion: The Department agrees that it should clarify the relationship between other Federal, State, and local laws and the priorities, requirements, definitions, and selection criteria that govern the TIF program. We have added a ''Note'' to *Requirement 2—Involvement and Support of Teachers and Principals* to inform applicants of their responsibilities if they were to become a grantee under the TIF program. The note states that it is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between those employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. It also states that in the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

Changes: We have added a *Note* to Requirement 2 that clarifies the relationship between existing Federal, State, and local law and collective bargaining agreements and similar agreements between employees and employers, and the priorities, requirements, and definitions established in this notice.

Comment: One commenter advised the Department to use the TIF program to make large grant awards to entities with fully-designed HCMSs. The commenter stated that fully-designed HCMSs (i.e., those systems that bring the full range of personnel decisions into alignment with a vision of instructional improvement) are a better investment than are separate smaller grants focusing on separate, siloed components of an HCMS.

Discussion: The Department believes that a well-designed and well-implemented HCMS will be the best mechanism to support a successful and sustainable PBCS, which is the statutorily defined purpose of the TIF program. For this reason, we have designed Priority 1 to support State and LEA efforts to strengthen LEAs' HCMSs. Although we believe that every LEA already has a system in place for making hiring and related personnel decisions (that is, an HCMS), we know that some systems are less coherent or comprehensive than others.

LEA needs may vary with respect to aligning the HCMS with the LEA's instructional vision and building into the HCMS human capital decisions that are based on ratings generated by educators evaluation systems consistent with *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth.* This being said, the Department wants to support reform-oriented LEAs wherever they may be on the continuum as they work to align their HCMS with their vision of instructional improvement. Although we do not require applicants to include the full range of personnel decisions in their proposed HCMS revisions, under *Selection Criterion (a)—A Coherent and Comprehensive Human Capital Management System* reviewers will consider the quality and comprehensiveness of each participating LEA's HCMS as described in the application, including the range of human capital decisions for which the applicant proposes to factor in educator effectiveness and the weight given to educator effectiveness when human capital decisions are made.

Changes: None.

Comment: One commenter recommended that we clarify the provisions regarding professional development that are in *Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center,* and that we require applicants to address individual professional development, school or team improvement, and program implementation as part of their proposed professional development systems.

Discussion: To meet Priority 1, applicants must propose a timeline for implementing an HCMS such that applicants use evaluation information to inform the design and delivery of performance-based compensation by no later than the third year of the project period. Further, as professional development is one component of an HCMS, an applicant may choose to describe in its response to Priority 1 how it will use evaluation information to inform professional development, whether professional development is or will be part of its strategy for attracting and retaining effective teachers, and how professional development fits into the LEAs vision of instructional improvement.

Further, Selection Criterion (c) applies to an LEA's professional development plan for educators in the high-need schools that are part of a TIF-funded PBCS. Under Selection Criterion (c)(1), reviewers will specifically evaluate the extent to which the proposed plan will use disaggregated information from the educator evaluation systems ''to identify the professional development needs of individual educators and schools.'' Thus, we expect applicants to design professional development plans that strive for the improvement of individual educators, teams, and the broader school community, but we leave the ultimate decision on how to do that to applicants. Reviewers will evaluate and provide points under Selection Criterion (c)(1) based on the quality and comprehensiveness of applicant's proposals in this area. For this reason, we find it unnecessary to change Priority 1 because the commenter's concern is adequately addressed through the selection criteria.

Changes: None.

Comment: None.

Discussion: Upon further review of Priority 1, we have determined that it may be helpful to clarify the restrictions on the use TIF funds to support the components of the HCMS (which includes the PBCS, professional development, and LEA systems and strategies to recruit, retain, and reward effective educators). In response to Priority 1, an applicant must describe

each LEA's HCMS as it exists currently and with any planned modifications as well as the human capital strategies each LEA uses or will use to ensure that high-need schools are able to attract and retain effective educators. Applicants will be evaluated on the adequacy of the financial and nonfinancial strategies and incentives, including the PBCS, in its HCMS for attracting effective educators to work in high-need schools and retaining them in those schools. Therefore, in providing a description of the HCMS in response to Priority 1, an applicant may describe a range of systems, strategies, and incentives of which some may be supported by TIF funds while others may not. We have added the ''Note'' following Priority 1 to clarify that TIF funds may not support all of the systems, strategies, and incentives that an applicant describes in response to these and other elements of the priorities. Whether a cost can be supported with TIF funds is governed by the rules set forth in *Requirement 6—Use of TIF Funds To Support the PBCS.*

Upon review of the Priority, we also have determined that paragraph (4) of Priority 1 may not be clear that even if an applicant does not need to make modifications to an existing LEA-wide HCMS, the applicant will need to describe a timeline for using evaluation information to inform the design and delivery of professional development an award of performance-based compensation beginning in identified high-need schools no later than the third year of the grant's project period. We have revised the beginning phrase of the paragraph to clarify that all applicants must include such a timeline regardless of whether it has modification to make in its LEA-wide HCMS to meet other provisions of the Priority.

Changes: We have added a *Note* to Priority 1 stating that TIF funds can be used to support the costs of the systems and strategies described under *Priority 1—An LEA-Wide HCMS With Educator Evaluation Systems at the Center, Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM),* and *Priority 5—An Educator Salary Structure Based on Effectiveness* only to the extent allowed under *Requirement 6—Use of TIF Funds To Support the PBCS.* We also have revised paragraph (4) to clarify that all applicants must submit the timeline regardless of whether modifications are needed to an existing HCMS to ensure that it comports with paragraphs (1), (2), and (3) of the Priority.

Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth

Comment: One commenter noted that its LEA currently operates two different evaluation systems, each of which meets the needs of schools using different instructional approaches. The commenter asked that, when establishing final priorities, requirements, and definitions for the TIF program, we take this into consideration.

Discussion: By requiring an LEA-wide approach to evaluation reform under *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* we seek to prevent situations in which a TIF-funded PBCS relies upon evaluations that are separate from the official educator evaluation systems the LEA uses to provide overall evaluation ratings. With these ancillary evaluations, an LEA might evaluate the educators in high-need schools once to determine eligibility for TIF-funded performance-based compensation and then again under separate criteria that the LEA uses for purposes of the educators' overall performance ratings. Consequently, when TIF funding ends, the ancillary evaluations that had been supported by a TIF-funded project, and which are needed to inform the PBCS, are also likely to end. To avoid this scenario and increase the sustainability and impact of the TIF-funded PBCS, Priority 2 requires applicants to use the evaluation systems described in response to the priority to both inform TIF-funded performance-based compensation and assign overall evaluation ratings to every educator in an LEA. Further, these overall evaluation ratings will provide an LEA with a single index—one for teachers and one for principals—with which to identify effective educators and, using their TIF-funded PBCS, recruit them to high-need schools.

Nothing in this notice precludes an applicant from using its own funds to implement an evaluation system in addition to the systems described in response to Priority 2 if, for example, the applicant finds that such an additional system would meet the needs of unique schools or groups of educators. However, those evaluations may not be supported by TIF funds, used to inform the TIF-funded PBCS, or used to assign overall evaluation ratings.

Changes: None.

Comment: Three commenters urged us to require applicants to propose, as part of their evaluation rubrics, a minimum of four performance levels so that those rubrics align with current, evidence-based evaluation models and encourage more meaningful performance-based differentiation.

Discussion: We proposed and are now finalizing the requirement in Priority 2 that applicants include a minimum of three performance levels in their evaluation rubrics because we want to align this program with the requirements of other Department initiatives, including the ESEA Flexibility initiative. States that receive approval for ESEA flexibility will be developing, piloting, and implementing educator evaluation systems that differentiate performance using at least three levels of performance. The Department believes that an evaluation rubric that uses three performance levels provides for adequate differentiation of educator effectiveness and is a significant improvement over the binary rating system that continues to be used by many LEAs. We note that nothing in this notice precludes an applicant from proposing an evaluation rubric that uses more than three performance levels.

Changes: None.

Comment: One commenter recommended that we require TIF-funded evaluation systems to assess educator performance twice annually. The commenter stated that this would provide educators a baseline performance rating, identify early on areas in need of improvement, and allow educators greater opportunity to demonstrate professional growth.

Discussion: While the Department agrees with the commenter that educators can benefit from regular and frequent feedback on their performance, we do not believe it is necessary to require summative evaluations twice annually. Rather, we expect that the various educator evaluation systems that applicants describe in their TIF applications in response to Priority 2 will present many different models for securing multiple opportunities for performance feedback. For example, under paragraph (2)(ii) of Priority 2, applicants are required to incorporate two or more observations during each evaluation period. The observations, which will occur multiple times each year, should generate abundant feedback. Moreover, applicants that find it desirable to evaluate educators twice annually will have the flexibility to propose to do so.

Changes: None.

Comment: A few commenters recommended that we revise *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth* to require

comprehensive evaluations that consider multiple factors without specifically requiring that the evaluations consider student growth in significant part. One commenter recommended that we require applicants to consider several factors—teacher portfolios, contributions to the school community, parent feedback, and professionalism—to improve the predictive power of their evaluation tools and strengthen the utility of performance assessment for identifying areas of weakness. A few commenters recommended that the Department require consideration of student and parent surveys, and one commenter cited research concluding that student surveys, in particular, correlate as strongly with student learning as classroom observation. Two commenters advised the Department to emphasize the use of observation over student growth for educator evaluation. One commenter advised the Department to require applicants to embed classroom management, conflict prevention and resolution, and cultural competence into their teacher evaluation rubrics.

Discussion: As we have noted throughout this notice, Congress has required that any TIF-funded PBCS consider gains in student achievement (i.e., student growth), and this requires that student growth be part of an educator evaluation system that would determine which educators are eligible for performance-based compensation. We have stated previously, in announcing priorities, requirements, definitions, and selection criteria for the FY 2010 TIF competition (75 FR 28713, 28718–19), that given the wide range of possible factors that might be included in an LEA's teacher evaluation system as well as the fact that improving student achievement is the underlying purpose of the TIF program, we believe it is both appropriate and consistent with the statute to ensure that TIF grantees give student growth significant weight among the factors included in these systems.

As the comments indicate, there are many points of view, as well as many valid practices, that may guide an LEA's decision regarding the factors to include in its educator evaluation systems. Given the statutory requirement that grantees also base their educator evaluations on multiple annual observations, among other factors, the LEA, in consultation with school staff and with the support of any teacher's union that represents teachers in collective bargaining, is in the best position to determine the relative weight to give these other factors. The Department believes that it is important to preserve for applicants the flexibility to identify the additional factors that will be included in their educator evaluation systems. Providing applicants this discretion will help ensure that the systems they establish are responsive to local needs, circumstances, and perspectives. For this reason, we decline to change paragraph (2)(iii) of Priority 2 to prescribe the additional factors which applicants must include in their evaluation systems. Further, we decline to change Priority 2 to indicate the relative weight that observation should carry, in relation to other factors such as student growth, in the determination of educator effectiveness.

Changes: None.

Comment: One commenter recommended that we revise Priority 2 to require TIF-funded evaluation systems to include monthly observations.

Discussion: While paragraph (2)(ii) of Priority 2 requires at least two observations during each evaluation period, the Department believes that applicants should retain the discretion to decide whether a greater number of observations should occur. We believe that a minimum of two observations per year would be sufficient if the observations and resulting feedback are high-quality: two comprehensive observations by a well-prepared evaluator may provide a more accurate picture of teacher performance than five cursory classroom visits. For this reason, the Department declines to make the change recommended by the commenter. However, we note that under Priority 2, applicants have the flexibility to propose additional observations beyond two per year, if they choose.

Changes: None.

Comment: One commenter recommended that we require applicants to clarify how they will define student growth for the purpose of educator evaluation. This commenter recommended that we require applicants to describe how their definition of student growth will help students achieve proficiency, how their definition will help teachers to better understand their performance, and how the definition will identify educator strengths.

Discussion: The Department defines ''student growth'' as the change in student achievement for an individual student between two or more points in time. This definition, and the various options it provides for determining ''student achievement'' for grades and subjects for which assessments are and are not required under section 1111(b)(3) of the ESEA, aligns with the use of the term in other Department initiatives, including the recent ESEA Flexibility initiative. It allows applicants to choose a student growth model that best meets their needs in developing rigorous, valid, and reliable educator evaluation systems. Applications will then be evaluated, in part, under *Selection Criterion (b)(2)(ii)—Rigorous, Valid, and Reliable Educator Evaluation Systems* on the evidence they present, including current research and best practices, to support the LEA's choice of student growth models. In their response to this selection criterion, we expect that applicants will provide a full justification for their selection, which may include such considerations as those described by the commenter (e.g., how the model will help students achieve proficiency, how it will help teachers to better understand their performance) or include other evidence to support their choice of student growth models. For these reasons, we find it unnecessary to further require applicants to clarify their definition of student growth.

Changes: None.

Comment: One commenter recommended that we require LEA applicants to use widely-accepted formalized assessments to determine student growth.

Discussion: The Department believes that the definition of *student growth* in this notice is adequate to ensure the use of valid and reliable assessments and other methods that the definition includes for measuring student growth. Under this definition, applicants must use, at minimum, the formal assessments required under section 1111(b)(3) of the ESEA to measure student growth for certain grades and subjects. For grades and subjects not covered by section 1111(b)(3) of the ESEA, the definition requires that the alternative measures of student learning and performance, such as student results on assessments, be rigorous and comparable across schools. Beyond these requirements, we do not agree that these measures of student growth need to be based on assessments that, as the commenter proposes, are widely accepted and formalized.

Further, the Department has determined that TIF grantees need the flexibility to develop or adopt new assessments for certain grades and subjects. Where new assessment tools may be needed to measure student achievement, applicants should consider LEA capacity, costs, and the project timeline when determining

whether to adopt readily available, valid, and reliable instruments, rather than develop new assessment tools.

For these reasons, we decline to require applicants to use widely-accepted formalized assessments to determine student growth.

Changes: None.

Comment: Several commenters expressed concerns regarding the use of classroom-level growth for measuring teacher performance, and recommended that we allow LEAs to determine the level of student growth, be it classroom-level, school-level, or grade-level growth, appropriate for assessing educators. These commenters were particularly concerned that, under *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* applicants must use classroom-level student growth for the evaluation of teachers with regular instructional responsibilities. The commenters asserted that this provision might encourage the evaluation of teachers in non-tested grades and subjects based on their students' achievement in other subjects or based on new assessments not yet tested for reliability, standardization, or validity. Additionally, one commenter stated that requiring classroom-level growth in each subject and grade could create conflict between teachers in tested subjects and grades, who are evaluated using accepted assessment instruments, and those in non-tested grades and subjects, who might be evaluated using instruments that have not been validated.

Discussion: The Department believes that the improved educator evaluation systems implemented under Priority 2—which depend upon generating an evaluation rating that is an appropriate reflection of each educator's effectiveness—are a central component of the reforms upon which the PBCS and other human capital decisions must be based. In order to produce educator evaluation data that are reflective of an educator's effectiveness, at least for teachers with regular classroom responsibilities for whom paragraph (2)(ii) of Priority 2 requires consideration of classroom-level growth, applicants must base the student growth component of the evaluation rating on the growth of the students in a teacher's own classroom, rather than the growth of students in other classrooms. Therefore, for the vast majority of teachers, student growth must be determined at the classroom level.

Further, the Department recognizes that some teachers do not have regular instructional responsibilities, which makes evaluation based on classroom-level student growth inappropriate. For these teachers' overall evaluation ratings, LEAs are free to identify another level of student growth measurement.

Lastly, the Department does not agree with the commenter that an evaluation system that treats all classroom teachers the same, evaluating each, in significant part, on the basis of the achievement of the students they teach, will create conflict among teachers who teach different subjects. Conflict is more likely among teachers when only some teachers are evaluated using the achievement of students in their classrooms, while others are not. At the same time, the Department agrees with the commenters that the assessments used to determine student growth must, for all grades and subjects, be rigorous and comparable across the schools in the LEA, and this is reflected in our definition of *student growth.* By requiring that all measures of student growth that an LEA uses be rigorous and comparable across the LEA's schools, we believe that the definition levels the playing field sufficiently between teachers of tested grades and subjects, on the one hand, and teachers of non-tested grades and subjects, on the other. To help ensure that applicants focus their applications on this issue, we have added language to *Selection Criterion (b)(2)(ii)—Rigorous, Valid, and Reliable Educator Evaluation Systems* to make clear that reviewers will examine the rigor and comparability of assessment tools an applicant proposes to use.

Changes: The Department has added language to Selection Criterion (b)(2)(ii) so that, in considering the extent to which an applicant has provided evidence, such as current research and best practices, supporting the LEA's choice of student growth models, the Department also considers how those models demonstrate the rigor and comparability of assessment tools used.

Comment: Several commenters advised us to further clarify paragraph (3) of *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* which requires that applications include a plan for how the evaluation systems will generate an overall evaluation rating that is based, in significant part, on student growth. The commenters requested that we set clear expectations regarding how student growth must be incorporated into the proposed evaluation rubric, and otherwise promote the strong use of student growth for differentiating educators based on their performance. Of these commenters, three requested that we require that student growth comprise 50 percent of an educator's evaluation, and two commenters requested that we not specify a minimum percentage or otherwise restrict the applicant's flexibility to determine significance.

Discussion: LEAs have wide discretion in determining how to weight or otherwise combine the evaluation factors to derive an overall evaluation rating under Priority 2. However, a key requirement relates to the student growth component of the evaluation rubric: The overall evaluation rating must be based, in significant part, on an educator's student growth outcomes. While understanding the commenters' desire that student growth comprise 50 percent of an educator's evaluation, the Department has decided that such a requirement would be too inflexible, and so has not established a specific minimum weight for the student growth component of the overall rating. This is, in part, because there are reasonable ways to derive an overall rating that considers student growth, in significant part, without relying on a weighting approach. For example, an LEA may decide that student growth outcomes below an established minimum will always generate an overall rating of ineffective—regardless of the other measures included in the evaluation rubric. Generally, however, an overall rating is not based, in significant part, on student growth if the growth measure has little effect on the overall rating or will affect an overall rating in only the most extreme circumstances. Under paragraphs (b)(5)(i) and (b)(6)(i) of *Selection Criterion—Rigorous, Valid, and Reliable Educator Evaluation Systems,* peer reviewers will consider whether an applicant bases its overall evaluation rating on student growth, in significant part. In response to this criterion, applicants should carefully explain why they believe that the student growth component of their proposed overall rating calculation is significant.

While the Department appreciates the concerns of commenters who argued for giving greater weight to student growth in TIF-funded PBCSs, we continue to require that this factor be given ''significant'' weight in this final notice. In light of the statutory requirement that grantees also base their evaluations on multiple annual observations among other factors, we believe that the LEA, in consultation with school staff and with the support of any teacher's union that represents teachers in collective bargaining, is in the best position to determine the relative weight to give these other factors.

Changes: None.

Comment: One commenter requested that we clarify in the priority that, for charter-school consortia applicants, the proposed evaluation system may extend to the entire consortium, rather than to the entire LEA in which the charter schools are located.

Discussion: In a consortium of charter schools in which each charter school is considered an LEA in its State, each of the charter schools listed in the partnership application is an LEA for purposes of Federal grants. Accordingly, each charter school in the consortium could implement its own evaluation system because doing so would result in implementing an LEA-wide evaluation system. Alternatively, all charter schools in the consortium (or group application) may choose to implement the same evaluation system in all charter schools in the consortium. In either case, the application would meet the LEA-wide requirement of Priority 2.

For the purposes of this notice, the evaluation system in a charter school that is considered an LEA has nothing to do with the evaluation system of the LEA in which the charter school is located (which might not be a part of the charter schools' TIF application).

Changes: None.

Comment: Two commenters expressed concern regarding the background statement provided for proposed *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth* in the NPP. Specifically, the commenters questioned the statement that our intent behind this priority is to ensure that educators eligible for performance-based compensation meet minimum performance thresholds on all measures included in an evaluation rubric. One of the commenters stated that interpreting Priority 2 to require that educators meet minimum thresholds on all measures in an evaluation rubric would be too restrictive for applicants that propose to use many performance measures in their evaluation rubric. Another commenter suggested that such an interpretation would require that any one of an educator's performance measures override any of the others, rather than permit applicants to propose evaluation systems that distribute weight more evenly across the various performance measures.

Discussion: In the background discussion of proposed Priority 2 contained in the NPP, we did not intend to suggest that, to consider an educator effective, LEAs must find the educator's performance to be satisfactory on each of the performance measures the LEA adopts for its evaluation systems. Rather, the LEA must determine the educator to be effective overall, taking into consideration his or her performance on all measures. Each LEA will determine the degree or weight to be given to each measure in the evaluation systems, bearing in mind that the overall rating must be based, in significant part, on student growth.

The Department believes that requiring payments made under the PBCS to be based upon an overall rating of effective or higher will ensure that grantees will provide compensation to educators eligible for performance-based compensation in high-need schools based on an evaluation of effectiveness that considers both practice and student outcome data. While the Department believes that compensating educators with very low scores on key aspects of the evaluation rubric may send the wrong message as to who should be compensated based on performance, Priority 2 leaves to applicants to determine how an LEA should ensure that its overall evaluation ratings for educators are based, in significant part, on student growth. Doing so provides great flexibility to an applicant on how to design its evaluation systems and PBCS while ensuring that an educator's impact on student achievement is central to the overall determination.

Changes: None.

Comment: None.

Discussion: Upon further consideration of the language in proposed paragraph 2(ii) of Priority 2, we believe that a slight wording change would better reflect what we intended this provision to mean. We intended this paragraph to require applicants to determine overall evaluation ratings for teachers with regular instructional responsibilities based, in part, on student growth at the classroom level. To ensure that this component of Priority 2 is sufficiently clear, we have revised this paragraph to state that, for the purpose of determining overall evaluation ratings for those teachers, student growth ''must be'', rather than ''must include'', the growth of the students included in an individual teacher's own classroom. We note that as long as applicants are using classroom-level growth to determine the overall evaluation ratings for teachers with regular instructional responsibilities to meet paragraph (2)(ii) of the priority, they may also consider whole-school growth as an additional factor under paragraph (2)(iii) of the priority.

Changes: The Department has revised paragraph (2)(ii) of Priority 2 to clarify that, for the purpose of determining overall evaluation ratings for teachers with regular instructional responsibilities, student growth must be, rather than must include, classroom-level growth.

Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM)

Comment: Several commenters recommended that we not conduct a separate TIF Competition with a Focus on STEM. The commenters expressed concern that encouraging applicants to single out educators in specific fields, such as the STEM fields, for additional compensation could cause misalignment in components of an LEA's HCMS.

Discussion: In the past several months, Federal agencies and private partners have launched national efforts, such as Educate to Innovate, to increase the number of effective STEM teachers in the Nation over the next few years. While we appreciate the commenters' concerns, the Department believes it is necessary to help States and LEAs attract and retain highly-effective STEM teachers to schools, particularly high-need schools where students are in greatest need of academic improvement. As TIF provides applicants a unique opportunity to rethink LEA-wide human capital management and revamp educator compensation, we believe it is appropriate to use the TIF program to encourage applicants to leverage this opportunity to recruit and develop top-quality STEM educators, and thereby improve STEM instruction. On the other hand, it is not our intent to prohibit, or even discourage, applicants proposing to meet *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM*) from expanding performance-based compensation to non-STEM educators, principals, or other personnel.

Changes: None.

Comment: Several commenters requested that we designate *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM*) as either competitive preference or invitational, but not absolute.

Discussion: As mentioned elsewhere in this notice, to preserve future flexibility to designate priorities as absolute, competitive preference, or invitational, as needed to serve the intended goals of any TIF competition, we will not designate in this notice whether the final priorities are absolute, competitive preference, or invitational. Rather, we will make these designations in the notice inviting applications for any competition in which we use one or more of the priorities. While we have considered the commenter's suggestions

in designing the TIF 2012 competition, we have determined that, consistent with our announcement in the NPP, we will designate Priority 3 as an absolute priority in the NIA and hold a separate TIF with a Focus on STEM competition in 2012.

Changes: None.

Comment: One commenter recommended replacing *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM*) with a priority focused on providing additional pay to all teachers in high-need schools. The commenter opposed providing educators in a single field additional compensation, because doing so would create inherently unequal pay systems and communicate to educators that some fields are more important than others. In making this statement, the commenter pointed to a number of hard-to-staff fields, such as special education, bilingual education, and specialized instructional support, that are not addressed by our proposed priorities, requirements, definitions, and selection criteria.

Discussion: We do not prescribe, in either Priority 3 or *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* the proportion of educators in high-need schools that must be served by the applicant's proposed PBCS. Rather, we provide applicants the flexibility to propose a PBCS that best serves the human capital needs of its high-need schools, has the full support of the school community, and considers the feasibility of sustaining the PBCS past the five-year project period. While we acknowledge that applicants proposing to meet Priority 3 may choose to limit opportunities for performance-based compensation to STEM educators, applicants would not be prohibited from expanding performance-based compensation to other educators, principals, or other personnel, such as those in the types of hard-to-staff fields mentioned by the commenter. Accordingly, applicants with shortages in the areas of special education and bilingual education would have the option to use TIF funds on performance-based compensation to attract new staff in those fields to their high-need schools. While we recognize the merits of the commenter's recommendation, and agree that comprehensive compensation systems would be ideal, we find it more important to offer applicants the flexibility to tailor their proposals to local need. We decline to replace Priority 3 with a priority focused on providing competitive pay to all teachers in high-need schools.

Changes: None.

Comment: None.

Discussion: The Department determined that a minor edit to Priority 3 will improve its alignment with *Selection Criterion (g)—Comprehensive Approach to Improving STEM Instruction* and avoid duplicating elements required under *Priority 2—LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth.* As applicants must describe their evaluation systems under Priority 2, we do not believe it necessary to ask that applicants provide a separate description of how they propose to evaluate STEM teachers. Instead, we will require applicants to describe how each participating LEA will identify and develop the unique competencies that characterize effective STEM teachers. We will assess this description, in part, under Selection Criterion (g)(2), which makes reference to STEM-specific professional development opportunities, but not evaluation.

Changes: We have removed the term ''evaluate'' from paragraph (2) of Priority 3.

Priority 4—New Applicants to the Teacher Incentive Fund (Now New or Rural Applicants to the Teacher Incentive Fund)

Comment: Several commenters requested that we remove *Priority 4* from the final priorities, or that we designate it as either competitive preference or invitational, in order to allow previous TIF cohorts to apply for a new grant. Many commenters that are recipients of a TIF grant expressed concern that they would not be able to sustain their current programming without the financial support that TIF provides. Many commenters stated that, if Priority 4 were an absolute priority, it would slow momentum in those LEAs that have already demonstrated their willingness to pursue challenging reform efforts. Many commenters also noted that, given the provisions in the TIF NPP, the next competition would help previously served LEAs to bring their projects to scale. Further, one commenter recommended that we allow SEAs and Regional Education Service Agencies to apply as lead applicants, even if an entity were the lead applicant under a previous TIF project, as SEAs and Regional Education Service Agencies have the capacity to serve a diverse group of LEAs. The commenter noted that it was unclear whether these entities would be ineligible to apply for a new TIF grant under Priority 4. One commenter asked whether a nonprofit applicant could meet Priority 4 if it proposed to serve charter schools located in an LEA that previously participated in a TIF-supported project, but that had excluded its charter schools from participation in the previous TIF project.

Discussion: As mentioned elsewhere in this notice, to preserve future flexibility to designate priorities as absolute, competitive preference, or invitational, as needed to serve the intended goals of any TIF competition, we do not designate in this notice whether priorities are absolute, competitive preference, or invitational. We will make these designations in the notice inviting applications for any TIF competition that uses one or more of these priorities.

Priority 4 applies to all applicants, including SEAs, LEAs, and nonprofit applicants. To the extent that a regional educational service center or the like is ''a public board of education or other public authority legally constituted within a State ... to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools'' it is an LEA (See section 9101(23)(A) of the ESEA (20 U.S.C. § 7801(26)(A))). Therefore, since a regional educational service center or like agency that meets this definition is an LEA, it may apply for a TIF grant and Priority 4 applies to it.

In years we designate Priority 4 as absolute, applicants would not be eligible to receive TIF funds unless they provide an assurance, which the Department accepts, that each LEA to be served by the project has not previously participated in a TIF-supported project. In years we designate Priority 4 as a competitive preference priority, applicants that fail to meet this priority would be eligible to receive TIF funds; however, applicants that meet this priority would receive additional points or preference over an application of comparable merit that did not meet this priority. Regardless of whether this priority is designated competitive preference or absolute, SEAs and nonprofit organization applicants that have previously participated in a TIF-supported project may meet this priority, and, if they so choose, apply as a lead applicant, if they propose to serve only LEAs that have not previously participated in a TIF-supported project. In years when we designate this priority as absolute, LEA applicants (which may include regional education service agency applicants) may meet this

priority, and, if they so choose, apply as a lead applicant, only if they have not previously participated in a TIF-supported project. In years when we designate this priority as competitive preference, LEA applicants that have previously participated in a TIF-supported project may apply as a lead applicant, but may not meet this priority or receive competitive preference. Further, group applications that include charter schools in the application may meet this priority only if each charter school included is either: an LEA that has not previously participated in a TIF-supported project, or, if not an LEA, is located in an LEA that has not previously participated in a TIF-supported project.

With this priority, it is our intent to direct TIF resources to those LEAs that are ready to pursue compensation reform, but have not yet benefited from the Federal financial assistance available under TIF to help support effective and sustained PBCSs and related areas of reform. We agree that this year's notice inviting applications would provide current and former TIF grantees a unique opportunity to bring their projects to scale, and, in years this priority is designated either competitive or invitational, we would encourage entities to submit an application. At the same time, the Department notes that, consistent with the TIF authorizing statute, all current and former TIF grantees were expected to sustain their PBCSs past the conclusion of the project period. As they have already implemented a PBCS with Federal TIF funding, these grantees have already had an opportunity to convince stakeholders of the merits of performance-based compensation and thereby solicit the local investment needed for sustainability and scale up. In order to provide new LEAs with the same opportunity, we decline to remove Priority 4 from this notice.

Changes: None.

Comment: One commenter recommended that we amend proposed *Priority 4—New Applicants to the Teacher Incentive Fund* to give preference to rural applicants because these applicants are often not able to successfully compete for Federal discretionary grants.

Discussion: We agree that this notice should help the Department ensure geographic diversity among TIF grantees, and have modified Priority 4 to give priority to applicants that propose to serve only rural LEAs. We have limited the rural component of the priority to applicants that propose to serve only rural LEAs in order to ensure that the priority is not undermined by applicants that might otherwise seek to include only one or some rural LEAs in the project. We also have modified the title of the priority accordingly.

Changes: The Department has modified Priority 4 to give priority to applicants that agree to serve either only LEAs that have not previously participated in a TIF-supported project, or only rural LEAs.

Priority 5—An Educator Salary Structure Based on Effectiveness

Comment: Several commenters requested that we revise Priority 5 to allow applicants to choose between performance-based compensation systems that either award bonuses or are implemented through a salary structure, rather than require that all applicants revise their salary schedules. While two commenters expressed support for our effort to encourage salary schedule reform so that salary is linked to performance—one because adjustments to the salary schedule would influence base pay, increase career earnings, and factor into pension calculations—they and other commenters expressed concern about making Priority 5 absolute (i.e., requiring that applicants meet it). One commenter disagreed with these views, and suggested that we require applicants to include a plan to transition from performance-based compensation to a salary structure based on effectiveness. Many other commenters expressed concern that such a requirement may lead to negative consequences. For example, a commenter stated that such a requirement might dissuade LEAs from applying for a TIF grant because teacher salary schedules are often subject to collective bargaining, and many LEAs would be unwilling to commit to a scope of work that has not been negotiated. A second commenter cited one State's laws regarding performance-based compensation—which requires the implementation of performance-based compensation, but allows compensation to take the form of a bonus or new salary—and argued that greater flexibility for TIF applicants would enable high-need schools to satisfy both State law and the priorities, requirements, definitions, and selection criteria included in this notice. A third commenter expressed concern that requiring all applicants to revise their salary schedules would reduce overall TIF participation, as it would create significant resource and stakeholder challenges.

A fourth commenter advised against promoting any tie between newly developed evaluation systems and educator salary before the new evaluation system has been tested for reliability, and cautioned that linking educator salary to what could be flawed evaluation ratings may work against TIF's goal of teacher retention. A fifth commenter expressed concern that it would be difficult to convince teachers in schools not participating in the TIF grant to support changes to their salary schedule, and such an effort would require significant outreach at the outset of the project.

Discussion: As mentioned elsewhere in this notice, to preserve future flexibility to designate priorities as absolute, competitive preference, or invitational, as needed to serve the goals of the TIF program, we do not designate in this notice whether priorities are absolute, competitive preference, or invitational. We will make these designations in the notice inviting applications for any TIF competition that uses one or more of these priorities. In response to the first comment, in years when Priority 5 is designated as a competitive preference or invitational priority, applicants would be able to choose whether their proposed PBCS would be implemented through a salary structure based on educator effectiveness or through a bonus structure. In years when Priority 5 is designated as an absolute priority, applicants would be required to implement their proposed PBCS through a salary structure based on educator effectiveness.

The Department agrees with many of the commenters about the practical concerns that applicants will need to address in responding to Priority 5. We also recognize the challenges local laws and collective bargaining can pose to such a change within an LEA. However, the Department believes one way to increase the likelihood that a PBCS continues after the end of the grant period, and is sustained through local budget fluctuations, is to award additional compensation not as incentive awards or bonuses, but rather as part of an educator's salary. In response to the challenges raised by commenters, the Department has modified the priority by removing the language that would have required implementation of the salary structure beginning no later than the third year of the project period. Instead, to meet this priority, applicants must describe a timeline for implementing a salary structure based on effectiveness as well as the extent to which the proposed implementation is feasible, given that implementation will depend upon stakeholder support and applicable LEA-level policies. We believe that these changes will provide LEAs with

the flexibility needed for this type of work. As a result of these changes, LEAs addressing Priority 5 will not be held to a uniform deadline. Rather, proposed timelines will be based on local contexts. Thus, we believe Priority 5 will not dissuade LEAs from applying to the program.

The flexibility when Priority 5 is designated as a competitive preference or invitational priority addresses a commenter's concern regarding an applicant's ability to meet both State law and the priorities, requirements, definitions, and selection criteria included in the notice as well as one commenter's concern that requiring applicants to revise their salary schedules would reduce overall TIF participation by creating significant resource and stakeholder challenges. Our revision to the timeline requirement will allow an applicant to ensure a high-quality implementation of the evaluation system and the subsequent linkages to the salary structure. In addition, we believe that a sustained performance-based salary structure will enhance an LEA's ability to retain effective teachers.

We understand the commenter's concern about the Department's making Priority 5 an absolute priority and will take that concern into consideration in any decision to designate the Priority as absolute, a competitive preference, or invitational. Finally, we agree with the commenter who expressed concern that change of this scope would require significant outreach at the outset of the project. The Department believes that significant outreach is required for all types of performance-based compensation reform and has designed this notice so that applicants must include evidence that educators in each participating LEA have been involved, and will continue to be involved, in the development and implementation of the PBCS and evaluation systems described in the application.

Changes: We have revised Priority 5 to require that each applicant describe, as part of its plan for implementing the PBCS, a timeline for implementing the proposed LEA salary structure as well as a rationale for why the applicant views its implementation plan as feasible. We also have removed language from the priority that would have required implementation of the salary structure beginning no later than the third year of the project period.

Comment: One commenter recommended that we add language to *Priority 5—An Educator Salary Structure Based on Effectiveness* to require that the proposed salary structure be collectively bargained or agreed upon by the organization representing educators. Further, the commenter recommended that the priority stipulate that the process for creating any new salary structure be transparent to ensure that performance-based compensation is attainable and that teachers clearly understand the criteria for earning additional compensation.

Discussion: With regard to the request that we require that elements of an applicant's proposal, including a proposal for a salary schedule based on educator effectiveness, be collectively bargained, we decline to make this change because we believe it would constitute inappropriate Federal involvement in local matters. With regard to the comment about the transparency of the new salary structure, we believe that a transparent and inclusive process is essential for a change of this scope and scale to be successful. To this end, applicants must provide evidence that educator involvement in the design of the PBCS and the educator evaluation systems has been extensive and will continue to be extensive during the grant period. Thus, we do not believe that any change is required at this time.

Changes: None.

Comment: A few commenters expressed concerns regarding the impact of a salary schedule, based on effectiveness, on educator behaviors and TIF's objective of attracting and retaining effective educators. The commenters argued that salary structures based on effectiveness, compared with performance-based bonuses, do not give educators the same incentive to remain in high-need schools or to maintain high-levels of performance. Moreover, the commenters noted that, under a salary schedule based on effectiveness, if an effective teacher decides to move from a high-need school to a school that is not high-need, it may prove difficult to reduce the teacher's salary. Similarly, if an effective teacher earns a higher salary due to performance, but lags in performance at a later point, it may again be difficult, and potentially impermissible, to remove the performance increment from the teacher's salary. Further, one commenter noted that there would be a significant delay between performance and compensation, which would potentially weaken the performance incentive. This is because, quite often, student growth does not become available until six months following the end of the school year. Once the data is received, it is unlikely that an LEA would be able to change base salary until the beginning of the next school year.

Discussion: The Department believes a salary structure based on effectiveness will not negatively impact the goal of attracting and retaining effective educators in high-need schools. In fact, we believe the opposite is likely to occur where the proposed salary structure results in a highly sustainable PBCS that may be more resistant to budgetary fluctuations at the local level than other PBCS designs. The concerns expressed by commenters generally do not consider the flexibility an applicant has in developing a salary structure based on educator effectiveness. We disagree with the commenters who expressed concern that a salary structure based on effectiveness does not give educators the same incentive to remain in high-need schools or to maintain high levels of performance. Salary structures may contain many performance-based incentives, including potential for greater base-pay progression at high-need schools or career-ladder position opportunities only at high-need schools. Although an LEA may not lower the salary of an educator moving from a high-need school to a low-need school, in this instance, the move would result in lower income potential. The concern that a salary structure based on effectiveness does not provide an incentive for educators to maintain high-levels of performance or is problematic in addressing lags in performance does not acknowledge that the typical salary structure provides educators with an annual increase in income based on years of service with no consideration given to effectiveness. Lastly, the potential delay between performance and receipt of performance-based compensation (often due to delays in an LEA's receipt of student growth data) is no greater for a PBCS delivered through a salary structure than through a bonus system. In both instances, applicants need to consider how best to address this challenge in designing an effective PBCS.

Changes: None.

Comment: Two commenters provided feedback regarding the impact of a salary schedule, based on effectiveness, on sustainability and educator evaluation. One commenter speculated that, to sustain a new salary structure during tough budget times, municipalities might raise the criteria for a determination of effectiveness so that fewer teachers would be awarded a higher salary. Under this scenario, according to the commenter, bonuses would become less accessible and this,

in turn, could undermine educator collaboration and result in declines in educator base pay. A second commenter expressed concern that salary schedules, based on effectiveness, would be harder to sustain than bonuses, because adjustments to base pay would increase pension obligations while bonuses would not.

Discussion: The Department believes a new salary structure will enhance sustainability and secure educator performance-based compensation past the duration of the TIF grant. We further believe that a PBCS delivered through a salary structure based on effectiveness will be more likely to be maintained during periods of budget fluctuations as compared with a bonus structure that is ancillary to an LEA's official salary structure and, therefore, easily discontinued during such periods. As one commenter speculated, during tough budget times an LEA could respond by attempting to reduce educator salaries. We do not believe this would be either unique to a salary structure based on effectiveness or more likely to occur under such a salary structure. Further, we believe that a salary structure based on effectiveness may impact pension obligations, but, as previously discussed, a typical salary schedule provides for annual increases to an educator's salary with no consideration for educator effectiveness. These increases have the same impact on pension obligations as increases that do take effectiveness into consideration.

Changes: None.

Comment: One commenter requested clarification of whether *Priority 5—An Educator Salary Structure Based on Effectiveness* pertained only to schools supported under the TIF grant or to all schools in the LEA.

Discussion: Under Priority 5, applicants will have the discretion to choose how broadly to implement the comprehensive salary schedule based on effectiveness. At a minimum, the salary schedule discussed in Priority 5 must include educators participating in the PBCS in the high-need schools identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* We have revised paragraph (b) of Priority 5 to make this clear. The LEA may choose to extend the salary schedule to cover additional teachers or additional schools but should carefully consider the restrictions on the use of TIF funds described in *Requirement 6—Use of TIF Funds to Support the PBCS.*

Changes: We have revised paragraph (b) of Priority 5 to require applicants to describe in their proposal how each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Comment: None.

Discussion: Upon further review, the Department has determined that paragraph (b) of proposed *Priority 5—An Educator Salary Structure Based on Effectiveness*—which required applicants to describe how TIF funds used for salary increases would be used only to support the additional cost of the revised salaries for educators in high-need schools—might erroneously suggest to applicants that TIF funds may not be used to support the entire cost of salary for effective educators who accept career ladder positions. Under *Requirement 6—Use of TIF Funds to Support the PBCS,* applicants may use TIF funds to support the entire cost of salary, up to 1 full-time equivalent position for every 12 teachers who are not in a career ladder position. As paragraph (b) of proposed Priority 5 seemed to conflict with Requirement 6, we have revised Priority 5 to require applicants to describe how each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools.

Changes: We have removed from this priority language that would have required applicants to describe how TIF funds used for salary increases would be used only to support the additional cost of the revised salaries. Further, we have revised paragraph (b) of Priority 5 to require applicants to describe in their proposal how each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Comment: None.

Discussion: Upon further review, the Department has determined that additional revisions are necessary to improve *Priority 5—An Educator Salary Structure Based on Effectiveness.* First, after publishing the NPP, we realized that some LEAs may already have salary structures that meet or are close to satisfying the requirements of this priority. For this reason, we have removed the language requiring a comprehensive revision of an existing salary schedule. Second, the Department recognizes that there might be instances where only a discrete portion of an educator's salary increase would be based on the educator's overall evaluation rating and that the remaining increase would be based on other factors. In such a case, an applicant may use TIF funds to pay for only the discrete portion of the educator's salary increase that would be based on the educator's overall evaluation rating. By revising this priority to require applicants to describe the extent to which each LEA will use these evaluation ratings to determine educator salaries, the Department intends that applicants should describe only the part of the salary structure that constitutes the increase attributable to the PBCS.

Changes: We have revised Priority 5 by removing the requirement that an applicant propose ''a comprehensive revision'' of an existing salary schedule. In paragraph (b) of the priority, we have added language requiring the applicant to describe the extent to which each LEA will use the overall rating of the evaluation to determine educator salaries.

Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel

Comment: A few commenters stated that applicants should not be allowed to propose PBCSs based solely on Design Model 2; instead these commenters urged us to require all applicants to implement a PBCS consistent with Design Model 1. Three commenters expressed concern that *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel* is inconsistent with the TIF authorizing statute, which requires both performance-based compensation and incentives to encourage educators to take on additional responsibilities and leadership roles. According to these commenters, each applicant must offer both components, and the Department may not allow applicants to select only one for their TIF project. Further, a number of commenters expressed concern that Design Model 2 would support a very limited concept of performance-based compensation, and stated that any TIF-funded PBCS should provide all educators, not simply teacher leaders or principals, an opportunity to receive additional compensation.

Discussion: We disagree that Design Model 2 is inconsistent with the TIF authorizing statute. As the commenters stated, the TIF statute requires the Department to make funding available to applicants to support their implementation of PBCSs for educators in high-need schools and offer educators incentives to take on additional leadership roles and responsibilities. More specifically, the FY 2012 TIF authorizing statute (Pub. L. 112–74) provides that TIF-supported PBCSs must consider gains in student

academic achievement as well as classroom evaluations conducted multiple times during each school year among other factors and provide educators with incentives to take on additional responsibilities and leadership roles.

Under Design Model 1, applicants would establish a PBCS under which they provide performance-based compensation to effective educators and would provide those educators with incentives to take on additional leadership roles and responsibilities. Under Design Model 2, applicants would include additional leadership roles and responsibilities in the PBCS, and then provide performance-based compensation to teachers who have received an overall evaluation rating of effective or higher and who accept a career ladder position as both another factor in the PBCS and an additional role or responsibility. Consistent with Priority 2 of this notice, applicants under either design model must propose to use student growth, multiple observations, and other factors in the determination of each educator's overall evaluation rating, which aligns with the statutory requirements governing educator eligibility for performance-based compensation. We also note in response to the last comment that an applicant has the option to offer performance-based compensation to other personnel who work in identified high-need schools under either design model.

Further, it is our intent to give an LEA flexibility to use its best judgment in designing a PBCS that will increase educator effectiveness and student achievement. While a PBCS under Design Model 2 could make a smaller number of teachers eligible for performance-based compensation than a PBCS under Design Model 1, as some commenters suggest, a PBCS under Design Model 2 might still produce greater gains in teacher effectiveness and student achievement. Achieving these important goals does not depend solely on the number of teachers eligible for compensation. It depends on a variety of factors, including the quality of the evaluation system and the job-embedded professional development the career ladder teachers provide. For these reasons, we decline to remove Design Model 2 from this notice.

Changes: None.

Comment: A few commenters recommended that we allow applicants to award forms of compensation not described in *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel.* A few commenters recommended that we allow applicants to provide separate performance-based incentives to educators based on the outcome of separate measures of performance, such as classroom observation and student growth. One of the commenters explained that performance-based compensation systems offering separate awards for student performance and practice are attractive to teachers, who can easily recognize the relationship between their work and the resulting award. Additionally, one commenter recommended that we allow applicants to propose whole-school awards, based on school-level performance, as part of their PBCS. The commenter expressed concerns about the effects of individual performance-based compensation on turnaround schools, which could erode collegiality in fragile schools. The commenter asserted that whole-school awards may help to promote a shared sense of ownership of reform amongst educators in high-need schools.

Discussion: We acknowledge the potential merits of either providing whole-school compensation based on school-level performance or rewarding educators based on separate measures of performance, as these approaches may prove effective for encouraging specific practices or behaviors. However, we believe that the effectiveness and sustainability of a PBCS, and its impact on increasing student achievement in high-need schools is much greater if TIF dollars reward only individual educators determined to be effective based on a comprehensive evaluation that uses multiple factors, student growth, and observations of educator practice. We believe that, by using rigorous evaluations to identify the highest quality educators, and then rewarding these educators with opportunities for advancement and additional compensation, high-need schools will be in the best position to attract and retain the highly-skilled workforce needed to help students achieve. Further, we recognize the importance of communicating to educators the nuances of any proposed PBCS or evaluation system so that educators may recognize the relationship between their efforts and accomplishments and the resulting rewards and other consequences. We note, however, that this challenge is present regardless of the design of the proposed reform.

Accordingly, we decline to revise Requirement 1 to allow for either whole-school compensation or compensation based on separate measures for performance. That said, nothing in this notice prohibits applicants from providing performance-based compensation outside of the proposed TIF-funded PBCS, provided that non-TIF funds are used for performance-based compensation.

Changes: None.

Comment: One commenter recommended that we fund additional compensation for teachers and principals who take on additional responsibilities and leadership roles, even if they have not shown a record of classroom effectiveness. This commenter noted that teacher attrition and turnover has created challenges for many schools, and claimed that additional compensation for additional responsibilities should enable schools to compensate teachers for their work, encourage them to advance based on their interests and accomplishments, and provide them with opportunities for leadership while maintaining the teacher's instructional responsibilities. A second commenter expressed support for the requirement limiting awards for taking on additional responsibilities to those who have demonstrated effectiveness, but noted that implementation of career ladder programs may be delayed in areas where the evaluation system has not yet been developed.

Discussion: The purpose of the TIF program is to support LEA implementation of an effective and sustainable PBCS that rewards educators determined to be effective based on student growth, multiple observations, and other factors, and to provide educators with incentives to take on additional responsibilities and leadership roles. The Department believes that, to best meet this purpose, all payments made to educators under a PBCS, including those provided to take on additional responsibilities and leadership roles, must be made to educators determined to be effective. Requirement 2, like all of the priorities, requirements, definitions, and selection criteria contained in this notice are designed to do this.

As mentioned elsewhere in this notice, it is the Department's belief that, by using rigorous evaluations to identify the highest quality educators, and, subsequently, rewarding these educators with opportunities for advancement and additional compensation, high-need schools will be in the best position to attract and retain the highly-skilled workforce needed to help students in those schools to achieve. While grantees may wish to supplement their TIF project, using local dollars, so that educators who have not been determined to be effective under the LEA's evaluation system are rewarded

for accepting additional responsibilities, they may do so, but they may only use TIF dollars for educators who have been determined to be effective.

We fully recognize that the development of the required PBCSs and related evaluation systems as well as the procedures for directing TIF funds to purposes permitted under this notice will require applicants to consider carefully their timelines for implementing the evaluation systems and PBCSs. Moreover, some applicants, if awarded a TIF grant, will need time to implement their PBCSs and evaluation systems, and meet the other requirements and priorities we have established for this program. We believe that the timelines we have established provide sufficient time for grantees to do so. Under Priority 2, applicants must propose a plan to implement their evaluations for at least a subset of teachers or schools in the LEA by the beginning of the second project year. Under paragraph (4) of Priority 1, applicants must use evaluation information to inform the design and delivery of professional development and the award of performance compensation under their proposed PBCS (to educators in high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools*) by the third project year. While applicants may, at their discretion, begin implementation sooner, we have established these timelines as base requirements to help applicants that need time to put their PBCSs and evaluation systems in place, for reasons such as those noted by one of the commenters.

Comment: One commenter opposed our restricting applicants from offering effective educators an opportunity to receive additional compensation for taking on career ladder positions and for taking on additional responsibilities and leadership roles.

Discussion: Applicants proposing to implement Design Model 1 must provide, as part of their PBCS, additional compensation to effective teachers (and, at their discretion, effective principals) who voluntarily accept additional responsibilities and leadership roles. To satisfy Design Model 1, therefore, applicants must compensate effective teachers (and, at their discretion, effective principals) for taking on additional responsibilities and leadership roles, which may include career ladder positions. However, under Design Model 2, applicants are required to offer effective teachers career ladder positions and do not have the option of offering other types of additional responsibilities and leadership roles. Through this restriction, we intend to reserve this design model for LEAs that wish to move ahead with an improvement strategy that relies heavily on career ladder positions and the comprehensive career ladder program that these positions require to be successful in improving teacher practice and student achievement. We expect that an LEA opting for this design model will develop a comprehensive plan through which career ladder teachers will get the extensive training and release time they need to make a significant difference in teacher practice in each participating high-need school. By contrast, the other types of additional responsibilities and leadership roles contemplated under the definition of that term in the NIA may be very limited in their scope and effect. To ensure that any career ladder program proposed under Design Model 2 is both comprehensive and coherent, we decline to expand the model to allow applicants to provide additional compensation to effective teachers who take on other types of additional responsibilities and leadership roles.

Changes: None.

Comment: One commenter opposed limitations restricting applicants to only one of the two PBCS design models, and recommended that we revise Requirement 1 to allow applicants to include both components in their PBCS proposal.

Discussion: We fully agree that applicants should have the flexibility to implement any of the allowable PBCS components included in Design Models 1 and 2. We view Design Model 1 as inclusive of all of the components of Design Model 2, because career ladder positions, which are specifically referenced in Design Model 2, are included in the definition of *additional responsibilities and leadership roles.* For this reason, we do not believe any change is necessary to respond to this comment.

Changes: None.

Comment: One commenter suggested that we encourage applicants to offer career ladder positions to a team of educators, rather than individuals, to build team collaboration among instructional leadership and thereby increase the impact of their work.

Discussion: The Department recognizes the merit of offering career ladder positions to a team of educators, rather than doing so to selected individuals, and encourages applicants to consider the benefits of this approach. However, we believe that applicants should have the flexibility to tailor their proposed PBCSs to best meet the needs of their high-need schools.

Changes: None.

Comment: One commenter recommended that we require teachers and principals who receive performance-based compensation to share their effective practices with other educators.

Discussion: We fully agree that effective teachers and principals should be provided opportunities to demonstrate instructional leadership and share their practices with peers. We believe that this is adequately addressed by *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* which requires applicants proposing to implement Design Model 1 to offer effective teachers, and, at their discretion, effective principals, opportunities to take on additional responsibilities and leadership roles. Similarly, Design Model 2 requires applicants to offer career ladder positions to effective teachers and allows applicants to offer additional compensation to principals, at their discretion, for taking on additional responsibilities and leadership roles. We have defined *additional responsibilities and leadership roles,* including *career ladder positions,* to mean meaningful, school-based opportunities to strengthen instruction and instructional leadership in a systemic way. While this certainly may include responsibilities to share effective practices with other educators, we believe that how to define these responsibilities, too, is best left to each participating LEA and those with whom it collaborates on the components of its PBCS.

Changes: None.

Comment: One commenter recommended that we revise the proposed priorities, requirements, definitions, and selection criteria to provide applicants with the flexibility to propose collaboratively developed compensation systems that integrate the following salary schedule principles: (a) A professional growth salary schedule must start with a professional-level salary of at least $40,000 for all beginning teachers entering the classroom, a minimum of $25,000 for education support professionals, and educators should be able to reach their ''maximum'' salary on the schedule within 10 years; (b) a professional growth salary schedule must be co-created or designed with educators through collective bargaining or, where there is no collective bargaining, agreed to by the organization representing educators, and it must allow for the strictly voluntary participation of current educators; (c) a professional growth salary schedule must contain

several levels through which educator progress is based on prescribed skills, knowledge, licenses, certifications, degrees, responsibilities, and accomplishments; (d) each level of any professional growth salary schedule should build on previous ones and contain salary increases for specified time periods within each level; (e) generally, early levels on any professional growth salary schedule should be linked to the probationary period of employment, advancement through the initial levels should be required, and movement through later levels may be voluntary; (f) a professional growth salary schedule must be linked to a professional development system that has been locally developed with educators and tied to high-quality professional development standards; (g) any professional growth salary schedule should clearly define what will be measured and how those measurements will be conducted; (h) any professional growth salary schedule should be tied to locally developed, research-based, professional learning opportunities targeted to the needs of the students; (i) a professional growth salary schedule must have adequate and sustainable sources of funding, both initially and on an ongoing basis, and grants should be viewed only as temporary resources that are not capable of sustaining a career salary program; (j) any professional growth salary schedule should be accessible to everyone who is eligible, without quotas; (k) any professional growth salary schedule should be locally bargained or, where there is no collective bargaining, agreed to with the organization representing the educators, flexible and structured for the contexts in which they will be implemented; (l) a professional growth salary schedule must be understandable to educators and the public; (m) an annual assessment of any professional growth salary schedule should be undertaken to determine its effectiveness in improving educator salaries, teaching quality, and the recruitment and retention of high-quality staff; and (n) all parties must agree on, and clarify, who is eligible to participate in a professional growth salary schedule.

Discussion: We believe that the proposed priorities, requirements, definitions, and selection criteria encourage applicants to collaboratively develop compensation systems. Under *Requirement 2—Involvement and Support of Teachers and Principals,* we require each applicant to provide evidence that educators have been involved, and will continue to be involved, in the development and implementation of the PBCS and evaluation systems described in the application. Under *Selection Criterion (d)—Involvement of Educators,* we will evaluate applicants based on the quality of educator involvement in the development of those same PBCSs and evaluation systems.

Further, the Department has reviewed the salary schedule principles submitted by the commenter, and has determined that the final priorities, requirements, definitions, and selection criteria allow applicants to develop compensation systems in ways that align with these principles. Given that applicants will have the flexibility requested by the commenters, we do not believe a change is necessary.

Changes: None.

Comment: None.

Discussion: Upon further review, we have determined that the ''Note'' in Requirement 1 should be amended to provide additional context for the charts provided in that Requirement. These charts illustrate how applicants can design their PBCS to meet the definition of a *PBCS.*

Changes: We have amended the note in Requirement 1 to provide an applicant with additional context for the charts found in the Requirement.

Requirement 2—Involvement and Support of Teachers and Principals

Comment: One commenter appeared to interpret Priority 1 as requiring LEAs to make significant modifications to their HCMSs, and expressed concern that applicants would not be able to secure educator support for systems still in their development stages. While the commenter acknowledged that educator support was important, the commenter stated that this support is only one of multiple factors that should be considered in the decision to implement a PBCS.

Discussion: The TIF authorizing statute requires that each TIF grantee demonstrate that its PBCS has been developed with the input of teachers and principals in the schools and LEAs to be served by the grant. Further, it is the Department's belief that ongoing involvement by educators in the development and implementation of the PBCS and evaluation systems is critical to the success and sustainability of the PBCS, and that educators are more likely to embrace these reforms if they have had a role in developing and implementing them. Accordingly, we believe it is appropriate and consistent with the statute to require each applicant to include in its application evidence of the involvement of educators in participating LEAs in the design of the PBCS, as well as in the design of the underlying evaluation systems that inform the PBCS. Further, under this requirement, an applicant must include in its application evidence demonstrating how educators in the participating LEAs will be involved in an ongoing basis with the implementation of the PBCS and evaluation systems. Beyond educator involvement, an applicant must also provide a description of the extent to which the applicant has educator support for the proposed PBCS and evaluation systems.

In requiring this description in the application, it is not our intent to require that applicants demonstrate in their applications that they have already secured a specific level of educator support; rather, under Selection Criterion (d), we will evaluate applications based on the strength of educator support that those applications describe in response to *Requirement 2—Involvement and Support of Teachers and Principals.* Applications that reflect low levels of educator support can be expected to receive a lower score under Selection Criterion (d). Conversely, applications that reflect higher levels of educator support can be expected to receive a higher score.

Changes: None.

Comment: Three commenters recommended that we prescribe the forms of evidence that an applicant must submit, and the processes in which applicants must engage, to meet *Requirement 2—Involvement and Support of Teachers and Principals.* One commenter suggested that we require applicants to conduct an educator vote, as such a process would be a definitive method for assessing whether there is sufficient support to implement a PBCS. A second commenter recommended that we require applicants to collaborate with effective teachers and a diverse cross-section of stakeholders in designing and implementing the PBCS. According to this commenter, involving these stakeholders would help to create professional education communities where top performers help to solve complex challenges. This commenter also recommended that we provide strong guidelines for submitting letters of support to ensure that these letters are genuine and represent a significant portion of educators. A third commenter recommended that we require applicants to collaborate with recognized educator representatives.

Discussion: While applicants must submit evidence of educator involvement to meet *Requirement 2—*

Involvement and Support of Teachers and Principals, we do not believe it is necessary or appropriate to prescribe the composition of educators that an applicant must include in the collaboration. We anticipate that some high-scoring applicants may engage in ongoing collaborative efforts where a handful of effective teachers and principals continuously work with district officials to manage the design and implementation of the PBCS and evaluations systems. Conversely, some high-scoring applicants may seek less substantive or formal involvement and input, but pursue feedback on a larger scale, and provide all educators in high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools* with opportunities to provide feedback on the development and implementation of the project. Thus, while the commenters' recommendations regarding the form of collaboration are all reasonable and may be very appropriate for certain LEAs, we do not accept any of them as procedures the Department should mandate for all LEAs that would participate in a TIF project.

Further, while evidence of educators' support in the form of letters or other communications that endorse the specifics of the applicant's proposal may make a stronger application for TIF funds, the Department has chosen not to require applicants to submit evidence of educator support in their applications in order to satisfy Requirement 2. Rather, to meet this requirement, applicants must provide a description of the extent to which the applicant has educator support for the proposed PBCS and educator evaluation systems. We will then evaluate the evidence provided to support this description, under paragraph (2) of *Selection Criterion (d)—Involvement of Educators;* applications that include strong evidence of educator support can be expected to receive a greater number of points under paragraph (2) than applications that do not include this level of support.

As the Department is letting applicants decide how best to describe educator support in their applications without requiring applicants to submit evidence of educator support in their TIF applications, we decline to prescribe the methods an applicant may use to submit evidence for the purposes of Selection Criterion (d)(2).

Changes: None.

Comment: One commenter recommended that we not allow educator representation to influence determinations of applicant eligibility. This commenter also stated that, to ensure the highest return on the TIF investment, we should not award funds to applicants when union policy would prohibit implementation of the PBCS or evaluation system.

Discussion: As mentioned elsewhere in this notice and in the NPP, educator involvement and support is critical to the successful implementation and sustainability of any applicant's proposed PBCS and evaluation systems. For this reason, each applicant must provide evidence of educator involvement in the development and implementation of both components of its project, and must describe the extent to which it has educator support for both of these components. Further, under *Selection Criterion (d)—Involvement of Educators,* applications that demonstrate strong evidence of educator involvement and support can be expected to receive more points than those that do not.

With these requirements and selection criteria, we believe it unnecessary to include the additional restriction, recommended by the commenter, which would prohibit the involvement of LEAs whose unions have policies prohibiting implementation of the PBCS or evaluation system. We hope that those unions would be willing to reconsider their positions and see the benefit of the reforms that we are proposing through the priorities, requirements, definitions, and selection criteria described in this notice. In addition, we have added a ''Note'' to Requirement 2 to clarify that it is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between these employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. Further, this ''Note'' clarifies that if a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

At the same time, the Department agrees that local policies, including union policies, may have a strong impact on the feasibility of an applicant's proposal. For this reason, we have revised both *Priority 5—An Educator Salary Structure Based on effectiveness* and *Selection Criterion (a)—A Coherent and Comprehensive Human Management Capital System (HMCS)* to address the impact of local policies on project feasibility.

Changes: Under *Priority 5—An Educator Salary Structure Based on effectiveness,* we have included new language (in paragraph (c)) directing applicants to describe the feasibility of its proposed salary structure's implementation, considering, in part, applicable local policies. In addition, under *Selection Criterion (a)(2)(iii)—A Coherent and Comprehensive Human Capital Management System,* we have added language to allow the Secretary to consider LEA-level policies that might inhibit or facilitate modifications needed to use educator effectiveness as a factor in human capital decisions when evaluating project feasibility. We have also added a *Note* to Requirement 2 to clarify that it is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between these employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. Further, this *Note* clarifies that, in the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

Requirement 3—Documentation of High-Need Schools

We received no comments regarding Requirement 3.

Requirement 4—SEA and Other Group Applications

Comment: One commenter asked whether an LEA that was part of a group application in a previous TIF project, but not the lead applicant for that project, is eligible to apply for TIF funding under the priorities, requirements, definitions, and selection criteria in this notice.

Discussion: Priority 4—New or Rural Applicants to the Teacher Incentive Fund and *Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants* address eligibility for LEA applicants that previously participated in a TIF-supported project. As noted elsewhere in this notice, we designate whether a priority is absolute, competitive preference, or invitational in the notice

inviting applications for a competition. For competitions in which we designate Priority 4 as absolute, applicants would not be eligible to receive TIF funds unless they provide an assurance, which the Department accepts, that each LEA to be served by the project has not previously participated in a TIF-supported project. In years when we designate Priority 4 as a competitive preference, LEA applicants that fail to provide this assurance would still be eligible to receive TIF funds although ineligible to receive the additional points available under the Priority. We consider an LEA to have previously participated in a TIF-supported project if it participated, or was included, in a previous or current TIF grant. For example, an LEA has previously participated if a previous TIF application that the Department funded identified it as a recipient of services under a previous TIF competition—even if the funded project did not move into full implementation, did not continue to receive funding throughout the entire performance period, or the LEA for some reason did not directly benefit from its participation in the project. Similarly, we consider an LEA to have previously participated if the grantee added the LEA as a participant in the project after a TIF project's initial funding.

Where Priority 4 is designated as a competitive preference, *Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants* will impact the permissible scope of an application, submitted under a new TIF competition, that involves an LEA that is currently participating in a TIF project at the beginning of the new grant's project period. Under Requirement 7, applicants must provide an assurance that TIF funds received under the competition will only be used to implement the PBCS in high-need schools that are not served, as of the beginning of the grant's project period or as planned in the future, by an existing TIF grant. Thus, if all the high-need schools in an LEA are already being served—or will be served—by a current TIF grant as of the beginning of the grant's project period, that LEA would not be eligible to receive funds or otherwise participate in a grant funded under this competition. Current TIF grantees with one or more high-need schools that are not served—and will not be served—by the current grant as of the beginning of the grant's project period would be eligible to receive funds under this notice.

Changes: None.

Comment: One commenter recommended that we remove the requirement that SEAs or other group applicants must implement a full HCMS when partnering with LEAs. According to the commenter, this change would allow SEAs and other group applicants to form partnerships with LEAs while also maintaining their flexibility to apply for a different scope of work, such as a PBCS, educator evaluation system, or salary structure overhaul.

Discussion: We are not certain that we understand this comment fully. We believe that the commenter recommended that we not require SEAs or nonprofit organizations that apply as part of group application to enter into an MOU with participating LEAs. It appears that the commenter believes that, in entering into such an MOU, SEAs and nonprofit organizations would thereby take on responsibility for the development of the LEAs' HCMSs. The commenter stated that, if we did not require SEAs or nonprofit organizations to execute such an MOU, we would enable them to have a different scope of work, such as the PBCS, educator evaluation system, or salary structure overhaul.

It appears that the commenter misinterpreted the purpose of the MOU that group applicants would execute under Requirement 4. Under paragraph (1) the MOU would contain a commitment by each participating LEA to implement the HCMS, including the educator evaluation systems and the PBCS, described in the application, and under paragraph (5) the MOU must contain a description of the activities that each member of the group will perform. Requirement 4 does not require that an SEA or nonprofit organization partner must take responsibility for developing the HCMS. While the participating LEA(s) in the group or partnership application must do so, the responsibility of SEA or nonprofit organization partners, if any, to assist the LEA(s) would be determined by the partners and described in the MOU.

Under *Priority 1—An LEA-wide Human Capital Management System (HCMS) with Educator Evaluation Systems at the Center,* and *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* each participating LEA must have a TIF-funded PBCS that is implemented as part of an LEA-wide HCMS. As we have explained elsewhere in this notice, we believe that integrating a PBCS within an LEA's larger HCMS will help ensure that the PBCS is a successful mechanism for improving classroom instruction and educator effectiveness, and that an LEA is more likely to sustain a PBCS that is embedded within a comprehensive HCMS. All TIF applications, whether from individual LEAs or from groups of LEAs, SEAs, or nonprofit organizations, must propose ways to ensure that the participating LEA(s) implement this responsibility, but how a group does this is up to the group to decide. We, therefore, decline to make a change in the requirement based on this comment.

Changes: None.

Requirement 5—Submitting an Application for One Competition

Comment: None.

Discussion: In reviewing proposed *Requirement 5—Submitting an Application for One Competition,* under which all eligible applicants were prohibited from applying to both competitions offered in any fiscal year, the Department has determined that this restriction was overly broad. With this restriction, our original intent was to encourage each applicant to develop one high-quality application that reflects the goals of the participating LEAs that will implement the new evaluation systems, HCMS, and PBCS. Based on this rationale, we have now determined that the restriction of one application per fiscal year need only apply to LEAs. Further, the Department has decided to rephrase this restriction to clarify that an LEA can participate in only one application—an application in the General TIF Competition or an application in the TIF Competition with a Focus on STEM. This means that an LEA may be included in only one application for one competition in any fiscal year—whether it applies on its own or with a group of LEAs, an SEA, or a nonprofit organization. Because the LEA will be the primary actor in any TIF project, the Department believes that this clarification is essential to avoid multiple awards for the same project.

The Department has also determined that its goals can be achieved by allowing an SEA to participate in a group application for one competition (General) and to participate in another group application for the other competition (TIF Competition with a Focus on STEM) so long as the LEAs in each group application are different. To minimize the risk of double funding, an SEA can participate in only one application for each competition.

Similarly, with the focus on not having multiple applications from any one LEA, the Department has decided not to restrict the number of group applications in which a nonprofit organization can participate. If two or more applications from the same entity

(an SEA or a non-profit) are successful, the Department will allocate any overlapping costs to the appropriate grant during the post-award period.

Changes: The Department has revised *Requirement 5— Submitting an Application for One Competition* to stipulate the number of applications, and the number of competitions, that any applicant may participate in during any fiscal year, with special rules for LEAs, SEAs, and nonprofits. In new paragraph (a) of this requirement, we state that an LEA may participate in only one application in any fiscal year. In new paragraph (b) of this requirement, we state that an SEA may participate in a group application for each of the competitions in any fiscal year. In new paragraph (c) of this requirement, we state that a non-profit organization may participate in an unlimited number of group applications for each competition in any fiscal year. Finally, to be consistent with the substantive changes to this requirement, we have changed the name of the requirement to ''*Limitations on Multiple Applications.*''

Requirement 6—Use of TIF Funds To Support the PBCS

Comment: In the NPP, we requested comments regarding the use of TIF funds to support the full amount of salary and salary augmentations associated with career ladder positions and other additional responsibilities and leadership roles. We received several comments responding to this request. Two commenters recommended that we fund only salary augmentations, and not full salaries, for career ladder positions. One of those two commenters noted that this approach would be more consistent with our goal of enhancing project sustainability. At the same time, the commenter recommended that we place no limit on salary augmentations associated with additional responsibilities and leadership roles because this compensation may be more effective for improving student outcomes than compensation awarded strictly on the basis of educator performance.

Several commenters recommended that we support the cost of both salaries and salary augmentations, even in spite of, according to one commenter, the potential risks to project sustainability. These commenters noted that master teachers have the greatest impact when they are fully released from instructional responsibilities to provide full-time support to other teachers (e.g., by analyzing data, conducting evaluations, coaching teachers individually, and facilitating instructional team meetings); however, LEAs often do not have the funding to support non-instructional positions. Therefore, without TIF support, most LEAs could not fully release their master teachers from instructional responsibilities. One commenter shared that its LEA could not continue to support full-time master teacher positions without TIF support, even though the LEA currently relies on an assortment of Federal, State, and local funds. Several commenters recommended that we fund one salary augmentation and one salary for a given number of classroom teachers to allow for appropriate TIF support that meets the needs of small and large schools.

Specifically, a few commenters recommended that we fund the full-time salary of one fully-released master teacher for every 15 classroom teachers and, additionally, the salary augmentation for one mentor teacher, who would retain some instructional responsibilities, for every eight regular classroom teachers. One commenter recommended a ratio of one master teacher for every 12 to 15 classroom teachers and one mentor teacher for every six to eight classroom teachers. While acknowledging this approach may cause concern for project sustainability, one commenter argued that financial support is critical for ensuring that career ladder positions have a strong foundation for lasting implementation.

Discussion: We greatly appreciate all of the thoughtful comments provided on this critical issue. After careful consideration of the recommendations provided, we have revised *Requirement 6—Use of TIF Funds to Support the PBCS* to limit the amount of TIF funds available to support the costs of career ladder positions and other additional responsibilities and leadership roles for teachers.

In setting this limit, we balance several considerations, including the desire to promote the sustainability of projects funded by the TIF program while also promoting the routine delivery of job-embedded professional development in the high-need schools. While the availability of TIF support should not encourage applicants to propose projects too large to sustain beyond the grant's project period, TIF funds should provide applicants, and their stakeholders, an opportunity to realize the benefits of full-time, fully-released career ladder positions for providing high-quality, job-embedded professional development. By providing this opportunity, we believe Requirement 6 will increase the likelihood that career ladder positions will garner the support, including financial support, needed to sustain the applicant's PBCS once grant funds are spent.

For these reasons, we are revising Requirement 6 to allow applicants to use TIF funds for full-time salaries of teachers in career ladder positions in participating high-need schools up to a ceiling. As suggested by several commenters, this ceiling is expressed as a ratio. We carefully considered the recommendations made by commenters based on current work in the field regarding individuals in career ladder positions, such as master teacher, mentor teacher, and others, taking on additional roles and responsibilities. Our approach differs from commenters' recommendations by providing one ratio for both career ladder positions and other additional roles and responsibilities to allow for the greatest flexibility for project design to best meet local needs.

In light of these recommendations, we have determined that TIF funds may support the cost of up to one full-time equivalent position for every 12 teachers who are not in a career ladder position in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* This ratio falls within the range of the commenters recommendations. Further, we believe that the ratio reflects an appropriate use of TIF dollars for additional responsibilities and leadership roles, particularly in view of the flexibility provided to grantees to configure the various positions that TIF funds would support.

Thus, if there are 48 classroom teachers in these participating high-need schools, TIF funds may be used to support the full-time salary of up to four career ladder positions. This approach provides applicants with significant flexibility by enabling an LEA to design its program of additional responsibilities and leadership roles using only full-time career ladder positions, only part-time positions, or some combination of both, as necessary to implement either PBCS Design Model 1 or Design Model 2. Thus, in the preceding example, while TIF funds could support four full-time positions, the applicant could elect instead to use the amount of available funds differently. For example, rather than supporting four full-time positions, the applicant could use TIF funds to support two full-time positions and four half-time positions. In the latter case, TIF funds would support two salaries and four salary augmentations (i.e., an additional amount of compensation over

and above what the LEA would otherwise pay the effective teacher).

Further, we intend for this limitation to apply to compensation for both career ladder positions and educators who take on additional responsibilities and leadership roles in accordance with the priorities, requirements, and definitions in this notice. In the preceding example, an applicant using Design Model 1 may use TIF-funds to support the costs of two full-time positions, and four salary augmentations for effective teachers who accept additional responsibilities and leadership roles. As several commenters noted, both full-time and part-time career ladder positions, and similar activities, can play a critical role in supporting teacher growth and student outcomes.

Changes: We have revised *Requirement 6—Use of TIF Funds to Support the PBCS* to clarify that applicants may use TIF funds to support the costs of both salaries and salary augmentations up to the cost of one full-time equivalent position for every 12 teachers who are not in a career ladder position in the high-need schools identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* This new element of the requirement appears in paragraph (b)(3) of Priority 5.

Comment: Two commenters requested that we allow TIF funds to be used to assist schools that are not high-need. One commenter requested that we allow applicants to use TIF funds to assist all schools within an LEA or a State. A second commenter requested that we allow TIF funds to be used to provide professional development to schools that are not high-need because doing so would allow for the efficient use of scarce resources without harm to the high-need schools.

Discussion: While the Department does not dispute the potential advantages of LEA-wide PBCSs or professional development opportunities, the statutory authority for the TIF program does not allow applicants to use TIF funds to support performance-based compensation for educators working in schools that are not high-need. By law, TIF funds may be used only for additional compensation to teachers, principals, and other personnel who work in high-need schools. While the authorizing statute also permits TIF funds to be used to help develop and implement the tools and systems, such as evaluation systems, that would be needed to implement a PBCS in non-high-need schools and that would help to identify what professional development educators in non-high-need schools may need, additional compensation and professional development for teachers, principals, and other personnel who work in non-high-need schools must be paid for with non-TIF funds.

Changes: None.

Comment: One commenter asked whether TIF funds may be used for direct services for students. Specifically, the commenter asked whether TIF funds could be used to support a STEM Academy for students run by effective teachers taking on career ladder positions or other additional responsibilities and leadership roles.

Discussion: Under the priorities, requirements, and definitions in this notice, TIF funds generally may not be used to provide direct services to students. Given the purpose of the TIF program, we have trouble envisioning how TIF funds may be used to provide direct services for students except perhaps, under PBCS Design Model 1, as part of an LEA's incentives for effective teachers to take on additional leadership roles and responsibilities. In this regard, the definition of *additional responsibilities and leadership roles provides* that these are ''meaningful school-based responsibilities that teachers may voluntarily accept to strengthen instruction or instructional leadership in a systemic way''. So any direct services to students would need to be provided within the context of strengthening instruction or instructional leadership in a systemic way.

To the extent that (1) the *additional responsibilities and leadership roles* assumed by the teachers in a STEM academy involve the provision of direct services to students, and (2) the STEM academy is located in a high-need school that is identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools,* TIF funds may be used for incentives for the academy's teachers to take on these additional responsibilities and leadership roles.

Changes: None.

Comment: One commenter requested that the Department allow grantees to use TIF funds to address specific components of an LEA's broader HCMS. For example, the commenter stated that the Department should allow an LEA that already has a robust teacher evaluation system to use TIF funds to build and implement a principal evaluation system as long as the LEA demonstrates alignment between the two.

Discussion: TIF funds may be used to support the development and implementation of the PBCS in the high-need schools identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* TIF funds may also be used both to support (1) the development and improvement of systems and tools that are necessary to implement the PBCS under the priorities, requirements, and definitions contained in this notice, and (2) the processes the LEA uses to act on the information generated by these systems and tools, for example, in determining to whom to award performance-based compensation. In keeping with these general principles, TIF funds may be used for costs needed to make proposed modifications to an LEA's HCMS that are needed to address *Priority 1—An LEA-Wide Human Capital Management System (HCMS) with Educator Evaluation Systems at the Center,* where these costs are reasonable and necessary for the development or improvement of systems and tools that support the PBCS.

Further, consistent with the TIF authorizing statute, TIF funds may be used for the development and improvement of systems and tools that support the PBCS and benefit the entire LEA, but not for the LEA-wide implementation of these systems and tools. Therefore, the salaries of staff who are charged with implementing these systems and tools that would be charged to TIF funds are subject to basic principles regarding allocation of costs charged to Federal grant funds among different programs or cost objectives. For example, given the timelines in this notice, the costs related to new evaluation systems can be considered development and improvement costs up to the first year of LEA-wide implementation. From the beginning of the first year of LEA-wide implementation, these costs would no longer be considered development or improvement costs for purposes of the TIF program; rather, they are implementation costs, which TIF funds cannot support on an LEA-wide basis. Under generally applicable Federal cost principles related to cost allocation, TIF funds may only support that proportion of the total implementation costs that benefit the high-need schools identified in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Changes: None.

Comment: None.

Discussion: As proposed, *Requirement 6—Use of TIF Funds to Support the PBCS* generally restricted grantees from using TIF funds to compensate educators except in two circumstances: when the compensation is part of the PBCS or involves compensating an educator who is

employed or hired to help administer the TIF project. The Department has determined that a third exception to the general restriction is appropriate. This third exception would allow grantees to use TIF funds to compensate educators who work in high-need schools identified in the application as included in the TIF project for attending professional development that addresses needs identified through the educators' evaluation results and that educators need to enable them to benefit from the PBCS. As the provision of professional development to these educators with TIF funds is itself permissible, we view payment of reasonable and necessary compensation to educators for their time attending TIF-related professional development outside of official duty hours as likewise permissible. In this situation, TIF funds may only be used to compensate educators if the PBCS-related professional development they attend occurs outside of the educators' official duty hours.

Changes: We have revised the last paragraph of this requirement (paragraph (c)) to clarify that TIF funds may be used to compensate educators for attending TIF-related professional development outside their official duty hours.

Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants

We received no comments regarding Requirement 7.

Definitions

Performance-based Compensation System (PBCS)

Comment: One commenter requested that we clarify paragraph (b)(1) of the definition of *performance-based compensation system (PBCS).* This paragraph describes the optional recruitment components of a PBCS. This commenter recommended that we revise this paragraph to specify that additional compensation may be provided to educators transferring from one high-need school to another and to first-year teachers in a high-need school. The commenter stated that this change would help high-need schools address common challenges with recruitment and retention.

Discussion: It was not our intent in the NPP to allow TIF-funded PBCSs to support either educator recruitment for first year teachers, for whom there may be no evaluation information available, or educator transfers between high-need schools. These proposals would not necessarily support the overall purpose of the TIF program—to improve educator effectiveness and student achievement in high-need schools. However, nothing in this notice precludes applicants from proposing to use non-TIF funds to provide additional compensation to first-year teachers or to effective educators who transfer from one high-need school to another.

Changes: None.

Comment: One commenter requested that we revise paragraph (b)(1) of the definition of *performance-based compensation* by removing the requirement that compensation for educators who previously worked in another LEA and who are hired to work in a high-need school be based on an overall evaluation rating of effective or higher under evaluation systems that are comparable to the applicant's proposed evaluation systems. The commenter expressed concern that this element of the definition would increase applicant burden, as applicants would have to investigate the evaluation systems of other LEAs.

Discussion: The TIF authorizing statute requires that TIF-funded performance-based compensation be provided on the basis of a PBCS that considers student growth, multiple observations, and other factors. In the case of an educator hired from another LEA, payment of performance-based compensation would thus be based on the new LEA's PBCS—not the former LEA in which the educator had worked. Accordingly, applicants may not use TIF funds to provide additional compensation to educators transferring from another LEA, where those educators have not been evaluated using factors that are comparable to the receiving LEA's proposed evaluation system and the provisions of the TIF authorizing statute. While we acknowledge that there is some burden associated with investigating another LEA's educator evaluation system, the only alternative to the exception we have provided would be to prohibit payment of additional compensation to educators who previously worked in another LEA and who are hired to work in a high-need school. We believe the exception we have provided is preferable.

Changes: None.

Rural Local Educational Agency

Comment: None.

Discussion: We have modified Priority 4 to give priority to applicants that propose to serve only rural LEAs to help ensure geographic diversity. The Department needs to define the term ''rural local educational agency'' for the purpose of this notice. In developing this definition, the Department chose to highlight those LEAs eligible to receive funds under the Department's Rural Education Achievement Program, including the Small Rural School Achievement program and the Rural and Low-Income School program.

Changes: We have defined ''rural local educational agency'' in this notice as an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under Title VI, Part B of the ESEA.

Student Growth

Comment: One commenter recommended that we amend the definition of *student growth* to reduce the emphasis on standardized tests, and promote the use of other assessment instruments and other measures, in order to avoid incenting teachers to teach to the test and to ensure that educators provide instruction that promotes 21st century skills.

Discussion: As mentioned elsewhere in this notice, Congress has authorized and appropriated funds for the TIF program to support the development of PBCSs that consider gains in student achievement (i.e., student growth), and the Department believes that student growth is a meaningful measure of teacher and principal effectiveness that should be a significant part of rigorous, transparent, and fair evaluation systems that include multiple measures. The Department strongly disagrees with the notion that the existence of cheating reflects on the merits of standardized testing or the usage of standardized test data for accountability purposes. Moreover, the Department believes that standardized testing has no special vulnerability to this type of behavior; rather, under any system of educational accountability, we must work to ensure that the metrics used are as fair, transparent, and rigorous as possible. Further, under the definition of *student growth* in this notice, applicants have broad flexibility to select the assessments used to measure student achievement for those grades and subjects not required to be assessed under section 1111(b)(3) of the ESEA, and to supplement the assessments in grades and subjects that are required under section 1111(b)(3) with other measures of student learning. For these reasons, we decline to amend the definition of *student growth* as requested by the commenter.

Changes: None.

Vision of Instructional Improvement

Comment: Two commenters requested that we expand the definition of *vision of instructional improvement* to include

cultural competency, classroom management, social and emotional learning, and conflict prevention and resolution among the key competencies for which LEAs must evaluate educators. One of the commenters noted that school safety, school discipline, and academic achievement are interlinked, and cited research showing that positive, evidence-based and preventative approaches to discipline resulted in higher attendance, achievement, and teacher morale.

Discussion: The Department agrees that competencies related to school climate may support educator efforts to help students attain higher levels of academic achievement. At the same time, however, we do not believe it is necessary or appropriate to require LEAs participating in a TIF project to develop or amend their vision of instructional improvement in any particular way. Rather, to meet Priority 1, applicants must articulate how their HCMS aligns or will align with the LEA's vision, leaving to the LEA whether it chooses to adjust it for purposes of implementing a TIF-funded project. Therefore, we decline to amend the definition of *vision of instructional improvement* to include specific competencies as recommended by the commenters.

Changes: None.

Selection Criteria

Comment: One commenter recommended that we revise *Selection Criterion (a)—A Coherent and Comprehensive Human Capital Management System (*HCMS), to reward applicants who have in place policies that support the usage of evaluation information from human capital decision-making.

Discussion: The Department agrees with the commenter's recommendation, and has amended Selection Criterion (a)(2)(iii) to allow the Secretary to provide more points to applicants whose local policies would support the usage of evaluation information for human capital decision-making.

Changes: The Department has amended Selection Criterion (a)(2)(iii) to allow the Secretary to consider the extent to which the LEA has applicable LEA-level policies that might either inhibit or facilitate modifications needed to use educator effectiveness as a factor in human capital decision-making.

Comment: Two commenters recommended the addition of new measures to Selection Criteria (b)(5) and (b)(6)(*Rigorous, Valid, and Reliable Educator Evaluation Systems*). One commenter requested that we amend Selection Criterion (b) to encourage applicants to use a range of prescribed factors, reflective of a principal's many responsibilities, to evaluate principal performance. Another commenter suggested that we amend Selection Criterion (b) to encourage applicants to develop comprehensive evaluations, where multiple factors are equally weighted in each applicant's proposed evaluation rubric, instead of evaluations where student growth receives significant weight. According to this commenter, comprehensive evaluations will properly assess whether students are provided the opportunities to learn 21st century skills without giving educators incentives to push students out of school or take steps to artificially raise test scores.

Discussion: We agree with the commenters that there are merits to using a range of factors to evaluate principal and teacher effectiveness. However, the Department believes that applicants should have the flexibility to select which other factors, apart from student growth and multiple evaluations, that they will use as part of their evaluation rubrics. We decline to prescribe factors beyond those required by statute, and outlined in Selection Criterion (b).

Changes: None.

Comment: Two commenters recommended that we make changes to *Selection Criterion (c)—Professional Development Systems to Support the Needs of Teachers and Principals Identified Through the Evaluation Process,* to encourage applicants to propose strong, evidence-based professional development supports as part of their TIF project. One commenter stated that, to remain consistent with research and best practice, we should amend Selection Criterion (c) to encourage applicants to propose professional development opportunities that are both job-embedded and ongoing. Another commenter recommended that we amend Selection Criterion (c) to award additional points to applicants who provide a methodology for examining the impact of their proposed professional development on student growth and instructional practice.

Discussion: We agree that applicants should propose ongoing, job-embedded supports as part of the professional development opportunities offered to educators, and have amended Selection Criterion (c)(3) accordingly. With respect to the comment regarding awarding additional points to applicants who provide a methodology for examining the impact of the proposed professional development on student growth and instructional practice, we believe such a change is unnecessary. We believe that our new Selection Criterion (c)(3) is sufficient to encourage applicants to propose school-based, job-embedded professional development opportunities likely to improve instructional and leadership practice, without prescribing how applicants should demonstrate that these supports are effective.

Changes: The Department has revised Selection Criterion (c) by adding a new paragraph (3) under which the Department will consider the extent to which each participating LEA has a high-quality plan to provide school-based, job-embedded opportunities for educators to transfer new knowledge into instructional and leadership practices.

Comment: One commenter suggested that we amend *Selection Criterion (f)—Sustainability,* to allow an applicant to make adjustments and improvements to its PBCS, as needed, during and after the project period has ended. Citing what the commenter considered a model performance-based compensation system, which differs significantly from the pilot project that preceded it, the commenter expressed concern that proposed Selection Criterion (f) would not allow for the continual improvement that was critical for bringing that system to its current state.

Discussion: We do not agree that Selection Criterion (f) precludes an applicant from making adjustments and improvements to its educator evaluation systems and PBCS.

Moreover, the Department certainly agrees that it is important to continually improve projects based on a formal project evaluation. In this regard, under *Selection Criterion (e)—Project Management,* an applicant will be awarded points depending on the extent to which its management plan includes an effective evaluation plan. The Department also believes that any adjustments and improvements made to a project based on the results of a formal evaluation that examines the project during various phases of implementation can help ensure the project's long-term sustainability.

Regardless of how applications are evaluated, grantees are free to work to continually improve their projects once awarded a TIF grant. We fully expect all grantees to make adjustments and improvements in their projects subject to the following conditions: That any changes that might affect the scope of the project first receive Department approval, and that the project remain consistent with their approved applications and the priorities,

requirements and definitions contained in this notice.

Changes: None.

Comment: One commenter expressed concern that minimal attention is given to project evaluation under *Selection Criterion (e)—Project Management;* this commenter requested that we add a new selection criterion focused on project evaluation. The commenter noted that, as many educators and school officials are skeptical of performance-based compensation, rigorous and independent evaluation of each project would help to increase the credibility of compensation reforms.

Discussion: The Department fully agrees that an evaluation of each TIF project would help to build the evidence supporting performance-based compensation, and, therefore, local support both for sustaining the PBCS beyond the project period and, more generally, for compensation reform based on PBCSs. For this reason, we proposed and have included Selection Criterion (e)(4) so that when evaluating applications, we can award points based on the effectiveness of the project evaluation plans included in the applications. Further, the Department has recently invested in two rigorous, national evaluations of performance-based compensation—one of which is an evaluation of grantees that received funds under the TIF fiscal year 2010 competition (the TIF 2010 competition)—that will provide the field with information related to the commenter's request. For these reasons, we decline to include a new selection criteria focused on project evaluation.

Changes: None.

Comment: One commenter recommended that we add a new selection criterion, under which we would award points to those applicants that articulate how they will modify and improve their project, as needed, with the goal of continual improvement.

Discussion: The Department agrees that it is important for TIF grantees to continually improve projects, whether based on a formal project evaluation or other data the grantee gathers about project implementation. That said, the Department does not believe it is necessary to include a new selection criterion solely focused on the goal of continual improvement. Under *Selection Criterion (e)—Project Management,* an applicant will receive points depending on the extent to which the proposed project's management plan includes an effective evaluation plan. In addition, we expect all grantees during the course of their project period to work to secure and examine data with which to continually improve their projects and project outcomes, consistent with their approved applications and the priorities, requirements, and definitions contained in this notice.

Changes: None.

Final Priorities

The Assistant Secretary establishes the following 5 priorities for the TIF program. The Assistant Secretary may apply one or more of these priorities in FY 2012 and later years in which this program is in effect.

Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center

To meet this priority, the applicant must include, in its application, a description of its LEA-wide HCMS, as it exists currently and with any modifications proposed for implementation during the project period of the grant. The application must describe—

(1) How the HCMS is or will be aligned with the LEA's vision of instructional improvement;

(2) How the LEA uses or will use the information generated by the evaluation systems it describes in its application to inform key human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion;

(3) The human capital strategies the LEA uses or will use to ensure that high-need schools are able to attract and retain effective educators; and

(4) Whether or not modifications are needed to an existing HCMS to ensure that it includes the features described in response to paragraphs (1), (2), and (3) of this priority, a timeline for implementing the described features, provided that the use of evaluation information to inform the design and delivery of professional development and the award of performance-based compensation under the applicant's proposed PBCS in high-need schools begins no later than the third year of the grant's project period in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Note: TIF funds can be used to support the costs of the systems and strategies described under this priority, *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM),* and *Priority 5—An Educator Salary Structure Based on Effectiveness* only to the extent allowed under *Requirement 6—Use of TIF Funds to Support the PBCS.*

Priority 2: LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth.

To meet this priority, an applicant must include, as part of its application, a plan describing how it will develop and implement its proposed LEA-wide educator evaluation systems. The plan must describe—

(1) The frequency of evaluations, which must be at least annually;

(2) The evaluation rubric for educators that includes at least three performance levels and the following—

(i) Two or more observations during each evaluation period;

(ii) Student growth, which for the evaluation of teachers with regular instructional responsibilities must be growth at the classroom level; and

(iii) Additional factors determined by the LEA;

(3) How the evaluation systems will generate an overall evaluation rating that is based, in significant part, on student growth; and

(4) The applicant's timeline for implementing its proposed LEA-wide educator evaluation systems. Under the timeline, the applicant must implement these systems as the LEA's official evaluation systems for assigning overall evaluation ratings for at least a subset of educators or schools no later than the beginning of the second year of the grant's project period. The applicant may phase in the evaluation systems by applying them, over time, to additional schools or educators so long as the new evaluation systems are the official evaluation systems the LEA uses to assign overall evaluation ratings for all educators within the LEA no later than the beginning of the third year of the grant's project period.

Priority 3: Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM)

To meet this priority, an applicant must include a plan in its application that describes the applicant's strategies for improving instruction in STEM subjects through various components of each participating LEA's HCMS, including its professional development, evaluation systems, and PBCS. At a minimum, the plan must describe—

(1) How each LEA will develop a corps of STEM master teachers who are skilled at modeling for peer teachers pedagogical methods for teaching STEM skills and content at the appropriate grade level by providing additional compensation to teachers who—

(i) Receive an overall evaluation rating of effective or higher under the evaluation system described in the application;

(ii) Are selected based on criteria that are predictive of the ability to lead other teachers;

(iii) Demonstrate effectiveness in one or more STEM subjects; and

(iv) Accept STEM-focused career ladder positions;

(2) How each LEA will identify and develop the unique competencies that, based on evaluation information or other evidence, characterize effective STEM teachers;

(3) How each LEA will identify hard-to-staff STEM subjects, and use the HCMS to attract effective teachers to positions providing instruction in those subjects;

(4) How each LEA will leverage community support, resources, and expertise to inform the implementation of its plan;

(5) How each LEA will ensure that financial and non-financial incentives, including performance-based compensation, offered to reward or promote effective STEM teachers are adequate to attract and retain persons with strong STEM skills in high-need schools; and

(6) How each LEA will ensure that students have access to and participate in rigorous and engaging STEM coursework.

Priority 4: New or Rural Applicants to the Teacher Incentive Fund

To meet this priority, an applicant must provide at least one of the two following assurances, which the Department accepts:

(a) An assurance that each LEA to be served by the project has not previously participated in a TIF-supported project.

(b) An assurance that each LEA to be served by the project is a rural local educational agency (as defined in this notice).

Priority 5: An Educator Salary Structure Based on Effectiveness

To meet this priority, an applicant must propose, as part of its PBCS, a timeline for implementing no later than in the fifth year of the grant's project period a salary structure based on effectiveness for both teachers and principals. As part of this proposal, an applicant must describe—

(a) The extent to which and how each LEA will use overall evaluation ratings to determine educator salaries;

(b) How each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools listed in response to Requirement 3(a); and

(c) The extent to which the proposed implementation is feasible, given that implementation will depend upon stakeholder support and applicable LEA-level policies.

Note: To meet *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* an applicant must implement its proposed PBCS in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools* by the beginning of the third year of the grant's project period. If the timeline for implementing the salary structure proposed under this Priority 5 does not meet that deadline, the applicant must describe, under *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* a proposed PBCS that the LEA will implement until the proposed salary structure is implemented.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary establishes the following requirements for the TIF program. The Assistant Secretary may apply one or more of these requirements in FY 2012 and later years in which this program is in effect. These requirements are in addition to the statutory requirements that apply to the program and any priorities, definitions, and selection criteria we announce in the notice inviting applications for a TIF competition.

Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel

In its application, an applicant must describe, for each participating LEA, how its proposed PBCS will meet the definition of a *PBCS* set forth in this notice.

Note: The following charts illustrate how applicants can design their PBCS to meet the definition of *PBCS.* Chart 1 describes the two types of design models that meet the statutory requirements. Chart 2 identifies additional optional features that could be implemented as part of a PBCS. To ensure that funded applications reflect a diversity of PBCSs, the Secretary reserves the right to fund a sufficient number of high-quality Design Model 1 and Design Model 2 projects, as shown in Chart 1.

CHART 1—PBCS DESIGN OPTIONS TO MEET STATUTORY REQUIREMENTS

Design model	Mandatory elements
1 * ..... * Corresponds to paragraph (a)(1) of the PBCS definition.	Proposed PBCS provides both of the following: (1) Additional compensation for *teachers and principals* who receive an overall rating of effective or higher under the evaluation systems described in the application. (2) Of those teachers and principals eligible for compensation under paragraph (1), additional compensation for *teachers and, at the applicant's discretion, for principals,* who take on *additional responsibilities and leadership roles* (as defined in this notice).
2* ..... * Corresponds to paragraph (a)(2) of the PBCS definition.	Proposed PBCS provides both of the following: (1) Additional compensation for *teachers* who receive an overall rating of effective or higher under the evaluation system described in the application and who take on *career ladder positions* (as defined in this notice). (2) Additional compensation for one or both of the following: (A) *Principals* who receive an overall rating of effective or higher under the evaluation system described in the application, or

CHART 1—PBCS DESIGN OPTIONS TO MEET STATUTORY REQUIREMENTS—Continued

Design model	Mandatory elements
	(B) *Principals* who receive an overall rating of effective or higher under the evaluation system described in the application and who take on *additional responsibilities and leadership roles* (as defined in this notice).

CHART 2—PBCS OPTIONAL FEATURES

	Optional elements
Compensation for Transfers to High-Need Schools.	Proposed PBCS provides additional compensation for educators (*which at the applicant's option may be for teachers or principals or both*) who receive an overall rating of effective or higher under the evaluation systems described in the application or under comparable evaluation systems in another LEA, and who either: (1) Transfer to a high-need school from a school of the LEA that is not high-need, or (2) For educators who previously worked in another LEA, are hired to work in a high-need school.
Compensation for Other Personnel	Proposed PBCS provides additional compensation for other personnel, who are not teachers or principals, based on performance standards established by the LEA so long as those standards, in significant part, include student growth, which may be school-level student growth.

Requirement 2—Involvement and Support of Teachers and Principals

In its application, the applicant must include—

(a) Evidence that educators in each participating LEA have been involved, and will continue to be involved, in the development and implementation of the PBCS and evaluation systems described in the application;

(b) A description of the extent to which the applicant has educator support for the proposed PBCS and educator evaluation systems; and

(c) A statement indicating whether a union is the exclusive representative of either teachers or principals in each participating LEA.

Note: It is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between these employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. In the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

Requirement 3—Documentation of High-Need Schools

Each applicant must demonstrate, in its application, that the schools participating in the implementation of the TIF-funded PBCS are high-need schools (as defined in this notice), including high-poverty schools (as defined in this notice), priority schools (as defined in this notice), or persistently lowest-achieving schools (as defined in this notice). Each applicant must provide, in its application—

(a) A list of high-need schools in which the proposed TIF-supported PBCS would be implemented;

(b) For each high-poverty school listed, the most current data on the percentage of students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act or are considered students from low-income families based on another poverty measure that the LEA uses (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a high-poverty school must be school-level data; the Department will not accept LEA- or State-level data for purposes of documenting whether a school is a high-poverty school; and

(c) For any priority schools listed, documentation verifying that the State has received approval of a request for ESEA flexibility, and that the schools have been identified by the State as priority schools.

Requirement 4—SEA and Other Group Applications

(a) Applications from the following are group applications:

(1) Any application from two or more LEAs.

(2) Any application that includes one or more SEAs.

(3) Any application that includes a nonprofit organization.

(b) An applicant that is a nonprofit organization must apply in a partnership that includes one or more LEAs, and must identify in the application the LEA(s) and any SEA(s) with which the proposed project would be implemented.

(c) An applicant that is an SEA must apply for a grant under this program as part of a group application that includes one or more LEAs in the same State as the SEA, and must identify in the application the LEA(s) in which the project would be implemented.

(d) All group applications must include a Memorandum of Understanding (MOU) or other binding agreement signed by all of the members of the group.

At a minimum, the MOU or other agreement must include—

(1) A commitment by each participating LEA to implement the HCMS, including the educator evaluation systems and the PBCS, described in the application;

(2) An identification of the lead applicant;

(3) A description of the responsibilities of the lead applicant in managing any grant funds and ensuring overall implementation of the proposed project as described in the application if approved by the Department;

(4) A description of the activities that each member of the group will perform; and

(5) A statement binding each member of the group to every statement and assurance made in the application.

(e) In any group application identified in paragraph (a) of this requirement, each entity in the group is considered a grantee.

Requirement 5—Limitations on Multiple Applications

(a) An LEA applicant may participate in no more than one application in any fiscal year.

(b) An SEA applicant may participate in no more than one group application for the General TIF Competition, and no more than one group application for the TIF Competition with a Focus on STEM in any fiscal year.

(c) Nonprofit organization applicants may participate in one or more group applications for the General TIF Competition, and in one or more applications for the TIF Competition with a Focus on STEM, in any fiscal year.

Requirement 6—Use of TIF Funds To Support the PBCS

(a) LEA-Wide Improvements to Systems and Tools

TIF funds may be used to develop and improve systems and tools that support the PBCS and benefit the entire LEA.

(b) Performance-Based Compensation and Professional Development

(1) *High Need Schools.* TIF funds may be used to provide performance-based compensation and related professional development in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* TIF funds may not be used to provide performance-based compensation or professional development in schools other than those high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

(2) *PBCSs.* TIF funds may be used to compensate educators only when the compensation is provided as part of the LEA's PBCS, as described in the application.

(3) *For Additional Responsibilities and Leadership Roles.* When a proposed PBCS provides additional compensation to effective educators who take on additional responsibilities and leadership roles, TIF funds may be used for either the entire amount of salary for career ladder positions, or for salary augmentations (i.e., an additional amount of compensation over and above what the LEA would otherwise pay the effective teacher), or both. TIF-funds may be used to fund additional compensation for additional responsibilities and leadership roles up to the cost of 1 full-time equivalent position for every 12 teachers, who are not in a career ladder position, located in the high-need schools listed in response to Requirement 3(a).

(c) Other Permissible Types of Compensation

Nothing in this requirement precludes the use of TIF funds to compensate educators who are hired by a grantee to administer or implement the TIF-supported PBCS, or to compensate educators who attend TIF-supported professional development outside their official duty hours, or to develop or improve systems and tools needed to support the PBCS.

Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants

Each applicant must provide an assurance, in its application, that, if successful under this competition, it will use the grant award to implement the proposed PBCS and professional development only in high-need schools that are not served, as of the beginning of the grant's project period or as planned in the future, by an existing TIF grant.

Final Definitions

The Assistant Secretary establishes the following definitions for the TIF program. The Assistant Secretary may apply one or more of these definitions in FY 2012 and later years in which this program is in effect.

Additional responsibilities and leadership roles means:

(a) In the case of teachers, meaningful school-based responsibilities that teachers may voluntarily accept to strengthen instruction or instructional leadership in a systemic way, such as additional responsibilities related to lesson study, professional development, and peer evaluation, and may also include career ladder positions.

(b) In the case of principals, additional responsibilities and leadership roles that principals may voluntarily accept, such as a position in which an effective principal coaches a novice principal.

Career ladder positions means school-based instructional leadership positions designed to improve instructional practice, which teachers may voluntarily accept, such as positions described as master teacher, mentor teacher, demonstration or model teacher, or instructional coach, and for which teachers are selected based on criteria that are predictive of the ability to lead other teachers.

Educators means teachers and principals.

High-need school means:

(a) A high-poverty school, or

(b) A persistently lowest-achieving school, or

(c) In the case of States that have received the Department's approval of a request for ESEA flexibility, a priority school.

High-poverty school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). 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.

Human capital management system (HCMS) means a system by which an LEA makes and implements human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion.

Other personnel means school-based personnel who are not serving in a teacher or principal position. Other personnel may include, for example, school counselors, media specialists, or para-educators.

Performance-based compensation system (PBCS) means a system that—

(a) Provides additional compensation for teachers and principals in one of the following circumstances—

(1)(i) Design Model 1. Additional compensation for teachers and principals who receive an overall evaluation rating of effective or higher under the evaluation systems described in the application; and

(ii) Of those teachers and principals eligible for compensation under paragraph (a)(1)(i) of this definition, additional compensation for teachers and, at the applicant's discretion, for principals, who take on additional responsibilities and leadership roles; or

(2)(i) Design Model 2. Additional compensation for teachers who receive an overall evaluation rating of effective or higher under the evaluation system described in the application and who take on career ladder positions; and

(ii) Additional compensation for (A) principals who receive an overall evaluation rating of effective or higher under the evaluation system described in the application, or (B) principals who receive an overall evaluation rating of effective or higher under the evaluation system described in the application and who take on additional responsibilities and leadership roles.

(b) May provide the following compensation:

(1) Additional compensation for educators (which at the applicant's option may be for teachers or principals or both) who receive an overall evaluation rating of effective or higher under the evaluation systems described in the application or under comparable evaluation systems in another LEA, and who either: (i) Transfer to a high-need school from a school of the LEA that is not high-need, or, (ii) for educators who previously worked in another LEA, are hired to work in a high-need school.

(2) Additional compensation for other personnel, who are not teachers or principals, based on performance standards established by the LEA so long as those standards, in significant part, include student growth, which may be school-level student growth.

Persistently lowest-achieving school means, as determined by the State:

(i) Any Title I school in improvement, corrective action, or restructuring that—

(a) 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

(b) 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

(ii) Any secondary school that is eligible for, but does not receive, Title I funds that—

(a) 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

(b) 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.

To identify the persistently lowest achieving schools, a State must take into account both:

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

Principal means any person who meets the definition of that term under State or local law. At an LEA's discretion, it may also include an assistant or vice principal or a person in a position that contributes to the organizational management or instructional leadership of a school.

Priority school means a school that has been identified by the State as a priority school pursuant to the State's approved request for Elementary and Secondary Education Act (ESEA) flexibility.

Rural local educational agency means an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under Title VI, Part B of the ESEA. 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.*

Student growth means the change in student achievement for an individual student between two or more points in time. For the purpose of this definition, student achievement means—

(a) For grades and subjects in which assessments are required under section 1111(b)(3) of ESEA: (1) A student's score on such assessments and may include (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided those measures are rigorous and comparable across schools within an LEA.

(b) For grades and subjects in which assessments are not required under section 1111(b)(3) of ESEA: Alternative measures of student learning and performance such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

Teacher means any person who meets the definition of that term under State or local law.

Vision of instructional improvement means a summary of the key competencies and behaviors of effective teaching that an LEA views as necessary to produce high levels of student achievement, as well as how educators acquire or improve these competencies and behaviors.

Final Selection Criteria

The Assistant Secretary announces two sets of selection criteria—the General TIF Competition selection criteria (selection criteria (a) through (f)) and the TIF Competition with the Focus on STEM selection criteria (selection criterion (g))—to be used to review an applicant's proposal for funding under any FY 2012 competition and any future competitions. The Assistant Secretary may apply General TIF Competition selection criteria, in whole or in part, in any year in which we conduct a General TIF Competition. The Assistant Secretary may apply the TIF Competition with a Focus on STEM selection criteria, in whole or in part, together with one or more of the General TIF Competition selection criteria, in any year in which we conduct a TIF Competition with a Focus on STEM. In combination with or in place of the General TIF Competition selection criteria or the TIF Competition with a Focus on STEM selection criteria, the Assistant Secretary may apply the general selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210; criteria based on statutory provisions in accordance with 34 CFR 75.209; or any combination thereof in any year in which there is a TIF competition. In the notice inviting applications, or the application package, or both, we will announce the maximum possible points assigned to each criterion.

(a) *A Coherent and Comprehensive Human Capital Management System (HCMS).* We will consider the quality and comprehensiveness of each participating LEA's HCMS as described in the application. In determining the quality of the HCMS, as it currently exists and as the applicant proposes to modify it during the grant period, we will consider the extent to which the HCMS described in the application is—

(1) Aligned with each participating LEA's clearly described vision of instructional improvement; and

(2) Likely to increase the number of effective educators in the LEA's schools, especially in high-need schools, as demonstrated by—

(i) The range of human capital decisions for which the applicant proposes to consider educator effectiveness—based on the educator evaluation systems described in the application.

(ii) The weight given to educator effectiveness—based on the educator evaluation systems described in the application—when human capital decisions are made;

(iii) The feasibility of the HCMS described in the application, including the extent to which the LEA has prior experience using information from the educator evaluation systems described in the application to inform human capital decisions, and applicable LEA-level policies that might inhibit or facilitate modifications needed to use educator effectiveness as a factor in human capital decisions;

(iv) The commitment of the LEA's leadership to implementing the

described HCMS, including all of its component parts; and

(v) The adequacy of the financial and nonfinancial strategies and incentives, including the proposed PBCS, for attracting effective educators to work in high-need schools and retaining them in those schools.

(b) *Rigorous, Valid, and Reliable Educator Evaluation Systems.* We will consider, for each participating LEA, the quality of the educator evaluation systems described in the application. In determining the quality of each evaluation system, we will consider the extent to which—

(1) Each participating LEA has finalized a high-quality evaluation rubric, with at least three performance levels (e.g., highly effective, effective, developing, unsatisfactory), under which educators will be evaluated;

(2) Each participating LEA has presented:

(i) A clear rationale to support its consideration of the level of student growth achieved in differentiating performance levels; and

(ii) Evidence, such as current research and best practices, supporting the LEA's choice of student growth models and demonstrating the rigor and comparability of assessments;

(3) Each participating LEA has made substantial progress in developing a high-quality plan for multiple teacher and principal observations, including identification of the persons, by position and qualifications, who will be conducting the observations, the observation tool, the events to be observed, the accuracy of raters in using observation tools and the procedures for ensuring a high degree of inter-rater reliability;

(4) The participating LEA has experience measuring student growth at the classroom level, and has already implemented components of the proposed educator evaluation systems;

(5) In the case of teacher evaluations, the proposed evaluation system—

(i) Bases the overall evaluation rating for teachers, in significant part, on student growth;

(ii) Evaluates the practice of teachers, including general education teachers and teachers of special student populations, in meeting the needs of special student populations, including students with disabilities and English learners;

(6) In the case of principal evaluations, the proposed evaluation system—

(i) Bases the overall evaluation rating on, in significant part, student growth; and

(ii) Evaluates, among other factors, a principal's practice in—

(A) Focusing every teacher, and the school community generally, on student growth;

(B) Establishing a collaborative school culture focused on continuous improvement; and

(C) Supporting the academic needs of special student populations, including students with disabilities and English learners, for example, by creating systems to support successful co-teaching practices, providing resources for research-based intervention services, or similar activities.

(c) *Professional Development Systems to Support the Needs of Teachers and Principals Identified Through the Evaluation Process.* We will consider the extent to which each participating LEA has a high-quality plan for professional development to help all educators located in high-need schools, listed in response to Requirement 3(a), to improve their effectiveness. In determining the quality of each plan for professional development, we will consider the extent to which the plan describes how the participating LEA will—

(1) Use the disaggregated information generated by the proposed educator evaluation systems to identify the professional development needs of individual educators and schools;

(2) Provide professional development in a timely way;

(3) Provide school-based, job-embedded opportunities for educators to transfer new knowledge into instructional and leadership practices; and

(4) Provide professional development that is likely to improve instructional and leadership practices, and is guided by the professional development needs of individual educators as identified in paragraph (c)(1) of this criterion.

(d) *Involvement of Educators.* We will consider the quality of educator involvement in the development and implementation of the proposed PBCS and educator evaluation systems described in the application. In determining the quality of such involvement, we will consider the extent to which—

(1) The application contains evidence that educator involvement in the design of the PBCS and the educator evaluation systems has been extensive and will continue to be extensive during the grant period; and

(2) The application contains evidence that educators support the elements of the proposed PBCS and the educator evaluation systems described in the application.

(e) *Project Management.* We will consider the quality of the management plan of the proposed project. In determining the quality of the management plan, we will consider the extent to which the management plan—

(1) Clearly identifies and defines the roles and responsibilities of key personnel;

(2) Allocates sufficient human resources to complete project tasks;

(3) Includes measurable project objectives and performance measures; and

(4) Includes an effective project evaluation plan;

(5) Specifies realistic and achievable timelines for:

(i) Implementing the components of the HCMS, PBCS, and educator evaluation systems, including any proposal to phase in schools or educators.

(ii) Successfully completing project tasks and achieving objectives.

(f) *Sustainability.* We will consider the quality of the plan to sustain the proposed project. In determining the quality of the sustainability plan, we will consider the extent to which the sustainability plan—

(1) Identifies and commits sufficient non-TIF resources, financial and nonfinancial, to support the PBCS and educator evaluation systems during and after the grant period; and

(2) Is likely to be implemented and, if implemented, will result in a sustained PBCS and educator evaluation systems after the grant period ends.

(g) *Comprehensive Approach to Improving STEM Instruction.* To meet Priority 3, we will consider the quality of an applicant's plan for improving educator effectiveness in STEM instruction. In determining the quality of the plan, we will consider the extent to which—

(1) The financial and nonfinancial strategies and incentives, including the proposed PBCS, are adequate for attracting effective STEM educators to work in high-need schools and retaining them in these schools;

(2) The proposed professional development opportunities—

(a) Will provide college-level STEM skills and content knowledge to STEM teachers while modeling for teachers pedagogical methods for teaching those skills and that content at the appropriate grade level; and

(b) Will enable STEM teachers to provide students in high-need schools with increased access to rigorous and engaging STEM coursework appropriate for their grade level, including college-level material in high schools;

(3) The applicant will significantly leverage STEM-related funds across

other Federal, State, and local programs to implement a high-quality and comprehensive STEM plan; and

(4) The applicant provides evidence (e.g., letters of support) that the LEA has or will develop extensive relationships with STEM experts and resources in industry, academic institutions, or associations to effectively implement its STEM plan and ensure that instruction prepares students to be college-and-career ready.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and subject to review by Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through the TIF program will exceed that amount. Therefore, this regulatory action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action and have determined that the benefits justify the costs.

We have also reviewed these priorities, requirements, definitions, and selection criteria under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are establishing these priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Need for Federal Regulatory Action

These priorities, requirements, definitions, and selection criteria are needed to implement the TIF program. The Department does not believe that the authorizing legislation for this program, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting the development and implementation of PBCSs. The authorizing and appropriations language is very brief and provides only broad parameters to govern the program. The priorities, requirements, definitions, and selection criteria in this notice clarify the types of activities the Department seeks to fund, and permit the Department to evaluate proposed projects using selection criteria that are based on the purpose of the program and are closely aligned with the Department's priorities.

In the absence of specific selection criteria for the TIF program, the Department would use the general selection criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations in selecting grant recipients. However, the Department does not believe the use of those general criteria would be appropriate for a TIF program competition because they do not focus on the development of PBCSs or activities most likely to increase the quality of teaching and school administration and improve educational outcomes for students.

Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding on those included in this notice. For example, the Department considered—

(1) Limiting eligible LEA applicants to those that already have in place the basic infrastructure necessary to generate student growth data at the classroom level. However, we took an alternative approach because we recognize that one purpose of the TIF program is to nurture innovation and reform in LEAs that may be beginning their reform efforts in this area.

(2) Requiring an applicant to commit a certain percentage of non-TIF funds to the project in order to help ensure the project's sustainability after the grant period. However, we took an alternative approach that requires the PBCS to be part of an LEA-wide HCMS because we believe that having the PBCS implemented as part of an LEA-wide

HCMS will help generate project sustainability. Further, we believe that the selection criteria that direct reviewers to assess the degree of LEA commitment, both financial and nonfinancial, and its effect on project sustainability, will be sufficient to ensure that funded projects are sustained after the end of the grant period.

The priorities, requirements, definitions, and selection criteria in this notice reflect and promote the purpose of the TIF program. They also align TIF, where possible and permissible, with other Presidential and Departmental priorities, such as the State Fiscal Stabilization Fund, the Race to the Top Fund, the School Improvement Grants program, and the ESEA Flexibility initiative. Through this regulatory action, the Department provides an eligible applicant with a great deal of flexibility in designing the systems and selecting the activities to carry out its proposed project. The Secretary believes that the priorities, requirements, definitions, and selection criteria in this notice appropriately balance the need for specific programmatic guidance while providing each applicant with flexibility to design innovative and enduring PBCSs.

Summary of Costs and Benefits

The Department believes that these priorities, requirements, definitions, and selection criteria do not impose significant costs on eligible States, LEAs, or nonprofit organizations that would receive assistance through the TIF program. The Secretary also believes that the benefits of implementing the priorities and requirements contained in this notice justify any associated costs.

The Department believes that the priorities, requirements, definitions, and selection criteria in this notice will result in the selection of high-quality applications to implement activities that will improve the quality of teaching and educational administration. Through these priorities, requirements, and selection criteria, we clarify the scope of activities we expect to support with program funds and the expected burden to prepare an application and implement a project under the program. A potential applicant must consider carefully the resources needed to prepare a strong application and its capacity to implement a successful project.

The Department believes that the costs imposed on an applicant by the priorities, requirements, definitions, and selection criteria are largely limited to the paperwork burden of preparing an application and that the benefits of implementing this regulatory action will justify any costs incurred by the applicant. This is because, during the project period, the applicant will pay the costs of actually carrying out activities under a TIF grant with program funds and any matching funds. Further, many of the systems that TIF funds will support, including educator evaluation systems and systems of professional development, are ones that LEAs regularly support with their own funds. Thus, the costs of implementing a TIF project using these priorities, requirements, definitions, and selection criteria will not be a significant burden for any eligible applicant, including a small entity.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements associated with this regulatory action.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whithouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to States, LEAs, and nonprofit organizations under this program as a result of this regulatory action. This table is based on funds available for new awards under the FY 2012 appropriation. Expenditures are classified as transfers to States, LEAs, and nonprofit organizations.

Accounting Statement Classification of Estimated Expenditures

Category	Transfers (in millions)
Annual Monetized Transfers	$284.5.
From Whom to Whom	Federal Government to States, LEAs, and nonprofits.

Effect on Other Levels of Government

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

Waiver of Congressional Review Act

These priorities, requirements, definitions, and selection criteria have been determined to be a major rule for purposes of the Congressional Review Act (CRA) (5 U.S.C. 801, et seq.). Generally, under the CRA, a major rule takes effect 60 days after the date on which the rule is published in the **Federal Register**. Section 808(2) of the CRA, however, provides that any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

These final priorities, requirements, definitions, and selection criteria are needed to implement the TIF program, authorized under the Department of Education Appropriations Act, 2012 (Division F, Title III of Public Law 112–74), which was signed into law on December 23, 2011. The Department must award TIF funds under this authority to qualified applicants by September 30, 2012, or the funds will lapse. Even on an extremely expedited timeline, it is impracticable for the Department to adhere to a 60-day delayed effective date for the final priorities, requirements, definitions, and selection criteria and make grant awards to qualified applicants by the September 30, 2012 deadline. When the 60-day delayed effective date is added to the time the Department will need to receive applications (approximately 45 days), review the applications (approximately 21 days), and finally approve applications (approximately 65 days), the Department will not be able to award funds authorized under the Department of Education Appropriations Act, 2012 to applicants by September 30, 2012. The Department has therefore determined that, pursuant to section 808(2) of the CRA, the 60-day delay in the effective date generally required for congressional review is impracticable, contrary to the public interest, and waived for good cause.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation process to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department

can properly assess the impact of collection requirements on respondents.

This notice contains information collection requirements 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). We estimate that each applicant will spend approximately 248 hours of staff time to address the priorities, requirements, definitions, and selection criteria, prepare the application, and obtain necessary clearances. Based on the number of applications the Department received in the FY 2010 competition, we expect to receive approximately 120 applications for these funds. The total number of hours for all expected applicants is an estimated 29,760 hours. We estimate the total cost per hour of the applicant-level staff who carry out this work to be $30 per hour. The total estimated cost for all applicants is $892,800.

In the NPP we invited comment on the paperwork burden estimated for this collection. We did not receive any comments.

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. The OMB control number assigned to this information collection is 1810–0700.

Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this regulatory action may affect are (1) small LEAs, and (2) nonprofit organizations applying for and receiving funds under this program in partnership with an LEA or SEA. The Secretary believes that the costs imposed on an applicant by the priorities, requirements, definitions, and selection criteria will be limited to paperwork burden related to preparing an application and that the benefits of implementing these priorities, requirements, definitions, and selection criteria would outweigh any costs incurred by the applicant.

Participation in the TIF program is voluntary. For this reason, the priorities, requirements, definitions, and selection criteria included in this notice will impose no burden on small entities unless they apply for funding under the TIF program using the priorities, requirements, definitions, and selection criteria in this notice. We expect that in determining whether to apply for TIF funds, an eligible entity will evaluate the costs of preparing an application and implementing a TIF project and weigh them against the benefits likely of implementing the TIF project. An eligible entity will probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a TIF program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of its TIF application to spur development and implementation of PBCSs without Federal funding through the TIF program.

The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 173,172 nonprofit organizations that had an educational mission and reported revenue to the Internal Revenue Service (IRS) by December 2011, 168,669 (over 97 percent) had revenues of less than $5 million. In addition, there are 12,358 LEAs in the country that meet the SBA's definition of small entity. While these entities are eligible to apply for funding under the TIF program, the Secretary believes that only a small number of them will apply. In the FY 2010 TIF competition, approximately 23 nonprofit organizations applied for funding in partnership with an LEA or SEA, and few of these organizations appeared to be a small entity. The Secretary has no reason to believe that a future competition under this program would be different. To the contrary, we expect that the FY 2012 competition will be similar to the FY 2010 competition because only a limited number of nonprofit organizations are working actively on the development of PBCSs and many of these organizations are larger organizations. Thus, the likelihood that the priorities, requirements, definitions, and selection criteria in this notice will have a significant economic impact on small entities is minimal.

In addition, the Secretary believes that the priorities, requirements, definitions, and selection criteria in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the regulatory action. That is, the length of the applications those entities would submit in the absence of this regulatory action and the time needed to prepare an application would be comparable if the competition relied exclusively on the selection criteria in 34 CFR 75.210 for this competition.

Further, this regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This regulatory action will not have a significant economic impact on a small entity once it receives a grant because it will be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** 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 this 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.

Delegation of Authority: The Secretary of Education has delegated authority to

Michael Yudin, Deputy Assistant Secretary for Policy for Elementary and Secondary Education to perform the functions and duties of the Assistant Secretary for Elementary and Secondary Education.

Dated: June 7, 2012.

Michael Yudin,

Deputy Assistant Secretary for Policy and Strategic Initiatives, delegated the authority to perform the functions and duties of the Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–14276 Filed 6–13–12; 8:45 am]

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Part III

Department of Education

Applications for New Awards; Teacher Incentive Fund; Notice

DEPARTMENT OF EDUCATION

Applications for New Awards; Teacher Incentive Fund

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information

Teacher Incentive Fund; General TIF Competition and TIF Competition with a Focus on STEM. Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.374A and 84.374B.

DATES: *Applications Available:* June 14, 2012.

Deadline for Notice of Intent to Apply: June 26, 2012.

Dates of Pre-Application Workshops: Visit the Teacher Incentive Fund's Web site at: *http://www2.ed.gov/programs/teacherincentive/applicant.html* for more information about TIF Pre-Application Workshops.

Deadline for Transmittal of Applications: July 27, 2012.

Deadline for Intergovernmental Review: September 25, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the TIF program is to support the development and implementation of sustainable performance-based compensation systems (PBCSs) for teachers, principals, and other personnel in high-need schools in order to increase educator effectiveness and student achievement in those schools.

Priorities: This notice contains five priorities, three of which are absolute priorities and two of which are competitive preference priorities. These priorities are from the notice of final priorities, requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register.**

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from the General TIF Competition and the TIF Competition with a Focus on STEM (CFDA 84.374A and 84.374B), the first two priorities, *Priority 1—A Local educational agency (LEA)-wide Human Capital Management System (HCMS) with Educator Evaluation Systems at the Center* and *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* are absolute priorities. For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from the TIF Competition with a Focus on STEM (CFDA 84.374B), the third priority, *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM),* is an absolute priority. Under 34 CFR 75.105(c)(3) we will only approve applications that meet either the first two or all three of these applicable absolute priorities. The following chart illustrates which absolute priorities apply to each competition:

Competition	Absolute priorities
TIF General Competition (CFDA 84.374A)	• *Priority 1—An LEA-wide Human Capital Management System (HCMS) with Educator Evaluation Systems at the Center.* • *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth.*
TIF Competition with a Focus on STEM (CFDA 84.374B).	• *Priority 1—An LEA-wide Human Capital Management System (HCMS) with Educator Evaluation Systems at the Center.* • *Priority 2—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth.* • *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM).*

These priorities are:

Priority 1 (Absolute): An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center

To meet this priority, the applicant must include, in its application, a description of its LEA-wide HCMS, as it exists currently and with any modifications proposed for implementation during the project period of the grant. The application must describe—

(1) How the HCMS is or will be aligned with the LEA's vision of instructional improvement;

(2) How the LEA uses or will use the information generated by the evaluation systems it describes in its application to inform key human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion;

(3) The human capital strategies the LEA uses or will use to ensure that high-need schools are able to attract and retain effective educators; and

(4) Whether or not modifications are needed to an existing HCMS to ensure that it includes the features described in response to paragraphs (1), (2), and (3) of this priority, and a timeline for implementing the described features, provided that the use of evaluation information to inform the design and delivery of professional development and the award of performance-based compensation under the applicant's proposed PBCS in high-need schools begins no later than the third year of the grant's project period in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

Note: TIF funds can be used to support the costs of the systems and strategies described under this priority, *Priority 3—Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM),* and *Priority 5—An Educator Salary Structure Based on Effectiveness* only to the extent allowed under *Requirement 6—Use of TIF Funds to Support the PBCS.*

Priority 2 (Absolute): LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth

To meet this priority, an applicant must include, as part of its application, a plan describing how it will develop and implement its proposed LEA-wide educator evaluation systems. The plan must describe—

(1) The frequency of evaluations, which must be at least annually;

(2) The evaluation rubric for educators that includes at least three performance levels and the following—

(i) Two or more observations during each evaluation period;

(ii) Student growth, which for the evaluation of teachers with regular instructional responsibilities must be growth at the classroom level; and

(iii) Additional factors determined by the LEA;

(3) How the evaluation systems will generate an overall evaluation rating that is based, in significant part, on student growth; and

(4) The applicant's timeline for implementing its proposed LEA-wide educator evaluation systems. Under the timeline, the applicant must implement these systems as the LEA's official evaluation systems for assigning overall evaluation ratings for at least a subset of educators or schools no later than the beginning of the second year of the grant's project period. The applicant may phase in the evaluation systems by applying them, over time, to additional schools or educators so long as the new evaluation systems are the official evaluation systems the LEA uses to assign overall evaluation ratings for all educators within the LEA no later than the beginning of the third year of the grant's project period.

Priority 3 (Absolute): Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM)

To meet this priority, an applicant must include a plan in its application that describes the applicant's strategies for improving instruction in STEM subjects through various components of each participating LEA's HCMS, including its professional development, evaluation systems, and PBCS. At a minimum, the plan must describe—

(1) How each LEA will develop a corps of STEM master teachers who are skilled at modeling for peer teachers pedagogical methods for teaching STEM skills and content at the appropriate grade level by providing additional compensation to teachers who—

(i) Receive an overall evaluation rating of effective or higher under the evaluation system described in the application;

(ii) Are selected based on criteria that are predictive of the ability to lead other teachers;

(iii) Demonstrate effectiveness in one or more STEM subjects; and

(iv) Accept STEM-focused career ladder positions;

(2) How each LEA will identify and develop the unique competencies that, based on evaluation information or other evidence, characterize effective STEM teachers;

(3) How each LEA will identify hard-to-staff STEM subjects, and use the HCMS to attract effective teachers to positions providing instruction in those subjects;

(4) How each LEA will leverage community support, resources, and expertise to inform the implementation of its plan;

(5) How each LEA will ensure that financial and non-financial incentives, including performance-based compensation, offered to reward or promote effective STEM teachers are adequate to attract and retain persons with strong STEM skills in high-need schools; and

(6) How each LEA will ensure that students have access to and participate in rigorous and engaging STEM coursework.

Competitive Preference Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from the competitions announced in this notice, the following two priorities are competitive preference priorities: *Priority 4 (Competitive Preference)—New or Rural Applicants to the Teacher Incentive Fund* and *Priority 5 (Competitive Preference)—An Educator Salary Structure Based on Effectiveness.* Under 34 CFR 75.105(c)(2)(i) we award up to an additional 30 points to an application, depending on how well the application meets one or more of these priorities.

Priority 4 (Competitive Preference): New or Rural Applicants to the Teacher Incentive Fund (Up to 10 Total Points)

To meet this priority, an applicant must provide at least one of the two following assurances, which the Department accepts:

(a) An assurance that each LEA to be served by the project has not previously participated in a TIF-supported project.

(b) An assurance that each LEA to be served by the project is a rural local educational agency (as defined in this notice).

Note: An applicant that proposes to serve only LEAs that have not previously participated in a TIF-supported project may earn 6 points. An applicant that proposes to serve only rural LEAs may earn 10 points. An applicant may not receive more than 10 points under this priority. In other words, an applicant that meets both paragraph (a) and (b) of this priority may receive no more than 10 total points.

Priority 5 (Competitive Preference): An Educator Salary Structure Based on Effectiveness (Up to 20 Additional Points)

To meet this priority, an applicant must propose, as part of its PBCS, a timeline for implementing no later than in the fifth year of the grant's project period a salary structure based on effectiveness for both teachers and principals. As part of this proposal, an applicant must describe—

(a) The extent to which and how each LEA will use overall evaluation ratings to determine educator salaries;

(b) How each LEA will use TIF funds to support the salary structure based on effectiveness in the high-need schools listed in response to Requirement 3(a); and

(c) The extent to which the proposed implementation is feasible, given that implementation will depend upon stakeholder support and applicable LEA-level policies.

Note: To meet *Priority 2 (Absolute)—LEA-wide Educator Evaluation Systems Based, in Significant Part, on Student Growth,* an applicant must implement its proposed PBCS in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools* by the beginning of the third year of the grant's project period. If the timeline for implementing the salary structure proposed under this Priority 5 does not meet that deadline, the applicant must describe, under *Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel,* a proposed PBCS that the LEA will implement until the proposed salary structure is implemented.

Requirements:

The following requirements, which are from the notice of final priorities, requirements, definitions, and selection for this program, published elsewhere in this issue of the **Federal Register,** apply to the competitions announced in this notice.

Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel

In its application, an applicant must describe, for each participating LEA, how its proposed PBCS will meet the definition of a PBCS set forth in this notice.

Note: The following charts illustrate how an applicant can design its PBCS to meet the definition of a PBCS. Chart 1 describes the two types of design models that meet the statutory requirements. Chart 2 identifies additional optional features that could be implemented as part of a PBCS. To ensure that funded applications reflect a diversity of PBCSs, the Secretary reserves the right to fund a sufficient number of high-quality Design Model 1 and Design Model 2 projects, as shown in Chart 1.

CHART 1—PBCS DESIGN OPTIONS TO MEET STATUTORY REQUIREMENTS

Design model	Mandatory elements
1 * ..... *Corresponds to paragraph (a)(1) of the PBCS definition.	Proposed PBCS provides both of the following: (1) Additional compensation for *teachers and principals* who receive an overall rating of effective or higher under the evaluation systems described in the application. (2) Of those teachers and principals eligible for compensation under paragraph (1), additional compensation for *teachers and, at the applicant's discretion, for principals,* who take on *additional responsibilities and leadership roles* (as defined in this notice).
2 * ..... *Corresponds to paragraph (a)(2) of the PBCS definition.	Proposed PBCS provides both of the following: (1) Additional compensation for *teachers* who receive an overall rating of effective or higher under the evaluation system described in the application and who take on *career ladder positions* (as defined in this notice). (2) Additional compensation for one or both of the following: (A) *Principals* who receive an overall rating of effective or higher under the evaluation system described in the application, or (B) *Principals* who receive an overall rating of effective or higher under the evaluation system described in the application and who take on *additional responsibilities and leadership roles* (as defined in this notice).

CHART 2—PBCS OPTIONAL FEATURES

	Optional elements
Compensation for Transfers to High-Need Schools.	Proposed PBCS provides additional compensation for educators (*which at the applicant's option may be for teachers or principals or both*) who receive an overall rating of effective or higher under the evaluation systems described in the application or under comparable evaluation systems in another LEA, and who either: (1) Transfer to a high-need school from a school of the LEA that is not high-need, or (2) For educators who previously worked in another LEA, are hired to work in a high-need school.
Compensation for Other Personnel	Proposed PBCS provides additional compensation for other personnel, who are not teachers or principals, based on performance standards established by the LEA so long as those standards, in significant part, include student growth, which may be school-level student growth.

Requirement 2—Involvement and Support of Teachers and Principals

In its application, the applicant must include—

(a) Evidence that educators in each participating LEA have been involved, and will continue to be involved, in the development and implementation of the PBCS and evaluation systems described in the application;

(b) A description of the extent to which the applicant has educator support for the proposed PBCS and educator evaluation systems; and

(c) A statement indicating whether a union is the exclusive representative of either teachers or principals in each participating LEA.

Note: It is the responsibility of the grantee to ensure that, in observing the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under terms of collective bargaining agreements, memoranda of understanding, or other agreements between these employees and their employers, the grantee also remains in compliance with the priorities, requirements, and definitions included in this notice. In the event that a grantee is unable to comply with these priorities, requirements, and definitions, the Department may take appropriate enforcement action (e.g., discontinue support for the project).

Requirement 3—Documentation of High-Need Schools

Each applicant must demonstrate, in its application, that the schools participating in the implementation of the TIF-funded PBCS are high-need schools (as defined in this notice), including high-poverty schools (as defined in this notice), priority schools (as defined in this notice), or persistently lowest-achieving schools (as defined in this notice). Each applicant must provide, in its application—

(a) A list of high-need schools in which the proposed TIF-supported PBCS would be implemented;

(b) For each high-poverty school listed, the most current data on the percentage of students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act or are considered students from low-income families based on another poverty measure that the LEA uses (see section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a high-poverty school must be school-level data; the Department will not accept LEA- or State-level data for purposes of documenting whether a school is a high-poverty school; and

(c) For any priority schools listed, documentation verifying that the State has received approval of a request for ESEA flexibility, and that the schools have been identified by the State as priority schools.

Requirement 4—SEA and Other Group Applications

(a) Applications from the following are group applications:

(1) Any application from two or more LEAs.

(2) Any application that includes one or more SEAs.

(3) Any application that includes a nonprofit organization.

(b) An applicant that is a nonprofit organization must apply in a partnership that includes one or more LEAs, and must identify in the application the LEA(s) and any SEA(s) with which the proposed project would be implemented.

(c) An applicant that is an SEA must apply for a grant under this program as part of a group application that includes

one or more LEAs in the same State as the SEA, and must identify in the application the LEA(s) in which the project would be implemented.

(d) All group applications must include a Memorandum of Understanding (MOU) or other binding agreement signed by all of the members of the group. At a minimum, the MOU or other agreement must include—

(1) A commitment by each participating LEA to implement the HCMS, including the educator evaluation systems and the PBCS, described in the application;

(2) An identification of the lead applicant;

(3) A description of the responsibilities of the lead applicant in managing any grant funds and ensuring overall implementation of the proposed project as described in the application if approved by the Department;

(4) A description of the activities that each member of the group will perform; and

(5) A statement binding each member of the group to every statement and assurance made in the application.

(e) In any group application identified in paragraph (a) of this requirement, each entity in the group is considered a grantee.

Requirement 5—Limitations on Multiple Applications

(a) An LEA applicant may participate in no more than one application in any fiscal year.

(b) An SEA applicant may participate in no more than one group application for the General TIF Competition, and no more than one group application for the TIF Competition with a Focus on STEM in any fiscal year.

(c) A nonprofit organization applicant may participate in one or more group applications for the General TIF Competition, and in one or more applications for the TIF Competition with a Focus on STEM, in any fiscal year.

Requirement 6—Use of TIF Funds To Support the PBCS

(a) *LEA-wide Improvements to Systems and Tools.* TIF funds may be used to develop and improve systems and tools that support the PBCS and benefit the entire LEA.

(b) *Performance-based Compensation and Professional Development.*

(1) *High-Need Schools.* TIF funds may be used to provide performance-based compensation and related professional development in the high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.* TIF funds may not be used to provide performance-based compensation or related professional development in schools other than those high-need schools listed in response to paragraph (a) of *Requirement 3—Documentation of High-Need Schools.*

(2) *PBCSs.* TIF funds may be used to compensate educators only when the compensation is provided as part of the LEA's PBCS, as described in the application.

(3) *For Additional Responsibilities and Leadership Roles.* When a proposed PBCS provides additional compensation to effective educators who take on additional responsibilities and leadership roles, TIF funds may be used for either the entire amount of salary for career ladder positions, or for salary augmentations (i.e., an additional amount of compensation over and above what the LEA would otherwise pay the effective teacher), or both. TIF-funds may be used to fund additional compensation for additional responsibilities and leadership roles up to the cost of 1 full-time equivalent position for every 12 teachers, who are not in a career ladder position, located in the high-need schools listed in response to Requirement 3(a).

(c) *Other Permissible Types of Compensation.* Nothing in this requirement precludes the use of TIF funds to compensate educators who are hired by a grantee to administer or implement the TIF-supported PBCS, or to compensate educators who attend TIF-supported professional development outside their official duty hours, or to develop or improve systems and tools needed to support the PBCS.

Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants

Each applicant must provide an assurance, in its application, that, if successful under this competition, it will use the grant award to implement the proposed PBCS and professional development only in high-need schools that are not served, as of the beginning of the grant's project period or as planned in the future, by an existing TIF grant.

Definitions:

The following definitions, which are from the notice of final priorities, requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register,** apply to the competitions announced in this notice.

Additional responsibilities and leadership roles means:

(a) In the case of teachers, meaningful school-based responsibilities that teachers may voluntarily accept to strengthen instruction or instructional leadership in a systemic way, such as additional responsibilities related to lesson study, professional development, and peer evaluation, and may also include career ladder positions.

(b) In the case of principals, additional responsibilities and leadership roles that principals may voluntarily accept, such as a position in which an effective principal coaches a novice principal.

Career ladder positions means school-based instructional leadership positions designed to improve instructional practice, which teachers may voluntarily accept, such as positions described as master teacher, mentor teacher, demonstration or model teacher, or instructional coach, and for which teachers are selected based on criteria that are predictive of the ability to lead other teachers.

Educators means teachers and principals.

High-need school means:

(a) A high-poverty school, or

(b) A persistently lowest-achieving school, or

(c) In the case of States that have received the Department's approval of a request for ESEA flexibility, a priority school.

High-poverty school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). 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.

Human capital management system (HCMS) means a system by which an LEA makes and implements human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion.

Other personnel means school-based personnel who are not serving in a teacher or principal position. Other personnel may include, for example, school counselors, media specialists, or para-educators.

Performance-based compensation system (PBCS) means a system that:

(a) Provides additional compensation for teachers and principals in one of the following circumstances—

(1)(i) Design Model 1. Additional compensation for teachers and

principals who receive an overall evaluation rating of effective or higher under the evaluation systems described in the application; and

(ii) Of those teachers and principals eligible for compensation under paragraph (a)(1)(i) of this definition, additional compensation for teachers and, at the applicant's discretion, for principals, who take on additional responsibilities and leadership roles; or

(2)(i) Design Model 2. Additional compensation for teachers who receive an overall evaluation rating of effective or higher under the evaluation system described in the application and who take on career ladder positions; and

(ii) Additional compensation for (A) principals who receive an overall evaluation rating of effective or higher under the evaluation system described in the application, or (B) principals who receive an overall evaluation rating of effective or higher under the evaluation system described in the application and who take on additional responsibilities and leadership roles.

(b) May provide the following compensation:

(1) Additional compensation for educators (which at the applicant's option may be for teachers or principals or both) who receive an overall evaluation rating of effective or higher under the evaluation systems described in the application or under comparable evaluation systems in another LEA, and who either: (i) transfer to a high-need school from a school of the LEA that is not high-need, or, (ii) for educators who previously worked in another LEA, are hired to work in a high-need school.

(2) Additional compensation for other personnel, who are not teachers or principals, based on performance standards established by the LEA so long as those standards, in significant part, include student growth, which may be school-level student growth.

Persistently lowest-achieving school means, as determined by the State:

(i) Any Title I school in improvement, corrective action, or restructuring that—

(a) 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

(b) 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

(ii) Any secondary school that is eligible for, but does not receive, Title I funds that—

(a) 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

(b) 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.

To identify the persistently lowest achieving schools, a State must take into account both:

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

Principal means any person who meets the definition of that term under State or local law. At an LEA's discretion, it may also include an assistant or vice principal or a person in a position that contributes to the organizational management or instructional leadership of a school.

Priority school means a school that has been identified by the State as a priority school pursuant to the State's approved request for Elementary and Secondary Education Act (ESEA) flexibility.

Rural local educational agency means an LEA that is eligible under the Small Rural School Achievement program or the Rural and Low-Income School program authorized under Title VI, Part B of the ESEA. 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*.

Student growth means the change in student achievement for an individual student between two or more points in time. For the purpose of this definition, student achievement means—

(a) For grades and subjects in which assessments are required under section 1111(b)(3) of ESEA: (1) A student's score on such assessments and may include (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided those measures are rigorous and comparable across schools within an LEA.

(b) For grades and subjects in which assessments are not required under section 1111(b)(3) of ESEA: alternative measures of student learning and performance such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

Teacher means any person who meets the definition of that term under State or local law.

Vision of instructional improvement means a summary of the key competencies and behaviors of effective teaching that an LEA views as necessary to produce high levels of student achievement, as well as how educators acquire or improve these competencies and behaviors.

Program Authority: The Department of Education Appropriations Act, 2012 (Division F, Title III of Pub. L. 112–74).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The notice of final priorities, requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

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: Discretionary grants.

Estimated Available Funds: $284,461,350.

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 the competitions announced in this notice.

Estimated Range of Awards: $500,000–$12,000,000 for the first year of the project period. Funding for the second through fifth years of the project period is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Estimated Average Size of Awards: $10,000,000 for the first year of the project period. Funding for the second through fifth years of the project period is subject to the availability of funds and the approval of continuation awards (see 34 CFR 75.253).

Estimated Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) LEAs, including charter schools that are LEAs.

(b) States that apply with one or more LEAs.

(c) Nonprofit organizations that apply in partnership with an LEA or an LEA and State.

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:*

Miriam Lund, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E245, LBJ Building, Washington, DC 20202–6200. Telephone: (202) 205–5224 or by email: *TIF4@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

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 program contact person listed in this section.

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 program.

Notice of Intent to Apply: We will be able to develop a more efficient process for reviewing grant applications if we understand the number of applicants that intend to apply for funding under these competitions. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by sending a short email message. This short email should provide (1) the applicant organization's name and address, (2) the competition for which the applicant intends to apply (i.e., the TIF General Competition or the TIF Competition with a Focus on STEM), and (3) all competitive preference priorities the applicant intends to address. The Secretary requests that this email notification be sent to tif4@ed.gov with ''Intent to Apply'' in the email subject line. Applicants that do not provide this email notification may still apply for funding.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Please limit the application narrative to no more than 60 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.

The suggested page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the suggested page limit does apply to all of the application narrative section.

3. *Submission Dates and Times:*

Applications Available: June 14, 2012.

Deadline for Notice of Intent to Apply: June 26, 2012.

Deadline for Transmittal of Applications: July 27, 2012.

Pre-application workshops will be held for this competition in June. The workshops are intended to provide technical assistance to all interested grant applicants. Detailed information regarding the pre-application workshops times, and on-line registration form, can be found on the Teacher Incentive Fund's Web site at *http://www2.ed.gov/programs/0teacherincentive/applicant.html*.

Applications for grants under this program 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.

Deadline for Intergovernmental Review: September 25, 2012.

4. *Intergovernmental Review:* This program 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 program.

5. *Funding Restrictions:* We reference 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 program 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 Teacher Incentive Fund, CFDA number 84.374A, the General TIF Competition and 84.374B, the TIF Competition with a Focus on STEM, 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 Teacher Incentive Fund competitions at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.374, not 84.374A).

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 program 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 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail your statement to: Miriam Lund, U.S. Department of Education, 400 Maryland Avenue SW., Room, 3E245, Washington, DC, 20202–6200.

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 84.374A for the General TIF Competition or CFDA Number 84.374B for the TIF Competition with a Focus on STEM), 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 84.374A for the General TIF Competition or CFDA Number 84.374B for the TIF Competition with a Focus on STEM), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from the notice of final priorities, requirements, definitions, and selection criteria for this program, published elsewhere in this edition of the **Federal Register**. The points or weights assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will review each application. They will be asked to evaluate and score each program narrative against the following selection criteria.

Selection Criteria (a) through (f) apply to *both* the General TIF Competition and the TIF Competition with a Focus on STEM. Selection Criteria (g) applies only to applicants applying to the TIF Competition with a Focus on STEM.

The maximum score for all of the General TIF Competition selection criteria is 200 points. The maximum score for the TIF Competition with a Focus on STEM is 225 points. The maximum score for each criterion and subcriterion is indicated in parentheses. The selection criteria for these competitions are as follows:

(a) *A Coherent and Comprehensive Human Capital Management System (HCMS).* (45 points) We will consider the quality and comprehensiveness of each participating LEA's HCMS as described in the application. In determining the quality of the HCMS, as it currently exists and as the applicant proposes to modify it during the grant period, we will consider the extent to which the HCMS described in the application is—

(1) Aligned with each participating LEA's clearly described vision of instructional improvement (10 points); and

(2) Likely to increase the number of effective educators in the LEA's schools, especially in high-need schools, as demonstrated by (35 points)—

(i) The range of human capital decisions for which the applicant proposes to consider educator effectiveness—based on the educator evaluation systems described in the application.

(ii) The weight given to educator effectiveness—based on the educator evaluation systems described in the application—when human capital decisions are made;

(iii) The feasibility of the HCMS described in the application, including the extent to which the LEA has prior experience using information from the educator evaluation systems described in the application to inform human capital decisions, and applicable LEA-level policies that might inhibit or facilitate modifications needed to use educator effectiveness as a factor in human capital decisions;

(iv) The commitment of the LEA's leadership to implementing the described HCMS, including all of its component parts; and

(v) The adequacy of the financial and nonfinancial strategies and incentives, including the proposed PBCS, for attracting effective educators to work in high-need schools and retaining them in those schools.

(b) *Rigorous, Valid, and Reliable Educator Evaluation Systems.* (35 points) We will consider, for each participating LEA, the quality of the educator evaluation systems described

in the application. In determining the quality of each evaluation system, we will consider the extent to which—

(1) Each participating LEA has finalized a high-quality evaluation rubric, with at least three performance levels (e.g., highly effective, effective, developing, unsatisfactory), under which educators will be evaluated (2 points);

(2) Each participating LEA has presented (4 points)—

(i) A clear rationale to support its consideration of the level of student growth achieved in differentiating performance levels; and

(ii) Evidence, such as current research and best practices, supporting the LEA's choice of student growth models and demonstrating the rigor and comparability of assessments;

(3) Each participating LEA has made substantial progress in developing a high-quality plan for multiple teacher and principal observations, including identification of the persons, by position and qualifications, who will be conducting the observations, the observation tool, the events to be observed, the accuracy of raters in using observation tools and the procedures for ensuring a high degree of inter-rater reliability (13 points);

(4) The participating LEA has experience measuring student growth at the classroom level, and has already implemented components of the proposed educator evaluation systems (4 points);

(5) In the case of teacher evaluations, the proposed evaluation system (6 points)—

(i) Bases the overall evaluation rating for teachers, in significant part, on student growth;

(ii) Evaluates the practice of teachers, including general education teachers and teachers of special student populations, in meeting the needs of special student populations, including students with disabilities and English learners;

(6) In the case of principal evaluations, the proposed evaluation system (6 points)—

(i) Bases the overall evaluation rating on, in significant part, student growth; and

(ii) Evaluates, among other factors, a principal's practice in—

(A) Focusing every teacher, and the school community generally, on student growth;

(B) Establishing a collaborative school culture focused on continuous improvement; and

(C) Supporting the academic needs of special student populations, including students with disabilities and English learners, for example, by creating systems to support successful co-teaching practices, providing resources for research-based intervention services, or similar activities.

(c) *Professional Development Systems to Support the Needs of Teachers and Principals Identified Through the Evaluation Process.* (35 points) We will consider the extent to which each participating LEA has a high-quality plan for professional development to help all educators located in high-need schools, listed in response to Requirement 3(a), to improve their effectiveness. In determining the quality of each plan for professional development, we will consider the extent to which the plan describes how the participating LEA will—

(1) Use the disaggregated information generated by the proposed educator evaluation systems to identify the professional development needs of individual educators and schools (8 points);

(2) Provide professional development in a timely way (2 points);

(3) Provide school-based, job-embedded opportunities for educators to transfer new knowledge into instructional and leadership practices (5 points); and

(4) Provide professional development that is likely to improve instructional and leadership practices, and is guided by the professional development needs of individual educators as identified in paragraph (c)(1) of this criterion (20 points).

(d) *Involvement of Educators.* (35 points) We will consider the quality of educator involvement in the development and implementation of the proposed PBCS and educator evaluation systems described in the application. In determining the quality of such involvement, we will consider the extent to which—

(1) The application contains evidence that educator involvement in the design of the PBCS and the educator evaluation systems has been extensive and will continue to be extensive during the grant period (10 points); and

(2) The application contains evidence that educators support the elements of the proposed PBCS and the educator evaluation systems described in the application (25 points).

(e) *Project Management.* (30 points) We will consider the quality of the management plan of the proposed project. In determining the quality of the management plan, we will consider the extent to which the management plan—

(1) Clearly identifies and defines the roles and responsibilities of key personnel (3 points);

(2) Allocates sufficient human resources to complete project tasks (5 points);

(3) Includes measurable project objectives and performance measures (5 points); and

(4) Includes an effective project evaluation plan (5 points);

(5) Specifies realistic and achievable timelines for:

(i) Implementing the components of the HCMS, PBCS, and educator evaluation systems, including any proposal to phase in schools or educators (8 points).

(ii) Successfully completing project tasks and achieving objectives (4 points).

(f) *Sustainability.* (20 points) We will consider the quality of the plan to sustain the proposed project. In determining the quality of the sustainability plan, we will consider the extent to which the sustainability plan—

(1) Identifies and commits sufficient non-TIF resources, financial and nonfinancial, to support the PBCS and educator evaluation systems during and after the grant period (10 points); and

(2) Is likely to be implemented and, if implemented, will result in a sustained PBCS and educator evaluation systems after the grant period ends (10 points).

(g) *Comprehensive Approach to Improving STEM Instruction.* (25 points) To meet Priority 3, we will consider the quality of an applicant's plan for improving educator effectiveness in STEM instruction. In determining the quality of the plan, we will consider the extent to which—

(1) The financial and nonfinancial strategies and incentives, including the proposed PBCS, are adequate for attracting effective STEM educators to work in high-need schools and retaining them in these schools (4 points);

(2) The proposed professional development opportunities—

(a) Will provide college-level STEM skills and content knowledge to STEM teachers while modeling for teachers pedagogical methods for teaching those skills and that content at the appropriate grade level (4 points); and

(b) Will enable STEM teachers to provide students in high-need schools with increased access to rigorous and engaging STEM coursework appropriate for their grade level, including college-level material in high schools (7 points);

(3) The applicant will significantly leverage STEM-related funds across other Federal, State, and local programs to implement a high-quality and comprehensive STEM plan (7 points); and

(4) The applicant provides evidence (e.g., letters of support) that the LEA has or will develop extensive relationships with STEM experts and resources in industry, academic institutions, or associations to effectively implement its STEM plan and ensure that instruction prepares students to be college-and-career ready (3 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 a grant under one the competitions announced in this notice, 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 one of the competitions. 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:* Pursuant to the Government Performance and Results Act of 1993, the Department has established the following performance measures that it will use to evaluate the overall effectiveness of the grantee's project, as well as the TIF program as a whole:

Measure 1. The number of teachers and principals, who are rated at the highest level, at least effective, and not effective, as measured by the district's evaluation system and the number who are not rated.

Measure 2. The number of teachers teaching in a high-need field or subject, such as teaching English learners, students with disabilities, or STEM, who are rated at the highest level, at least effective, and not effective, as measured by the district's evaluation system and the number who are not rated.

Measure 3. The number of teachers and principals who were rated at the highest level, at least effective, and not effective, as measured by the district's evaluation system, and the number who were not rated, in the previous year and who returned to serve in the same high-need school in the LEA.

Measure 4. The number of school districts participating in a TIF grant that use educator evaluation systems to inform the following human capital decisions: recruitment; hiring; placement; retention; dismissal; professional development; tenure; promotion; or all of the above.

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: Miriam Lund, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E245, LBJ Building, Washington, DC 20202–6200. Telephone: (202) 205–5224 or by email: *TIF4@ed.gov.*

If you use a TDD or a TTY, 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 disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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Delegation of Authority: The Secretary of Education has delegated authority to Michael Yudin, Deputy Assistant Secretary for Policy for Elementary and Secondary Education to perform the functions and duties of the Assistant

Secretary for Elementary and Secondary Education.

Dated: June 7, 2012.

Michael Yudin,

Deputy Assistant Secretary for Policy, and Strategic Initiatives, Delegated, the Authority to Perform the Functions, and Duties of the Assistant, Secretary for Elementary and Secondary, Education.

[FR Doc. 2012–14269 Filed 6–13–12; 8:45 am]

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Federal Register

Vol. 77, No. 115

Thursday, June 14, 2012

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FEDERAL REGISTER PAGES AND DATE, JUNE

32391–32880 1
32881–33062 4
33063–33288 5
33289–33594 6
33595–33944 7
33945–34178 8
34179–34780 11
34781–35240 12
35241–35616 13
35617–35806 14

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8829 32875
8830 32877
8831 32879
8832 33595
8833 33597
8834 33599
8835 33601
8836 33603
Administrative Orders:
Memorandums:
Memorandum of April 24, 2012 33945
Memorandum of May 23, 2012 32391
Memorandum of June 7, 2012 35241
Presidential Determinations:
No. 2012–07 of April 24, 2012 33947

5 CFR

Ch. LXXXIII 34179
9301 34179
Proposed Rules:
532 34854
1200 33663
1201 33663
1203 33663
1208 33663
1209 33663

6 CFR

5 33605
Proposed Rules:
5 33683

7 CFR

7 33063
28 33289
205 33290
319 34781
614 34186
930 33303
985 33076
1700 35245
Proposed Rules:
932 33104
1205 34855
1280 34868
3201 33270

9 CFR

11 33607
55 35542
81 35542
93 34783
94 34783
95 34783

10 CFR

26 33619
71 34194
73 34194
Proposed Rules:
430 .....33106, 35299
431 32916
1703 .....32433, 33980

12 CFR

1 .....35253, 35259
5 35253
16 35253
28 35253
160 .....35253, 35259
225 33949
241 32881
1236 33950
Proposed Rules:
1026 33120
1282 34263

14 CFR

39 .....32884, 32887, 32889, 32892, 33083, 33619, 33622, 34206
71 .....32393, 32895, 32896, 34208, 34209, 34210, 34211, 35617, 35618
97 .....33085, 33087
121 34784
Proposed Rules:
39 .....32433, 32437, 32439, 32918, 33125, 33127, 33129, 33332, 33334, 34281, 34283, 34870, 34872, 34874, 34876, 34878, 34881, 35304, 35306
71 .....32921, 33685, 33687
73 35308
121 32441

15 CFR

Proposed Rules:
740 33688
742 .....33688, 35310
774 .....33688, 35310
906 33980
1400 34883

16 CFR

Proposed Rules:
305 33337

17 CFR

46 35200
275 35263
Proposed Rules:
240 35625

19 CFR

12 33624
111 33964

163 33964

20 CFR

404 35264

21 CFR

179 34212
510 32897
Proposed Rules:
172 35317

22 CFR

120 33089
123 33089
124 33089
126 33089
127 33089
129 33089
Proposed Rules:
121 ....33698, 35317

25 CFR

Proposed Rules:
543 32444
547 32465

26 CFR

1 ....34785, 34788
Proposed Rules:
1 ....34884, 34887

27 CFR

478 ....33625, 33630
Proposed Rules:
9 33985

29 CFR

Proposed Rules:
1206 33701

30 CFR

Proposed Rules:
917 34888
936 34890
944 34892
950 34894

31 CFR

344 33634
1010 33635
1020 33638

33 CFR

100 ....33089, 33337, 33967, 34215, 35266
117 ....32393, 32394, 33337, 34797
151 ....33969, 35268
165 ....32394, 32898, 33089, 33094, 33308, 33309, 33312, 33970, 34797, 34798, 35268, 35271, 35619, 35621
Proposed Rules:
100 ....33130, 35321
165 ....34285, 34894

36 CFR

242 35482
Proposed Rules:
220 35323

37 CFR

Proposed Rules:
201 35643

38 CFR

3 34218
9 32397

39 CFR

20 33640
111 33314

40 CFR

51 33642
52 ....32398, 33642, 33659, 34218, 34801, 34808, 34810, 34819, 35273, 35279, 35285, 35287
81 ....34221, 34819
82 33315
85 34130
86 34130
97 34830
180 ....32400, 32401, 35291, 35295
271 34229
1039 34130
Proposed Rules:
52 ....32481, 32483, 32493, 33022, 33360, 33363, 33372, 33380, 34288, 34297, 34300, 34302, 34306, 34897, 34898, 34906, 35326, 35327, 35329, 35652
60 33812
63 33812
80 34915
85 34149
86 34149
122 ....34315, 34927
123 ....34315, 34927
124 ....34315, 34927
125 ....34315, 34927
725 35331
1039 34149

42 CFR

417 32407
422 32407
423 32407
Proposed Rules:
88 35574
412 34326
413 34326
424 34326
476 34326
489 34326

45 CFR

Proposed Rules:
156 33133

46 CFR

25 33860
27 33860
28 33860
31 33860
34 33860
35 33860
62 33860
71 33860
76 33860
78 33860
91 33860
95 33860
97 33860
107 33860
108 33860
112 33860
115 33860
118 33860
119 33860
122 33860
131 33860
132 33860
147 33860
162 ....33860, 33969, 35268
167 33860
169 33860
176 33860
181 33860
182 33860
185 33860
189 33860
190 33860
193 33860
194 33860
196 33860
532 33971

47 CFR

1 33097
11 33661
15 33098
51 35623
54 ....33097, 35623
64 ....33662, 34233
73 32900
90 33972
Proposed Rules:
11 33995
54 33896
64 35336
73 33997

48 CFR

6 35624
15 35624
19 35624

49 CFR

234 35164
371 32901
375 32901
386 ....32901, 34249
387 32901
390 34846
395 ....33098, 33331
396 34846
541 32903
Proposed Rules:
594 35338
595 33998
1572 35343

50 CFR

17 ....33100, 35118
100 35482
226 32909
622 ....32408, 32913, 32914, 34254
665 34260
679 ....33103, 34262, 34853
697 32420
Proposed Rules:
17 ....32483, 32922, 33142, 33143, 34338
20 34931
600 35349
665 ....34331, 34334

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 2947/P.L. 112–129

To provide for the release of the reversionary interest held by the United States in certain land conveyed by the United States in 1950 for the establishment of an airport in Cook County, Minnesota. (June 8, 2012; 126 Stat. 375)

H.R. 3992/P.L. 112–130

To allow otherwise eligible Israeli nationals to receive E-2 nonimmigrant visas if similarly situated United States nationals are eligible for similar nonimmigrant status in Israel. (June 8, 2012; 126 Stat. 376)

H.R. 4097/P.L. 112–131

John F. Kennedy Center Reauthorization Act of 2012 (June 8, 2012; 126 Stat. 377)

Last List June 11, 2012

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