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9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Federal Register

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1720

RIN 0572-ZA06

Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations for the guarantee program for cooperative and other not-for-profit lenders that make loans for eligible electric and telephone purposes. These proposed amendments implement changes adopted in the Food, Conservation and Energy Act of 2008 (Pub. L. 110-246). The intended effect is to update agency regulations to reflect current statutory authority.

DATES: *Effective Date:* This rule is effective August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Karen L. Larsen, Policy Analysis and Loan Management Staff, Office of the Assistant Administrator, Electric Programs, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5165-S, Washington, DC 20250-1560. Telephone (202) 720-9545; e-mail: karen.larsen@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to

the Electric Loan and Loan Guarantee program is 10.850 Rural Electrification Loans and Loan Guarantees. The catalog is available on the Internet and the General Services Administration's (GSA) free CFDA Web site at <http://www.cfda.gov>. The CFDA Web site also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202-512-1800 or toll free at 866-512-1800, or access GPO's on-line bookstore at <http://bookstore.gpo.gov>.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034) advising that RUS loans and loan guarantees are not covered by Executive Order 12372.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agency is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards in section 3 of the Executive Order.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Federal agencies in the development of regulatory policies that have tribal implications or preempt tribal laws. The RUS has determined that this rule relating to loan guarantees for non-profit lenders does not preempt tribal laws, or have a substantial direct effect on either one or more Indian tribe(s) or on the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175.

Executive Order 13211

This rule does not have any adverse effects on energy supply, distribution, or use should the proposal be implemented. The Agency has determined that the preparation of Statement of Energy Effects under Executive Order 13211 is not required.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act,

to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

On February 5, 2010, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Part 1720, Guarantees for Bonds and Notes issued for Electrification and Telephone Purposes (75 FR 5902). This rule amends the Agency's policies and procedures for granting guarantees to eligible cooperatives and other not-for-profit lenders that make loans for eligible electric and telephone purposes under the Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 901 *et seq.*). The amendments to part 1720 revise the current regulations to implement changes made by the 2008 Farm Bill and to clarify existing provisions. The public was invited to submit comments on or before April 6, 2010. Two comments were received and are addressed in the Discussion of Comments section of this rule.

The RE Act authorizes the Secretary to guarantee and make loans to persons, corporations, States, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to RUS under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, *see* 7 CFR 1700.25.

Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) (FSRIA) amended the RE Act to add section 313A (7 U.S.C. 940c-1) entitled "Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes." This section created a new loan guarantee program (313A program) for eligible non-profit lenders. Final regulations implementing the program were published in the **Federal Register** on October 29, 2004, 69 FR 63045.

Section 6106(a)(1)(A) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) amended section 313A of the RE Act extending the program authorization from September 30, 2007, to September 30, 2012, expanding eligible loan purposes, and

setting an annual limit of \$1,000,000,000 on the total amount of guarantees approved by the Secretary during a fiscal year, subject to the availability of funds. Prior to the 2008 amendment the total amount of a lender's bonds and notes that could be guaranteed under this section was limited to the total amount of loans made by the lender concurrently with a loan approved by the Secretary under the RE Act.

Section 6106(a)(1)(B) further amended section 313A of the RE Act by removing the provision prohibiting the recipient from using any amount obtained from the reduction in funding costs as a result of a guarantee under section 313A to reduce the interest rate charged on a new or concurrent loan. New loan guarantees will not be subject to this limitation.

Discussion of Comments

The proposed rule was published on February 5, 2010, at 75 FR 5902. Comments were due on April 6, 2010.

RUS received two written public comments via the Regulations.gov portal on the proposed rule amending 7 CFR part 1720, the regulations implementing section 313A of the RE Act (7 U.S.C. 940c-1).

CoBank, ACB (CoBank), a member of Farm Credit System overseen by the Farm Credit Administration (FCA) and a major lender to electric cooperatives, including many RUS borrowers, expressed its concerns that part 1720 as proposed, if implemented without change or clarification "could be read to preclude entities such as CoBank from participating in the program as a guaranteed lender." CoBank commented on an unchanged section of the existing rule (7 CFR 1720.4(b)(1)) relating to restrictions on patronage and dividend distributions in the event of a decline in credit quality of a participating lender and requested clarification of lender eligibility under 7 CFR 1720.5(a)(1).

The National Rural Utilities Cooperative Finance Corporation (CFC), an existing participant in the program, commented on two proposed additions to the evaluation criteria in 7 CFR 1720.7(b) that the Agency would use to consider applications competitively.

Senior Secured Debt

Comment: CoBank seeks clarification on the applicability of 7 CFR 1720.4(b)(1) of the existing regulation which limits payments of cash patronage and dividends by a participating lender when the credit rating on its senior secured debt has fallen below an "A__" rating.

CoBank contends that the limitation imposed by existing section 1720.4(b)(1) on the payment of cash patronage and dividends to guaranteed lenders having a credit rating below "A__" on senior secured debt (without regard to the guarantee) is problematic because CoBank does not issue senior secured debt and, accordingly, could never be in compliance with this condition as it could never obtain a senior secured debt rating. In its comments, CoBank seeks clarification that this regulation does not apply to institutions that do not issue senior secured debt.

Response: RUS does not read existing 7 CFR 1720.4(b)(1) as requiring a guaranteed lender to have senior secured debt in order to avoid the patronage and dividend limitations imposed by such provision. RUS reads this provision as only being applicable to entities that have senior secured debt. Therefore, no change is being made to existing section 1720.4(b)(1).

Pre-Existing Contractual Commitments To Pay Dividends

Comment: CoBank also contends that existing 7 CFR 1720.4(b)(1) should be modified because it places a restriction on CoBank's ability to make dividend payments despite CoBank's pre-existing contractual commitments to pay dividends on its preferred stock.

Response: As stated above, section 1720.4(b)(1) only applies to entities that issue senior secured debt. While section 1720.4(b)(1) is inapplicable to entities not having senior secured debt, this does not mean that RUS is indifferent to the risks that a borrower's unrestricted discretion to make distributions present to a creditor. However, in the case of CoBank, CoBank has pointed out that the risk has been addressed through regulations of the FCA. FCA directly regulates CoBank's ability to issue cash patronage refunds and dividends. RUS agrees that the regulations of the FCA are helpful in addressing the concerns reflected in section 1720.4(b)(1), however, RUS does not believe it is necessary to remove the restriction as CoBank has suggested since, for reasons already stated, the provision would not apply in CoBank's circumstances. RUS reserves the right to incorporate suitable alternatives to section 1720.4(b)(1) in the transaction documents of borrowers such as CoBank, and no change is being made in this rule.

Lender Eligibility

Comment: CoBank suggests that 7 CFR 1720.5(a)(1), as RUS proposed to revise it, establishes the eligibility criteria in an overly narrow manner by stating that eligible entities may be

“organized on a non-profit basis.” CoBank suggests that this language may be construed to mean that an eligible entity needs to be a non-profit entity organized under State law and that this result was not contemplated by Congress. In CoBank’s view, this reading of the proposed regulation may serve to exclude from participation in the section 313A guarantee program entities that are not organized as non-profit entities under State law. In its comments, CoBank seeks confirmation that this regulation requires applicants to have substantive non-profit status, and that this regulation does not require that applicants be created as non-profit entities under State law.

Response: RUS does not read the language of proposed section 1720.5(a)(1) as requiring an entity to be organized as a non-profit entity under State law in order to be an eligible applicant under the 313A guarantee program. Furthermore, it finds nothing in the legislative history that would support such an interpretation that results in a policy excluding entities on the basis of whether they have been organized under State laws or Federal laws. RUS notes that similar language in section 306 of the RE Act (7 U.S.C. 936) establishing the core RUS guaranteed loan programs has for many years been interpreted to include CoBank. Therefore, RUS confirms that the final rule requires substantive non-profit status, not particular types of State law entities. The language itself has not been changed.

Application Evaluation Factor Involving Supervision, Examination, and Safety and Soundness Regulation of Applicant by an Independent Federal Agency

Comment: CFC contends that the new evaluation criterion proposed to be included in 7 CFR 1720.7(b)(4) would disadvantage entities like CFC that are not regulated by an independent Federal agency. The proposed section 1720.7(b)(4) would allow RUS to consider the extent to which an applicant is subject to “supervision, examination, and safety and soundness regulation by an independent federal agency” as an evaluation factor in connection with the awarding of guarantees under the 313A program. CFC contends that it is not subject to an established regulatory scheme and, as a result, will not be able to satisfy this evaluation criterion. Moreover, CFC essentially contends that although it is not regulated by a Federal agency, CFC’s compliance with certain reporting requirements, their submission of financial statements to RUS, and the

inclusion of a financial expert on its board of directors at the request of the U.S. Treasury Department serve to provide disclosure and oversight comparable to or exceeding that required by Federal regulation.

Response: RUS believes that the fact that an applicant is regulated by an independent Federal agency provides a substantial benefit in that the additional oversight provided by a Federal agency tasked with the regulation of lending institutions provides RUS with an additional layer of security. Accordingly, the factor is appropriate for RUS to consider since regulatory oversight benefits RUS because it serves to lessen RUS’ financial risk as the guarantor in the 313A program. The examples that CFC references are not comparable to the comprehensive regulatory scheme of the FCA. Therefore, no change is being adopted in the final rule. RUS notes that the degree of regulation is not an eligibility factor.

Application Evaluation Factor Involving Concentration of Financial Risk Resulting From Previous Guarantees

Comment: CFC contends that the new evaluation criterion proposed in 7 CFR 1720.7(b)(5) would serve to penalize entities that have previously received guarantees made under section 313A of the RE Act. Proposed section 1720.7(b)(5) provides that RUS take into consideration “[t]he extent of concentration of financial risk that RUS may have resulting from previous guarantees made under section 313A of the RE Act.” CFC suggests that prior RUS guarantees made under the 313A program are sufficiently secured by CFC’s underlying credit strength and its pledged loan collateral. Accordingly, CFC contends that financial risk to RUS is already minimized and suggests that if RUS seeks to further minimize its risk, it could modify this proposed language to limit a guaranteed lender’s ability to make loans to a single entity in an amount that exceeds ten percent of the total section 313A guaranteed loans outstanding to RUS.

Response: RUS believes that a legitimate purpose is served by considering the concentration of outstanding section 313A guarantees. Although there are existing protections in place to minimize RUS’ risk with respect to the existing guaranteed lender, RUS believes that it is still prudent risk management to consider the amount of its existing exposure to each guaranteed lender under the 313A program when acting on applications for

additional guarantees. Therefore, no change is being made in the final rule.

List of Subjects in 7 CFR Part 1720

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

■ For reasons set out in the preamble, RUS amends chapter XVII of title 7 of the Code of Federal Regulations by amending part 1720 to read as follows:

PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES

■ 1. The authority citation for part 1720 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 940c–1.

■ 2. Revise § 1720.1 to read as follows:

§ 1720.1 Purpose.

This part prescribes regulations implementing a guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the Rural Electrification Act of 1936 (7 U.S.C. 940c–1).

■ 3. Revise § 1720.2 to read as follows:

§ 1720.2 Background.

The Rural Electrification Act of 1936 (the “RE Act”) (7 U.S.C. 901 *et seq.*) authorizes the Secretary to guarantee and make loans to persons, corporations, States, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to RUS under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, *see* 7 CFR 1700.25. Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (FSRIA) amended the RE Act to include a new program under section 313A entitled Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes. This measure directed the Secretary of Agriculture to promulgate regulations that carry out the Program. The Secretary published the regulations for the program in the **Federal Register** as a final rule on

October 29, 2004, adding Part 1720 to Title 7 of the Code of Federal Regulations. Section 6106(a)(1)(A) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) amended section 313A of the RE Act by replacing the level of "concurrent loans" as a factor limiting the amount of bonds and notes that could be guaranteed and inserted "for eligible electrification or telephone purposes" as the limitation on the amount of bonds and notes that can be guaranteed under section 313A up to an annual program limit of \$1,000,000,000, subject to availability of funds. Section 6106(a)(1)(B) further amended section 313A of the RE Act by removing the prohibition against the recipient using an amount obtained from the reduction in funding costs as a result of a new guarantee under section 313A to reduce the interest rate charged on a new or concurrent loan.

■ 4. Amend § 1720.3 by revising the definition of "Borrower" and adding the definition of "Eligible Loan" as follows:

§ 1720.3 Definitions.

* * * * *

Borrower means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification or rural telephone under the RE Act, or that is eligible for such financing.

* * * * *

Eligible Loan means a loan that a guaranteed lender extends to a borrower for up to 100 percent of the cost of eligible electrification or telephone purposes consistent with the RE Act.

* * * * *

■ 5. Amend § 1720.4 by revising paragraphs (a)(2), (3), and (4), and revising paragraph (b)(2) to read as follows:

§ 1720.4 General standards.

(a) * * *

(2) At the time the guarantee is executed, the total principal amount of guaranteed bonds outstanding would not exceed the principal amount of outstanding eligible loans previously made by the guaranteed lender;

(3) The proceeds of the guaranteed bonds will not be used directly or indirectly to fund projects for the generation of electricity; and

(4) The guaranteed lender will not use any amounts obtained from the reduction in funding costs provided by a loan guarantee issued prior to June 18, 2008, to reduce the interest rates borrowers are paying on new or outstanding loans, other than new concurrent loans as provided in part 1710 of this chapter.

(b) * * *

(2) Maintain sufficient collateral equal to the principal amount outstanding, for guaranteed lenders having a credit rating below "A -" on its senior secured debt without regard to the guarantee, or in the case of a lender that does not have senior secured debt, a corporate (counterparty) credit rating below "A -" without regard to the guarantee. Collateral shall be in the form of specific and identifiable unpledged securities equal to the value of the guaranteed amount. In the case of a guaranteed lender's default, the U.S. government claim shall not be subordinated to the claims of other creditors, and the indenture must provide that in the event of default, the government has first rights on the asset. Upon application and throughout the term of the guarantee, guaranteed lenders not subject to collateral pledging requirements shall identify, with the concurrence of the Secretary, specific assets to be held as collateral should the credit rating of its senior secured debt, or its corporate credit rating, as applicable, without regard to the guarantee fall below "A -." The Secretary has discretion to require collateral at any time should circumstances warrant.

* * * * *

■ 6. Amend § 1720.5 by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1720.5 Eligibility criteria.

(a) * * *

(1) A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis; and

* * * * *

(b) * * *

(1) The guaranteed lender must furnish the Secretary with a certified list of the principal balances of eligible loans then outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding; and

* * * * *

■ 7. Amend § 1720.6 by revising paragraph (a)(7) to read as follows:

§ 1720.6 Application process.

(a) * * *

(7) Evidence of a credit rating, from a Rating Agency, on its senior secured debt or its corporate credit rating, as applicable, without regard to the government guarantee and satisfactory to the Secretary; and

* * * * *

■ 8. Amend § 1720.7 by revising paragraphs (b)(3) and (4), adding new paragraphs (b)(5) and (6), and revising paragraph (d) to read as follows:

§ 1720.7 Application evaluation.

* * * * *

(b) * * *

(3) The applicant's demonstrated performance of financially sound business practices as evidenced by reports of regulators, auditors and credit rating agencies;

(4) The extent to which the applicant is subject to supervision, examination, and safety and soundness regulation by an independent federal agency;

(5) The extent of concentration of financial risk that RUS may have resulting from previous guarantees made under section 313A of the RE Act; and

(6) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, or generate other economic benefits, including the amount of fee income available to be deposited into the Rural Economic Development Subaccount, maintained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c(b)(2)(A)), after payment of the subsidy amount.

* * * * *

(d) *Decisions by the Secretary.* The Secretary shall approve or deny applications in a timely manner as such applications are received; provided, however, that in order to facilitate competitive evaluation of applications, the Secretary may from time to time defer a decision until more than one application is pending. The Secretary may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS shall notify the applicant in writing of the Secretary's approval or denial of an application. Approvals for guarantees shall be conditioned upon compliance with 7 CFR 1720.4 and 1720.6 of this part. The Secretary reserves the discretion to approve an application for an amount less than that requested.

■ 9. Amend § 1720.8 by revising paragraphs (a) (3), (4), and (8) to read as follows:

§ 1720.8 Issuance of the guarantee.

(a) * * *

(3) Prior to the issuance of the guarantee, the applicant must certify to the Secretary that the proceeds from the guaranteed bonds will be applied to fund new eligible loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of

the guaranteed lender used to fund eligible loans;

(4) The applicant provides a certified list of eligible loans and their outstanding balances as of the date the guarantee is to be issued;

* * * * *

(8) The applicant shall provide evidence of a credit rating on its senior secured debt or its corporate credit rating, as applicable, without regard to the guarantee and satisfactory to the Secretary; and

* * * * *

■ 10. Amend § 1720.12 by revising paragraph (a)(5) to read as follows:

§ 1720.12 Reporting requirements.

(a) * * *

(5) Credit rating, by a Rating Agency, on its senior secured debt or its corporate credit rating, as applicable, without regard to the guarantee and satisfactory to the Secretary; and

* * * * *

■ 11. Revise § 1720.13 to read as follows:

§ 1720.13 Limitations on guarantees.

In a given year the maximum amount of guaranteed bonds that the Secretary may approve will be subject to budget authority, together with receipts authority from projected fee collections from guaranteed lenders, the principal amount of outstanding eligible loans made by the guaranteed lender, and Congressionally-mandated ceilings on the total amount of credit. The Secretary may also impose other limitations as appropriate to administer this guarantee program.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010-17817 Filed 7-21-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[ICE 2345-05; DHS-2005-0046]

RIN 1653-AA47

Electronic Signature and Storage of Form I-9, Employment Eligibility Verification

AGENCY: U.S. Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: This final rule amends Department of Homeland Security regulations to provide that employers and recruiters or referrers for a fee who

are required to complete and retain the Form I-9, Employment Eligibility Verification, may sign this form electronically and retain this form in an electronic format. This final rule makes minor changes to an interim final rule promulgated in 2006.

DATES: This final rule is effective August 23, 2010.

FOR FURTHER INFORMATION CONTACT:

Allen Vanscoy, Office of Investigations, U.S. Immigration and Customs Enforcement, 500 12th St., SW., Washington, DC 20024. Telephone (202) 732-5798 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Employment Eligibility Verification Requirement

Section 274A of the Immigration and Nationality Act, as amended (INA), 8 U.S.C. 1324a, requires all U.S. employers, agricultural associations, agricultural employers, farm labor contractors, or persons or other entities that recruit or refer persons for employment for a fee, to verify the employment authorization and identity of all employees hired to work in the United States after November 6, 1986. To comply with the law, an employer, or a recruiter or referrer for a fee, is responsible for the completion of a Form I-9, Employment Eligibility Verification (Form I-9), for each new employee, including United States citizens. 8 CFR 274a.2.

The completed Form I-9 is not filed with the Department of Homeland Security (DHS). Rather, the Form I-9 is retained by the employer who must make it available for inspection upon a request by Immigration and Customs Enforcement (ICE) investigators or other authorized federal officials. Employers are required to retain a Form I-9 in their own files for three years after the date of hire of the employee or one year after the date that employment is terminated, whichever is later. 8 CFR 274a.2(c)(2). Recruiters or referrers for a fee are required to retain each Form I-9 for three years after the date of hire. *Id.* at (d)(2). Failure to properly complete and retain each Form I-9 may subject the employer or recruiter or referrer for a fee to civil money penalties. INA section 274A(e)(5), 8 U.S.C. 1324a(e)(5).

B. Format of the Form I-9

The Form I-9 has been available to the public in numerous paper and electronic means since 1986. The Form I-9 is available online at the U.S. Citizenship and Immigration Services (USCIS) Web site as a Portable Document Format (.pdf) fillable and

printable form. <http://uscis.gov/files/form/i-9.pdf>.

This final rule permits employers to complete, sign, scan, and store the Form I-9 electronically (including an existing Form I-9), as long as certain performance standards set forth in this final rule for the electronic filing system are met. DHS has separately revised the substantive documentary requirements for employment verification that form the basis for the Form I-9. *Documents Acceptable for Employment Eligibility Verification*, 73 FR 76505 (Dec. 17, 2008).

C. Regulatory History

In June 2006, DHS published an interim final rule to permit electronic signature and storage of the Form I-9. 71 FR 34510 (June 15, 2006). The interim rule implemented Public Law 108-390, 118 Stat. 2242 (Oct. 30, 2004), and INA section 274A, 8 U.S.C. 1324a. The interim rule amended DHS regulations to permit employers to complete, sign, scan, and store the Form I-9 electronically (including an existing Form I-9), as long as certain performance standards set forth in this final rule for the electronic filing system are met. See 8 CFR 274a.2. This final rule responds to public comments received on the interim final rule and adopts the interim final rule with changes noted below.

II. Changes Made by This Final Rule

In this final rule, DHS makes minor modifications to 8 CFR 274a.2 to clarify certain provisions that:

- Employers must complete a Form I-9 within three business (not calendar) days;
- Employers may use paper, electronic systems, or a combination of paper and electronic systems;
- Employers may change electronic storage systems as long as the systems meet the performance requirements of the regulations;
- Employers need not retain audit trails of each time a Form I-9 is electronically viewed, but only when the Form I-9 is created, completed, updated, modified, altered, or corrected; and
- Employers may provide or transmit a confirmation of a Form I-9 transaction, but are not required to do so unless the employee requests a copy. The final rule makes technical and conforming amendments to the regulations.

III. Comments and Responses

This final rule responds to the nine comments received from trade associations and agencies and

organizations involved in human resource management and modifies the interim final rule as explained above. DHS has carefully considered the views expressed and, to the extent practical and appropriate, incorporated those suggestions in the final regulation. The interim final rule merely provided an additional option for employers to sign and store the Form I-9 and supporting documents electronically rather than by retaining paper, microfilm or microfiche copies of the Form I-9. This final rule makes modest adjustments to the interim final rule.

A. Time To Complete Form I-9

Several commenters expressed concern regarding the timeframes involved in completing the Form I-9. A commenter questioned the meaning of the term "at the time of hire." The commenters were concerned with the language that required the employer to complete the verification section of a Form I-9 within three (3) days and suggested that the final rule specifically state three (3) "business days." This question is clarified on the revised Form I-9 (rev. 06/05/07) that states: "Employers must complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins." The interim rule inadvertently omitted the word "business." In this final rule DHS has revised 8 CFR 274a.2(b)(1)(ii)(B) to state three "business" days instead of the implied three calendar days.

B. Electronic Storage Options

Several commenters raised concerns about the employers' ability to implement new systems as technology changes and improves. Commenters suggested that to specify processes and systems in this final rule would likely inhibit the use of future developments and the resulting cost savings and improved efficiencies. The interim final rule and this final rule do not specify any technology based system, but provide only for a performance-based system that ensures accessibility.

One commenter asked if an employer could use a combination of electronic and paper storage systems for storing a Form I-9. In response, DHS has revised 8 CFR 274a.2(b)(2)(i) to provide that employers may use paper, electronic systems, or a combination of the two.

One commenter asked if electronic storage systems that permit the storage of all data but do not produce a facsimile of the Form I-9 could be used. DHS believes the existing regulations establish that an employer must be able to produce a reasonable facsimile or

copy of the Form I-9. 8 CFR 274a.2(a)(2), (e)(7) (authorizing use of "reasonable data compression or formatting technologies").

Several commenters requested guidance on the storage of ancillary documents used to verify an employee's identity and eligibility to work in the United States. Employers may, but are not required to, copy or make an electronic image of a document used to comply with the requirements of INA section 274A(b), 8 U.S.C. 1324a(b), 8 CFR 274a.2(b)(3). Employers should be cautious, however, to apply consistent policies and procedures for all employees to avoid a potential of discrimination.

A commenter asked if the Form I-9 could be stored with the employee's other employment records. Similarly, several commenters were concerned about storage of documents they use to verify an employee's identity and employment authorization. The Form I-9 and verification documentation may be stored in a separate Form I-9 file or as part of the employee's other employment records. 8 CFR 274a.2(b)(3). Further, DHS has added language in 8 CFR 274a.2(e)(4) to make clear that employers may change electronic storage systems as long as such systems meet the requirements of this rule.

Two commenters asked whether the entire Form I-9 must be retained or only the pages on which the employer and employee enter data. Only the pages of the Form I-9 containing employer and employee-entered data need be retained. 8 CFR 274a.2(e)(1). Other pages of the current form are instructions for completing the Form I-9 and need not be retained by the employer.

Several commenters inquired if DHS would provide additional guidance concerning the use of contract services for the electronic storage of the Form I-9. DHS does not intend to provide any additional guidance or requirements for employers choosing to use contract electronic storage and generation systems. DHS intends that the regulation allow for flexibility.

C. Audit Trail Requirements

Several commenters suggested that the audit trail requirements of 8 CFR 274a.2(g)(1)(iv) would be burdensome, particularly for small businesses, but could pose issues for all businesses. Commenters stated that the audit trail requirement would significantly diminish any cost savings over the more traditional paper-based systems, particularly if the audit trail must include every accession of the record. DHS agrees with comments that

suggested that it is unnecessary to require an audit trail to record every time a Form I-9 is simply viewed or accessed but not modified. An audit trail is important, however, whenever a record is created, completed, altered, updated, or otherwise modified. Accordingly, 8 CFR 274a.2(g)(1)(iv) has been modified to ensure that whenever the electronic record is created, completed, updated, modified, altered, or corrected, a secure and permanent record is created that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken. Additionally, DHS revised 8 CFR 274a.2(e)(1)(iv) to delete the requirement that the electronic storage system be searchable by any data element and has inserted language that requires searchability to be consistent with 8 CFR 274a.2(e)(6).

A commenter stated the word "documents" should be used instead of the term "books" in 8 CFR 274a.2(e)(6). DHS agrees and has adopted the recommendation.

D. Employee Receipt

Several commenters objected to the requirement in 8 CFR 274a.2(h)(1)(iii) that a printed transaction record be given to the employee. Commenters argued it is contrary to the goals of a paperless system, and that the requirements before this rule did not require the employer to provide an employee with a printed transaction record. One commenter noted that some companies process thousands of new employees annually and another noted that, in the modern work environment, many employees work off-site. Overall, these commenters expressed concern that requiring paper receipts could be a significant burden to businesses both large and small. Commenters noted that the employer, not the employee, must demonstrate compliance.

DHS disagrees. DHS believes this requirement is feasible and not, in most cases, unduly burdensome. DHS believes that providing a transaction receipt, such as a printed copy of the electronic record, may be an important protective step for the employee if errors are later discovered. The employee may not be the person inputting the information into the electronic record. In response to comments, however, DHS has amended this final rule to require employers to provide or transmit a confirmation of the transaction only if an employee requests it. In addition, DHS removed the language requiring the employer to provide the confirmation at the time of the transaction. DHS understands that in certain situations it

may be impracticable for employers to transmit or print a confirmation of the transaction because the employee may not have access to a computer or the employer may not have the capability to print a paper copy of the electronic record at the time the document is completed electronically. If, however, the employee requests confirmation, it is reasonable for the employer to be required to give the employee a copy of the information provided within a reasonable period of time. Providing the option of electronic preparation and storage does not in any way alter the requirement that the employer physically examine any documentation provided by the employee in the presence of the employee prior to completing the Form I-9. Though not required when preparing a paper Form I-9, DHS believes requiring an employer to provide a receipt upon employee request when completing an electronic record allows employers and employees to confirm the accuracy of the information provided.

E. U.S. Government Access to Employer Electronic Systems

One commenter objected to the requirement in 8 CFR 274a.2(e)(3) that electronic generation or storage systems not be subject to license or contract restrictions that would inhibit access by U.S. Government agencies to those Form I-9 preparation and storage systems. The commenter also objected to the requirement that an employer give the government unlimited access to the employer's electronic generation and storage system. DHS declines to alter 8 CFR 274a.2(e)(3). The provision does not require unlimited government access; it prevents contract and license restrictions from denying government access to electronically stored Form I-9.

F. Improvements to Form I-9

A number of comments suggested improvements to the Form I-9, including revisions to the ancillary documents list used for verification and to improve the readability of the Form I-9. This rulemaking concerns only the storage of the Form I-9, not its content. Those issues, therefore, are beyond the scope of this rulemaking. DHS has separately amended the regulatory requirements for documentation of employment eligibility and this rule makes minor technical corrections to comport with that rulemaking.

Documents Acceptable for Employment Eligibility Verification, 73 FR 76505 (Dec. 17, 2008); *Documents Acceptable for Employment Eligibility Verification*, 74 FR 2838 (Jan. 16, 2009) (correction);

Documents Acceptable for Employment Eligibility Verification, 74 FR 5899 (Feb. 3, 2009) (delayed effective date); *Documents Acceptable for Employment Eligibility Verification*, 74 FR 10455 (March 11, 2009) (correction). See also *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)*, available at <http://www.uscis.gov/USCIS/Controlled%20Vocabulary/Native%20Documents/m-274.pdf>.

Finally, one commenter suggested that requiring an employer to download the Form I-9 electronically poses a burden on small businesses that do not use a computer or the internet in their business operations. The interim rule and this final rule do not require that Form I-9 be downloaded electronically from any source. Form I-9 continues to be available in the paper format that can be obtained, upon request, from USCIS, at (800) 870-3676 or (800) 375-5283. The interim rule and this final rule simply provide an option for an employer to electronically store the Form I-9.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS previously determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore, no RFA analysis under 5 U.S.C. 603 or 604 is required for this rule. DHS notes, however, that because electronic signature and storage technologies are optional, DHS expects that small entities will choose electronic methods only if those methods will save costs, lessen overall burden, or otherwise improve efficiency.

B. Unfunded Mandates Reform Act of 1995

This final rule will not result in any expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted for inflation) or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104-121, tit. II, 110 Stat. 847, 857 (March 29, 1996), 5 U.S.C.

601 note. This final rule will not result in an annual effect of \$100 million or more on the economy; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866 (Regulatory Planning and Review)

This final rule is considered by DHS to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the rule has been submitted to the Office of Management and Budget (OMB) for review.

DHS analyzed the cost and benefits of this final rule as required by Executive Order 12866 section 1(b)(6), and made a reasoned determination that the benefits of this final rule justify its costs to the public and Government. Whether to create and store the Form I-9 in an electronic or traditional paper format will be within the discretion of employers or recruiters or referrers for a fee, who are already required under 8 CFR 274a.2 to retain the Form I-9. This final rule permits the employers to continue using their current Form I-9 policies and practices to prepare and store the Form I-9 in the paper format; electing to prepare and store the Form I-9 electronically is voluntary. The regulation does not require any additional actions or expenses, it merely provides employers with an additional option that may result in improved efficiency and cost-savings.

E. Executive Order 13132 (Federalism)

This final rule will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, agencies are required to submit any reporting or

recordkeeping requirements inherent in a rule to the OMB for review and approval. This final rule makes minor adjustments to an interim final rule affecting electronic completion of Form I-9, which has been approved for use by OMB under Control Number 1615-0047. The final rule permits the employer also to continue to retain Form I-9 in paper, microfiche, or microfilm, and allows a new option: to retain Form I-9 electronically. DHS estimated that the interim final rule permitting storage of the Form I-9 electronically reduced the burden on businesses by 650,000 hours. 71 FR at 34514. Accordingly, DHS submitted the required Paperwork Reduction Change Worksheet (OMB-83C) to OMB reflecting the reduction in burden hours for Form I-9, and OMB approved the changes. The amendments made by this final rule to clarify storage options do not alter in any significant quantifiable way the recordkeeping hours or burdens from those associated with the interim final rule. Accordingly, no Paperwork Reduction Change Worksheet (Form OMB 83-C) was required to be submitted to OMB.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

- 2. Section 274a.2 is amended:
a. By revising paragraph (b)(1)(ii)(B);
b. By revising paragraph (b)(2)(i) introductory text;
c. By revising the first and last sentences of paragraph (b)(2)(ii);
d. By revising the second sentence of paragraph (b)(3);
e. By revising paragraph (e)(1) introductory text;
f. By revising paragraph (e)(1)(iv);
g. By revising paragraph (e)(4);
h. By revising the first and last sentences of paragraph (e)(6);
i. By revising the last sentence of paragraph (e)(8)(i);
j. By revising paragraph (e)(8)(ii);
k. By revising the last sentence of paragraph (f)(3);
l. By revising paragraph (g)(1)(iv); and
m. By revising paragraph (h)(1)(iii).

The revisions and additions read as follows:

§ 274a.2 Verification of identity and employment authorization.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) Complete section 2—"Employer Review and Verification"—on the Form I-9 within three business days of the hire and sign the attestation with a handwritten signature or electronic signature in accordance with paragraph (i) of this section.

* * * * *

(2) * * *

(i) A paper (with original handwritten signatures), electronic (with acceptable electronic signatures that meet the requirements of paragraphs (h) and (i) of this section or original paper scanned into an electronic format, or a combination of paper and electronic formats that meet the requirements of paragraphs (e), (f), and (g) of this section), or microfilm or microfiche copy of the original signed version of Form I-9 must be retained by an employer or a recruiter or referrer for a fee for the following time periods:

* * * * *

(ii) Any person or entity required to retain Forms I-9 in accordance with this section shall be provided with at least three business days notice prior to an inspection of Forms I-9 by officers of an authorized agency of the United States. * * *. Nothing in this section is intended to limit the subpoena power under section 235(d)(4) of the Act.

* * * * *

(3) Copying of documentation. * * * If such a copy or electronic image is made, it must either be retained with the Form I-9 or stored with the employee's records and be retrievable consistent with paragraphs (e), (f), (g), (h), and (i) of this section. * * *

* * * * *

(e) * * * (1) Any person or entity who is required by this section to complete and retain Forms I-9 may complete or retain electronically only those pages of the Form I-9 on which employers and employees enter data in an electronic generation or storage system that includes:

* * * * *

(iv) In the case of electronically retained Forms I-9, a retrieval system that includes an indexing system that permits searches consistent with the requirements of paragraph (e)(6) of this section; and

* * * * *

(4) A person or entity who chooses to complete or retain Forms I-9 electronically may use one or more

electronic generation or storage systems. Each electronic generation or storage system must meet the requirements of this paragraph, and remain available as long as required by the Act and these regulations. Employers may implement new electronic storage systems provided:

(i) All systems meet the requirements of paragraphs (e), (f), (g), (h) and (i) of this section; and

(ii) Existing Forms I-9 are retained in a system that remains fully accessible.

* * * * *

(6) An "indexing system" for the purposes of paragraphs (e)(1)(iv) and (e)(5) of this section is a system that permits the identification and retrieval for viewing or reproducing of relevant documents and records maintained in an electronic storage system. * * * The requirement to maintain an indexing system does not require that a separate electronically stored documents and records description database be maintained if comparable results can be achieved without a separate description database.

* * * * *

(8) * * *

(i) * * *. Generally, an audit trail is a record showing who has accessed a computer system and the actions performed within or on the computer system during a given period of time;

(ii) Provide a requesting agency of the United States with the resources (e.g., appropriate hardware and software, personnel and documentation) necessary to locate, retrieve, read, and reproduce (including paper copies) any electronically stored Forms I-9, any supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the records; and

* * * * *

(f) * * *

(3) * * *. Nothing in this section is intended to limit the subpoena power of an agency of the United States under section 235(d)(4) of the Act.

* * * * *

(g) * * *

(1) * * *

(iv) Ensure that whenever the electronic record is created, completed, updated, modified, altered, or corrected, a secure and permanent record is created that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

* * * * *

(h) * * *

(1) * * *

(iii) Upon request of the employee, provide a printed confirmation of the transaction to the person providing the signature.

* * * * *

Janet Napolitano,
Secretary.

[FR Doc. 2010-17806 Filed 7-21-10; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2010-BT-TP-0022]

RIN: 1904-AC25

Energy Conservation Program for Consumer Products: Test Procedure for Microwave Ovens; Repeal of Active Mode Test Procedure Provisions

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) repeals the regulatory provisions establishing the cooking efficiency test procedure for microwave ovens under the Energy Policy and Conservation Act (EPCA). DOE has determined that the microwave oven test procedure to measure the cooking efficiency does not produce accurate and repeatable test results and is unaware of any test procedures that have been developed that address the concerns with the DOE microwave oven cooking efficiency test procedure.

DATES: *Effective date:* This rule is effective on July 22, 2010.

ADDRESSES: The public may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Anderson, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Tel.: (202) 586-7335. E-mail: Wes.Anderson@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue,

SW., Washington, DC 20585-0121. Tel.: (202) 586-7796. E-mail: Elizabeth.Kohl@hq.doe.gov.

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I. Legal Authority and Background

Legal Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291-6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles" for consumer products, including microwave ovens. (42 U.S.C. 6291(1)-(2) and 6292(a)(10)) Under the Act, this program consists essentially of three parts: testing, labeling, and establishing Federal energy conservation standards.

Manufacturers of covered products must use DOE test procedures to certify that their products comply with energy conservation standards adopted under EPCA and to represent the efficiency of their products. (42 U.S.C. 6295(s); 42 U.S.C. 6293(c)) DOE must also use DOE test procedures in any action to determine whether covered products comply with EPCA standards. (42 U.S.C. 6295(s)) Criteria and procedures for DOE's adoption and amendment of such test procedures, as set forth in EPCA, require that test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly

burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also specifies that State law providing for the disclosure of information with respect to any measure of energy consumption is superseded to the extent that such law requires testing or the use of any measure of energy consumption or energy descriptor in any manner other than provided under section 323 of EPCA. (42 U.S.C. 6297(a)(1)(A); 42 U.S.C. 6297(f)(3)(G)) Therefore, in the absence of a Federal test procedure or accompanying conservation standard, States may prescribe their own test procedures and standards pursuant to applicable State law. *Id.*

Background—Active Mode Test Procedure

DOE's test procedure for microwave ovens is codified at appendix I to subpart B of Title 10 of the Code of Federal Regulations (CFR). That test procedure was part of an October 3, 1997, final rule that also revised the test procedures for other cooking products to measure their efficiency and energy use more accurately. 62 FR 51976. The microwave oven test procedure incorporates portions of the International Electrotechnical Commission (IEC) Standard 705-1998 and Amendment 2-1993, "Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes," (IEC Standard 705) and measures microwave oven cooking efficiency and energy factor (EF). *Id.*

Background—Active Mode Standards

The National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100-12), which amended EPCA, established prescriptive standards for kitchen ranges and ovens, but no standards were established for microwave ovens. (42 U.S.C. 6295(h)) The NAECA amendments also required DOE to conduct two cycles of rulemakings to determine whether to revise the standard. DOE undertook the first cycle of these rulemakings and issued a final rule on September 8, 1998 (63 FR 48038), in which DOE found that no amended standards were justified for electric cooking products, including microwave ovens. In a final rule published on April 8, 2009 (74 FR 16040) (hereafter referred to as the appliance standards rulemaking), DOE established amended standards for gas cooking products, but again found that no active mode cooking efficiency standards were justified for electric cooking products, including microwave ovens. This rulemaking completed the second cycle of rulemakings required by

the NAECA amendments to EPCA. (42 U.S.C. 6295(h)(2))

II. Discussion

The regulatory definition of “microwave oven” is set forth at 10 CFR 430.2. “Microwave oven” is defined as “a class of kitchen ranges and ovens which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy.” The existing test procedure to measure energy efficiency of microwave ovens is codified at 10 CFR 430.23(i) and 10 CFR part 430, subpart B, appendix I, and the sampling plan, that is, the specific requirements for the number of units to be tested, is set forth at 10 CFR 430.24(i).

The current DOE microwave oven test procedure incorporates portions of IEC Standard 705 for measuring the cooking performance of microwave ovens. The testing methods measure the amount of energy required to raise the temperature of 1 kilogram of water by 10 degrees Celsius (°C) under controlled conditions. The ratio of usable output power over input power describes the EF, which is also a measure of the cooking efficiency.

As part of the appliance standards rulemaking, DOE tested 32 microwave ovens, and the Association of Home Appliance Manufacturers (AHAM) independently tested 21 additional units, for a total of 53 microwave ovens, according to the current DOE microwave oven test procedure.¹ The data from cooking tests on these units show a cooking efficiency range from 55

percent to 62 percent. Reverse engineering conducted by DOE as part of the appliance standards rulemaking attempted to identify design options associated with this variation in cooking efficiency. Although design options among various microwave ovens were found to be highly standardized, DOE was unable to correlate specific design options or other features such as cavity size or output power with cooking efficiency.

DOE also observed significant variability in the cooking efficiency measurements obtained using the DOE microwave oven test procedure for the 53 units tested by DOE and AHAM. The data show test-to-test variability of several EF percentage points (0 to 2.5) for a given microwave oven (*i.e.*, where a given combination of design options could be assigned to a number of trial standard levels (TSLs), depending upon the test results). DOE was also unable to ascertain why similarly designed, equipped, and constructed microwave ovens showed varying EFs and, hence, annual energy consumption. DOE further notes that manufacturers stated during interviews that the water used in the test procedure is not representative of an actual food load. One manufacturer stated, for example, that this could result in different microwave ovens being rated at the same energy efficiency even though true cooking performance is different.² DOE understands that IEC, AHAM, manufacturers, and others are exploring whether a test procedure can be developed that addresses the high-

variability concerns with its current cooking efficiency measure. DOE stated in an October 2008 notice of proposed rulemaking (hereinafter referred to as the October 2008 TP NOPR) that it would evaluate such test procedures to determine whether they address the concerns discussed above, thereby making them suitable candidates for use in amending the DOE test procedure. 73 FR 62134, 62139 (Oct. 17, 2008).

DOE also noted that IEC Standard 705 has been declared obsolete by IEC and the current IEC test procedure is IEC Standard 60705–2006, “Household microwave ovens—Methods of measuring performance” (IEC Standard 60705). In order to evaluate the key differences between these two IEC test procedures, DOE conducted a series of tests as part of the appliance standards rulemaking on a sub-sample of its microwave ovens (12 units total) to compare the efficiency measurements using both IEC test procedures. The general methodology for each test procedure is largely the same, and consists of heating 1 kg of water from about 10 °C below room temperature to room temperature, using the maximum power setting on the microwave oven. The input power over the duration of the test, and thus energy consumed during the test, are compared to the energy absorbed by the test load to obtain the efficiency measurement. Table II.1 below summarizes key differences noted between the test procedures that can potentially impact the final energy efficiency calculation.

TABLE II.1—KEY DIFFERENCES BETWEEN IEC STANDARD 705 AND IEC STANDARD 60705

IEC Standard 705–1988 and Amendment 2–1993	IEC Standard 60705–2006
Ambient Temp., $T_0 = 20 \pm 2 \text{ }^\circ\text{C}$	Ambient Temp., $T_0 = 20 \pm 5 \text{ }^\circ\text{C}$.
Starting Water Temp., $T_1 = T_0 - (10 \pm 1 \text{ }^\circ\text{C})$	Starting Water Temp., $T_1 = 10 \pm 1 \text{ }^\circ\text{C}$.
Final Water Temp., $T_2 = T_0 \pm 1 \text{ }^\circ\text{C}$	Final Water Temp., $T_2 = 20 \pm 2 \text{ }^\circ\text{C}$.
Electrical Input Energy neglects the magnetron filament heat-up time, the measurement starting when the input current reaches 90 percent of its final value.	Measurement of Electrical Input Energy includes the energy consumed during the magnetron filament heat-up time.
No mention of rounding off efficiency or output power calculations	Efficiency is rounded off to the nearest whole number, while output power is rounded off to the nearest 50 W.
Temperature measurement accurate within 0.25 °C and linearity better than 1 percent. Time measurement accurate within 0.25 seconds.	No specifications for accuracy of temperature and time measurements.

As part of this testing to compare the two IEC test procedures, DOE conducted tests to evaluate the variation of test-to-test efficiency results for an individual microwave oven. DOE test results,

shown below in Table II.2, showed that the test-to-test variation using IEC Standard 60705 ranged from 0 to 5 percent of the average value, which was much greater than the comparable

variation for IEC Standard 705, whose test-to-test variation in efficiency results ranged from 0 to 1.5 percent for the same sub-sample of microwave ovens. This larger range associated with IEC

¹ Both DOE’s and AHAM’s microwave oven samples contained units with manufacturer-rated output powers ranging from 700 to 1,300 W.

² For more details of the cooking efficiency testing conducted as part of the appliance standards rulemaking, see the 2009 *Technical Support Document for Residential Dishwashers, Dehumidifiers, and Cooking Products and*

Commercial Clothes Washers. Available online at http://www1.eere.energy.gov/buildings/appliance_standards/residential/cooking_products.html.

Standard 60705 is believed to be attributable to the effects of the procedure's requirement to round the power output to the nearest 50 W and the efficiency to the nearest whole number after each individual test, prior to averaging. DOE also evaluated the non-rounded data from the tests using IEC Standard 60705, which still showed more test-to-test variation for a given

unit (0 to 2.1 percent) than the variations test-to-test during the IEC Standard 705 testing. This remaining increment in test-to-test variation was likely due to the more lenient tolerances on the prescribed ambient and final test load temperatures (presented in Table II.2). Based on observations and analysis of test results, DOE believes that IEC Standard 60705 is likely to produce

even less consistent or repeatable test results than IEC Standard 705 because the measurement requirements in IEC Standard 705 are more stringent. Therefore, DOE did not propose amendments in the October 2008 TP NOPR to the microwave oven test procedure to reference IEC Standard 60705.

TABLE II.2—IEC STANDARD 705 VERSUS IEC STANDARD 60705 TEST RESULTS TEST-TO-TEST VARIATION

Test unit	Test-to-test EF range (%)		
	IEC Standard 705	IEC Standard 60705 (rounded)	IEC Standard 60705 (non-rounded)
1	1.46	3.57	0.56
2	0.06	3.45	0.96
3	0.40	3.33	0.70
4	0.48	5.00	1.66
5	0.71	3.57	0.50
6	0.47	3.45	0.20
7	0.77	3.39	0.53
8	0.21	1.67	0.76
9	1.07	1.67	1.05
10	0.96	0.00	0.87
11	0.67	1.79	0.82
12	1.24	5.17	2.14

In response to the October 2008 TP NOPR, DOE received comments from interested parties regarding the accuracy and repeatability of the existing DOE microwave oven test procedure for measuring cooking efficiency. The Appliance Standards Awareness Project (ASAP) cited substantial problems with the test procedure for measuring cooking efficiency that have not yet been addressed, including a lack of repeatable and consistent results and the possibility that the challenge of dealing with cooking efficiency is being compounded by rating the cooking efficiency of combination ovens in their various cooking modes. (ASAP, Public Meeting Transcript, No. 7 at p. 25) Pacific Gas & Electric (PG&E) noted that heat transfer in a microwave oven depends on the specific resistivity of the load, and that pure water has relatively low specific resistivity, and items that might be cooked in a microwave oven would have more salt and thus absorb microwave energy more efficiently than pure water. PG&E noted that, while water is easily obtainable for testing, using it probably results in lower cooking efficiency measurements than would be expected from using actual food products. (PG&E, Public Meeting Transcript, No. 7 at pp. 44–45)

DOE is unaware of any test procedures that have been developed that address the concerns with the DOE microwave oven cooking efficiency test

procedure discussed above. DOE is also unaware of any research or data on consumer usage indicating what a representative food load would be, or any data showing how changes to the representative test load would affect the measured EF or repeatability of test results.

Because there are currently no existing test procedures that produce representative and repeatable cooking efficiency measurements for microwave ovens, and because of the issues with using the existing DOE microwave oven test procedure, as discussed above, including the large test-to-test variation in cooking efficiency measurements, DOE is repealing the provisions in the existing microwave oven test procedure relating to the measurement of cooking efficiency and EF, and the regulatory provision specifying requirements for the number of units to be tested pursuant to the test procedure (*i.e.*, the sampling plan).

DOE will maintain the regulatory definition of microwave oven because kitchen ranges and ovens are listed as covered products in EPCA (42 U.S.C. 6292(10)) and because DOE is currently considering amendments to the microwave oven test procedure to measure standby and off mode energy use. DOE plans to initiate a separate rulemaking process to consider new provisions for measuring microwave oven energy efficiency in active

(cooking) mode and has published a notice of public meeting to discuss active mode test procedures elsewhere in today's **Federal Register**.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Administrative Procedure Act

The Department of Energy finds good cause to waive notice and comment on these regulations pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because this final rule is repealing a test procedure that DOE has determined to not be able to produce accurate and repeatable test results. Interested parties were provided with an opportunity to comment on the active mode test procedure in the October 2008 TP NOPR and responded in support of DOE's determination. In addition, DOE previously determined that standards for microwave ovens

were not warranted. (74 FR 16040, April 8, 2009). As a result, there is currently no energy conservation standard in place for microwave ovens for which a test procedure would be necessary to measure energy efficiency or energy use. A delay in effective date is unnecessary and contrary to the public interest for these same reasons. Therefore, these regulations are being published as final regulations and are effective July 22, 2010.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (www.gc.doe.gov). Because a notice of proposed rulemaking is not required under the Administrative Procedure Act or other applicable law, the Regulatory Flexibility Act does not require certification or the conduct of a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act of 1995

Today's final rule contains no new record-keeping requirements. Therefore, today's final rule would not impose any new reporting requirements requiring clearance by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Review Under the National Environmental Policy Act of 1969

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in paragraph A6 to Appendix A to subpart D, 10 CFR part 1021, which applies because this rule would revise existing

test procedures such that the amount, quality, or distribution of energy usage will not be affected, and, therefore, not result in any environmental impacts.³ Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 4, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this final rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the

regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." UMRA requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at www.gc.doe.gov). Today's final rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of \$100 million or more in any year, so these requirements do not apply.

³ Categorical Exclusion A6 provides, "Rulemakings that are strictly procedural, such as rulemaking (under 48 CFR part 9) establishing procedures for technical and pricing proposals and establishing contract clauses and contracting practices for the purchase of goods and services, and rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements."

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule and concluded that it is consistent with applicable policies in the OMB and DOE guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. The definition of a "significant energy action" is any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply,

distribution, or use if the proposal were to be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's final rule is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of OIRA also did not designate the final rule as a significant energy action. Therefore, it is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA; Pub. L. 95–70) (15 U.S.C. 788). Section 32 essentially provides that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. This final rule to repeal the test procedure for determining the energy efficiency of microwave ovens does not authorize or require the use of any commercial standards. Therefore, no consultation with either DOJ or FTC is required.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

VI. Approval of the Office of the Assistant Secretary

The Assistant Secretary of DOE's Office of Energy Efficiency and Renewable Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on July 9, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, part 430 of chapter II of title 10, Code of Federal Regulations, is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 2. Section 430.3 is amended by removing paragraphs (l)(1) and (l)(2).

■ 3. Section 430.23 is amended by revising paragraphs (i)(1), (i)(2), (i)(4), and (i)(12) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(i) *Kitchen ranges and ovens.* (1) The estimated annual operating cost for conventional ranges, conventional cooking tops, and conventional ovens shall be the sum of the following products: (i) The total annual electrical energy consumption for any electrical energy usage, in kilowatt-hours (kWh's) per year, times the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act; plus (ii) the total annual gas energy consumption for any natural gas usage, in British thermal units (Btu's) per year, times the representative average unit cost for natural gas, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act; plus (iii) the total annual gas energy consumption for any propane usage, in Btu's per year, times the representative average unit cost for propane, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act. The total annual energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be as determined according to 4.3, 4.2.2, and 4.1.2, respectively, of appendix I to this subpart. The estimated annual operating cost shall be rounded off to the nearest dollar per year.

(2) The cooking efficiency for conventional cooking tops and conventional ovens shall be the ratio of the cooking energy output for the test to the cooking energy input for the test, as determined according to 4.2.1 and 4.1.3, respectively, of appendix I to this

subpart. The final cooking efficiency values shall be rounded off to three significant digits.

* * * * *

(4) The energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total annual energy input, as determined according to 4.3, 4.2.3, 4.1.4, respectively, of Appendix I to this subpart. The final energy factor values shall be rounded off to three significant digits.

* * * * *

(12) Other useful measures of energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix I to this subpart.

* * * * *

■ 4. Section 430.24 is amended by revising paragraph (i)(1) to read as follows:

§ 430.24 Units to be tested.

* * * * *

(i)(1) Except as provided in paragraph (i)(2) of this section, for each basic model of conventional cooking tops, and conventional ovens a sample of sufficient size shall be tested to insure that—

(i) Any represented value of estimated annual operating cost, energy consumption or other measure of energy consumption of a basic model for which consumers would favor lower values shall be no less than the higher of:

- (A) the mean of the sample or
- (B) the upper 97½ percent confidence limit of the true mean divided by 1.05, and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of:

- (A) the mean of the sample or
- (B) the lower 97½ percent confidence limit of the true mean divided by .95.

* * * * *

■ 5. Appendix I to Subpart B of Part 430 is amended:

■ a. In section 1. *Definitions*, by:

- 1. Removing section 1.5; and
- 2. Redesignating sections 1.6 through 1.11 as 1.5 through 1.10;

■ b. In section 2. *Test Conditions*, by:

- 1. Removing section 2.1.3;
- 2. Revising sections 2.2.1, 2.5, and 2.6;
- 3. Removing and reserving section 2.8, consisting of sections 2.8.1, 2.8.2, and 2.8.2.1;

- 4. Removing section 2.9.3.4;
- 5. Redesignating section 2.9.3.5 as 2.9.3.4; and

■ 6. Revising sections 2.9.1.1, 2.9.1.2, 2.9.3.1, and 2.9.5;

■ c. In section 3. *Test Methods and Measurements*, by:

- 1. Revising sections 3.1.1 introductory text, 3.1.1.1, and 3.1.2;
- 2. Removing section 3.1.3, consisting of section 3.1.3.1;
- 3. Removing 3.2.3, and 3.3.13;
- d. In section 4. *Calculation of Derived Results From Test Measurements*, by:
 - 1. Revising sections 4.3; and
 - 2. Removing section 4.4, consisting of sections 4.4.1, 4.4.2, 4.4.3, 4.4.4 and 4.4.5;

The revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

* * * * *

2. Test Conditions

* * * * *

2.2.1 *Electrical supply.* Maintain the electrical supply to the conventional range, conventional cooking top, and conventional oven being tested at 240/120 volts except that basic models rated only at 208/120 volts shall be tested at that rating. Maintain the voltage within 2 percent of the above specified voltages.

* * * * *

2.5 Ambient room air temperature.

During the test, maintain an ambient room air temperature, T_R , of 77 ± 9 °F (25 ± 5 °C) for conventional ovens and cooking tops, as measured at least 5 feet (1.5 m) and not more than 8 feet (2.4 m) from the nearest surface of the unit under test and approximately 3 feet (0.9 m) above the floor. The temperature shall be measured with a thermometer or temperature indicating system with an accuracy as specified in Section 2.9.3.1.

2.6 Normal nonoperating temperature.

All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in Section 1.5, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in Sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4, as applicable.

* * * * *

2.8 [Reserved]

* * * * *

2.9.1.1 *Watt-hour meter.* The watt-hour meter for measuring the electrical energy consumption of conventional ovens and cooking tops shall have a resolution of 1 watt-hour (3.6 kJ) or less and a maximum error no greater than 1.5 percent of the measured value for any demand greater than 100 watts.

2.9.1.2 *Watt meter.* The watt meter used to measure the conventional oven, conventional range, or range clock power shall have a resolution of 0.2 watt (0.2 J/s)

or less and a maximum error no greater than 5 percent of the measured value.

* * * * *

2.9.3.1 *Room temperature indicating system.* The room temperature indicating system shall be as specified in Section 2.9.3.4 for ranges, ovens and cooktops.

* * * * *

2.9.5 *Scale.* The scale used for weighing the test blocks shall have a maximum error no greater than 1 ounce (28.4 g).

* * * * *

3. Test Methods and Measurements

3.1 Test methods.

3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in Section 2, “TEST CONDITIONS,” of this Appendix, and adjust any pilot lights of a conventional gas oven in accordance with the manufacturer’s instructions and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in Section 1.5 and described in Section 2.6. Set the conventional oven test block W_1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for at least one complete thermostat “cut-off/cut-on” of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in Section 2, “TEST CONDITIONS,” of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer’s instructions and turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in Section 1.5 and described in Section 2.6. Then set the conventional oven’s self-cleaning process in accordance with the manufacturer’s instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

* * * * *

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in Section 2, “TEST CONDITIONS,” of this Appendix.

Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer’s instructions and turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in Section 1.5 and described in Section 2.6. Set the test block in the center of the surface unit under test. The small test block, W_2 , shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3 , shall be used on electric surface units over 7 inches (177.8 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the

maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25 ± 5 percent of the maximum energy input rate. After 15 ± 0.1 minutes at the reduced energy setting, turn off the surface unit under test.

* * * * *

4. Calculation of Derived Results From Test Measurements

* * * * *

4.3 *Combined components.* The annual energy consumption of a kitchen range, e.g. a cooktop and oven combined, shall be the sum of the annual energy consumption of each of its components. The annual energy consumption for other combinations of ovens and cooktops will also be treated as the sum of the annual energy consumption of each of its components. The energy factor of a combined component is the sum of the annual useful cooking energy output of each component divided by the sum of the total annual energy consumption of each component.

[FR Doc. 2010-17773 Filed 7-21-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0174; Directorate Identifier 2009-NM-186-AD; Amendment 39-16359; AD 2010-14-14]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI for EMBRAER Model ERJ 170 airplanes describes the unsafe condition as:

It has been found the occurrence of an engine in-flight shutdown caused by the LPCV [low pressure check valves] failing to close due to excessive wear, which leads to the concern that such fault may be present in both engines of a given aircraft.

* * * * *

The MCAI for EMBRAER Model ERJ 190 airplanes describes the unsafe condition as: An occurrence of an uncommanded engine in-flight shutdown (IFSD) was reported

* * * which was caused by an ERJ 170 defective LPCV * * *. The valve failed to close due to excessive wear. Despite there were no IFSD related to LPCV * * * failure, some ERJ 190 valves * * * were inspected and presented cracks due to low cycle fatigue. Since this failure mode also might lead to an engine in-flight shutdown and since both engines of the airplane have the same valves, there is a possibility of an occurrence of a dual engine IFSD due to LPCV failure.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 26, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 26, 2010.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 4, 2010 (75 FR 9816), and proposed to supersede AD 2007-16-09, Amendment 39-15148 (72 FR 44734, August 9, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI for EMBRAER Model ERJ 170 airplanes states:

It has been found the occurrence of an engine in-flight shutdown caused by the LPCV [low pressure check valves] failing to close due to excessive wear, which leads to the concern that such fault may be present in both engines of a given aircraft.

* * * * *

The MCAI for EMBRAER Model ERJ 190 airplanes states:

An occurrence of an uncommanded engine in-flight shutdown (IFSD) was reported on 20 Sep. 2005, which was caused by an ERJ 170 defective LPCV [part number] P/N 1001447-3 logging 3900 Flight Hours (FH). The valve failed to close due to excessive wear. Despite there were no IFSD related to LPCV P/N

1001447-4 failure, some ERJ 190 valves P/N 1001447-4 logging around 2472 FH were inspected and presented cracks due to low cycle fatigue. Since this failure mode also might lead to an engine in-flight shutdown and since both engines of the airplane have the same valves, there is a possibility of an occurrence of a dual engine IFSD due to LPCV failure.

* * * * *

The required actions include repetitive replacements of the low-stage check valves and associated seals of the left-hand and right-hand engine bleed system with new or serviceable valves, depending on the model. For certain airplanes, this AD also includes an optional terminating action for the repetitive replacements. This AD also requires, if the terminating action is done, revising the approved maintenance plan to include repetitive functional tests of the low-stage check valve. For certain other airplanes, this AD requires replacing a certain low-stage check valve with an improved low-stage check valve. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The Air Line Pilots Association, International (ALPA), supports the NPRM.

Explanation of Change Made to This AD

Since we issued the NPRM, we have received Revision 6, of EMBRAER 170 Maintenance Review Board Report (MRBR), MRB-1621, dated January 14, 2010. We have updated the final rule to reference EMBRAER 170 Maintenance Review Board Report (MRBR), MRB-1621, Revision 6, dated January 14, 2010. We have added paragraph (j)(14) to this final rule to give credit for revising the maintenance program to include maintenance Task 36-11-02-002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB-1621, Revision 5, dated November 5, 2008.

We also revised paragraph (j)(13) of this AD to clarify that doing a replacement before the effective date of this AD is acceptable for compliance with a replacement specified in paragraph (j)(1) of this AD.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

We have determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI

to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 231 products of U.S. registry.

The actions that are required by AD 2007–16–09 and retained in this AD, which are provided in the following table, provide the estimated costs, at an average labor rate of \$85 per work hour, for U.S. operators to comply with this AD. The parts manufacturer states that it will supply required parts to operators at no cost.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement of right-hand check valves on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes.	3	\$255 per replacement cycle.	55	\$14,025 per replacement cycle.
Replacement of left-hand check valves on Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes.	3	\$255 per replacement cycle.	75	\$19,125 per replacement cycle.

We estimate that it will take about 6 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$4,219 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$1,092,399, or \$4,729 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15148 (72 FR 44734, August 9, 2007) and adding the following new AD:

2010–14–14 Empresa Brasileira de Aeronautica S.A. (EMBRAER):
Amendment 39–16359. Docket No. FAA–2010–0174; Directorate Identifier 2009–NM–186–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 26, 2010.

Affected ADs

(b) This AD supersedes AD 2007–16–09, Amendment 39–15148.

Applicability

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

(1) Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and

Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes; equipped with Hamilton Sundstrand low pressure check valve (LPCV) having part number (P/N) 1001447–3.

(2) Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; equipped with Hamilton Sundstrand LPCV having P/N 1001447–3 or 1001447–4.

Subject

(d) Air Transport Association (ATA) of America Code 36: Pneumatic.

Reason

(e) The mandatory continuing airworthiness information (MCAI) for EMBRAER Model ERJ 170 airplanes states:

It has been found the occurrence of an engine in-flight shutdown caused by the LPCV [low pressure check valves] failing to close due to excessive wear, which leads to the concern that such fault may be present in both engines of a given aircraft.

* * * * *

The MCAI for EMBRAER Model ERJ 190 airplanes states:

An occurrence of an uncommanded engine in-flight shutdown (IFSD) was reported on 20 Sep. 2005, which was caused by an ERJ 170 defective LPCV P/N 1001447–3 logging 3,900 Flight Hours (FH). The valve failed to close due to excessive wear. Despite there were no IFSD related to LPCV P/N 1001447–4 failure, some ERJ 190 valves P/N 1001447–4 logging around 2472 FH were inspected and presented cracks due to low cycle fatigue. Since this failure mode also might lead to an engine in-flight shutdown and since both engines of the airplane have the same valves, there is a possibility of an occurrence of a dual engine IFSD due to LPCV failure.

* * * * *

The required actions include repetitive replacements of the low-stage check valves and associated seals of the left-hand and right-hand engine bleed system with new or serviceable valves, depending on the model. For certain airplanes, this AD also includes an optional terminating action for the repetitive replacements. This AD also requires, if the terminating action is done, revising the approved maintenance plan to include repetitive functional tests of the low-stage check valve. For certain other airplanes, this AD requires replacing a certain low-stage check valve with an improved low-stage check valve.

Restatement of Requirements of AD 2005–23–14, With Revised Service Information:

Replacement for Right-Hand (RH) Engine on Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU Airplanes

(f) For Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes: Within 100 flight hours after November 29, 2005 (the effective date of AD 2005–23–14, which was superseded by AD 2007–16–09), or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance

with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005; or paragraph 3.C. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, or Revision 01, dated March 10, 2008. As of the effective date of this AD, only use EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

Removed Check Valves

(g) Although EMBRAER Alert Service Bulletin 170–36–A004, dated September 28, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

Restatement of Certain Requirements of AD 2007–16–09, With Revised Service Information:

Replacement for Left-Hand (LH) Engine on All Model ERJ 170 Airplanes

(h) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes: Within 300 flight hours after September 13, 2007 (the effective date of AD 2007–16–09) or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the LH engine's engine bleed system with a new check valve and new seals, in accordance with paragraph 3.B. of the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005; or Revision 01, dated March 10, 2008. As of the effective date of this AD, only use EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

Removed Check Valves in Accordance With New Service Bulletin

(i) Although EMBRAER Service Bulletin 170–36–0004, dated November 18, 2005, specifies to send removed check valves to the manufacturer, this AD does not include that requirement.

New Requirements of This AD:

Actions and Compliance

(j) Unless already done, do the following actions.

(1) For Model ERJ 170–200 LR, –200 STD, and –200 SU airplanes: Within 100 flight hours after the effective date of this AD, or prior to the accumulation of 3,000 total flight hours, whichever occurs later, replace the low-stage check valve and associated seals of the RH engine's engine bleed system with a new check valve and new seals, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0004, Revision 01, dated March 10, 2008. Repeat the replacement thereafter at intervals not to exceed 3,000 flight hours.

(2) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes: Replacing the LPCV having P/N 1001447–3 with a new one having P/N 1001447–4 in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–36–0011,

Revision 02, dated July 19, 2007, terminates the repetitive replacements required by paragraphs (f), (h), and (j)(1) of this AD.

(3) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes, at the earlier of the times specified in paragraphs (j)(3)(i) and (j)(3)(ii) of this AD, revise the maintenance program to include maintenance Task 36–11–02–002 (Low Stage Bleed Check Valve), specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB–1621, Revision 6, dated January 14, 2010.

Thereafter, except as provided by paragraph (k) of this AD, no alternative inspection intervals may be approved for the task.

(i) Within 180 days after accomplishing paragraph (j)(2) of this AD.

(ii) Before any LPCV having P/N 1001447–4 accumulates 3,000 total flight hours, or within 300 flight hours after the effective date of this AD, whichever occurs later.

(4) For Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes: As of the effective date of this AD, no person may install any LPCV identified in paragraph (j)(4)(i) or (j)(4)(ii) of this AD on any airplane.

(i) Any LPCV having P/N 1001447–3, installed on Model ERJ–170 airplanes, that has accumulated more than 3,000 total flight hours.

(ii) Any LPCV having P/N 1001447–3, installed on Model ERJ–170 and ERJ–190 airplanes, that has accumulated 3,000 or more total flight hours. To calculate the equivalent number of flight hours for a LPCV having P/N 1001447–3 that was installed on Model ERJ–190 airplane to be installed on a Model ERJ–170 airplane, the flight hours accumulated in operation on ERJ–190 models must be multiplied by a factor of 2 (100 percent).

(5) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Within 100 flight hours after the effective date of this AD, replace all LPCVs having P/N 1001447–3 that have accumulated 1,500 total flight hours or more as of the effective date of this AD, with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0006, Revision 01, dated July 19, 2007.

(6) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Replace all LPCVs having P/N 1001447–3 that have accumulated less than 1,500 total flight hours as of the effective date of this AD, before the LPCV accumulates 1,500 total flight hours or within 100 flight hours after the effective date of this AD, whichever occurs later. Replace that LPCV with a new or serviceable LPCV having P/N 1001447–4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–36–0006, Revision 01, dated July 19, 2007.

(7) For Model ERJ 190–100 ECJ, –100 LR, –100 IGW, –100 STD, –200 STD, –200 LR, and –200 IGW airplanes: Within 200 flight

hours after the effective date of this AD, or before any LPCV having P/N 1001447-4 installed on the right engine accumulates 2,000 total flight hours since new or since overhaul, whichever occurs later, replace the valve with a new or serviceable LPCV having P/N 1001447-4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190-36-0014, Revision 01, dated January 14, 2009. Repeat the replacement on the right engine at intervals not to exceed 2,000 total flight hours on the LPCV since new or last overhaul.

(8) For Model ERJ 190-100 ECJ, -100 LR, -100 IGW, -100 STD, -200 STD, -200 LR, and -200 IGW airplanes: Within 200 flight hours after the effective date of this AD, or before any LPCV having P/N 1001447-4 installed on the left engine accumulates 2,000 total flight hours since new or last overhaul, whichever occurs later, replace the valve with a new or serviceable LPCV having P/N 1001447-4 that has accumulated less than 2,000 total flight hours since new or since overhaul, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190-36-0014, Revision 01, dated January 14, 2009. Repeat the replacement on the left engine at intervals not to exceed 2,000 total flight hours on the LPCV since new or last overhaul.

(9) For Model ERJ 190-100 ECJ, -100 LR, -100 IGW, -100 STD, -200 STD, -200 LR, and -200 IGW airplanes: As of the effective date of this AD, installation on the left and right engines with a LPCV having P/N 1001447-4 is allowed only if the valve has accumulated less than 2,000 total flight hours since new or last overhaul prior to installation.

(10) For Model ERJ 190-100 ECJ, -100 LR, -100 IGW, -100 STD, -200 STD, -200 LR, and -200 IGW airplanes: As of the effective date of this AD, no LPCV having P/N 1001447-3 may be installed on any airplane. Any LPCV having P/N 1001447-3 already installed on an airplane may remain in

service until reaching the flight-hour limit defined in paragraphs (j)(5) and (j)(6) of this AD.

(11) Replacing the LPCV is also acceptable for compliance with the requirements of paragraph (j)(2) of this AD if done before the effective date of this AD in accordance with EMBRAER Service Bulletin 170-36-0011, dated January 9, 2007; or EMBRAER Service Bulletin 170-36-0011, Revision 01, dated May 28, 2007.

(12) Replacing the LPCV is also acceptable for compliance with the requirements of paragraphs (j)(5) and (j)(6) of this AD if done before the effective date of this AD in accordance with EMBRAER Service Bulletin 190-36-0006, dated April 9, 2007.

(13) Replacing the LPCV is also acceptable for compliance with the corresponding replacement in paragraph (j)(1) of this AD if done before the effective date of this AD in accordance with EMBRAER Service Bulletin 170-36-0004, dated November 18, 2005.

(14) Revising the maintenance program to include maintenance Task 36-11-02-002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR), MRB-1621, Revision 5, dated November 5, 2008, is acceptable for compliance with the requirements of paragraph (j)(3) of this AD if done before the effective date of this AD.

Note 1: The actions in paragraphs (j)(5), (j)(6), (j)(7), (j)(8), (j)(9), and (j)(10) of this AD are considered interim action until a final action is identified, at which time we might consider issuing further rulemaking.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(k) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for paragraph (j) of this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

AMOCs approved previously in accordance with AD 2007-16-09, Amendment 39-15148, are approved as AMOCs for the corresponding provisions of paragraph (j) of this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(l) Refer to MCAI Brazilian Airworthiness Directives 2005-09-03R2, effective February 25, 2008, and 2006-11-01R4, effective April 9, 2009; and the service information listed in Table 1 of this AD; for related information.

TABLE 1—RELATED SERVICE INFORMATION

Document	Revision	Date
EMBRAER Service Bulletin 170-36-0004	01	March 10, 2008.
EMBRAER Service Bulletin 170-36-0011	02	July 19, 2007.
EMBRAER Service Bulletin 190-36-0006	01	July 19, 2007.
EMBRAER Service Bulletin 190-36-0014	01	January 14, 2009.
Task 36-11-02-002 (Low Stage Bleed Check Valve) specified in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR) MRB-1621.	6	January 14, 2010.

Material Incorporated by Reference

(m) You must use the service information contained in Table 2 of this AD, and the

specified task in Section 1 of the EMBRAER 170 Maintenance Review Board Report (MRBR) MRB-1621, Revision 6, dated

January 14, 2010, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
EMBRAER Service Bulletin 170-36-0004	01	March 10, 2008.
EMBRAER Service Bulletin 170-36-0011	02	July 19, 2007.
EMBRAER Service Bulletin 190-36-0006	01	July 19, 2007.
EMBRAER Service Bulletin 190-36-0014	01	January 14, 2009.

(1) The Director of the Federal Register approved the incorporation by reference of

the service information specified in this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

EMBRAER 170 MRBR MRB-1621, Revision 6, dated January 14, 2010, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page Nos.	Revision No.	Date shown on page(s)
MRBR Title Page	None shown	6	January 14, 2010.
MRBR List of Effective Pages	A-P	None shown*	January 14, 2010.
MRBR Table of Contents	1	None shown*	November 5, 2008.
	2-3	None shown*	January 14, 2010.
	4	None shown*	May 31, 2007.
Section 1	1-1, 1-2, 1-8	None shown*	May 31, 2007.
	1-3 through 1-7, 1-9, 1-13 through 1-86.	None shown*	January 14, 2010.
	1-10	None shown*	November 5, 2008.
	1-11, 1-12	None shown*	June 29, 2006.

* Only the title page of EMBRAER 170 MRBR MRB-1621, Revision 6, contains the revision level of this document.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927-5852 or +55 12 3309-0732; fax +55 12 3927-7546; e-mail distrib@embraer.com.br; Internet <http://www.flyembraer.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on June 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010-16182 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0003; Directorate Identifier 2007-NM-251-AD; Amendment 39-16368; AD 2010-15-02]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A330-200 and -300 Series Airplanes, and A340-200, -300, -500, and -600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Several cases of corrosion and damage on the Down Drive Shafts (DDS), between the Down Drive Gear Box (DDGB) and the Input Gear Box (IPGB), on all 10 Flap Tracks (5 per wing), have been reported by AIRBUS Long Range Operators.

Investigations have revealed that corrosion and wear due to absence of grease in the spline interfaces could cause [DDS] disconnection which could result in a free movable flap surface, potentially leading to aircraft asymmetry or even flap detachment.

* * * * *

The unsafe condition could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 26, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 26, 2010.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on March 29, 2010 (75 FR 15353). That supplemental NPRM proposed to correct an unsafe condition for the products listed above.

Explanation of Revised Service Information

Airbus has issued Mandatory Service Bulletin A330-27-3152, Revision 03, including Appendices 1 and 2, dated February 22, 2010. Airbus Mandatory Service Bulletin A330-27-3152, Revision 02, dated September 23, 2008, is referred to as the appropriate source of service information for accomplishing certain actions in the supplemental NPRM. The changes in Airbus Mandatory Service Bulletin A330-27-

3152, Revision 03, dated February 22, 2010, are minor and no additional work is necessary for airplanes on which the actions specified in Revision 02 of this service bulletin were done.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Comments

Delta supports the proposed actions in the supplemental NPRM and asks that we include Airbus Mandatory Service Bulletin A330-27-3152, Revision 03, dated February 22, 2010, as the appropriate source of service information for accomplishing certain actions. Delta also asks that we give credit for Airbus Mandatory Service Bulletin A330-27-3152, Revision 02, dated September 23, 2008.

As stated previously, Airbus issued Mandatory Service Bulletin A330-27-3152, Revision 03, dated February 22, 2010. We have cited Airbus Mandatory Service Bulletin A330-27-3152, Revision 03, dated February 22, 2010, as the appropriate source of service information for accomplishing the required actions and have changed the service bulletin references in Tables 1 and 2 of this AD accordingly.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD affects about 41 products of U.S. registry. We also estimate that it takes 65 work-hours per

product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be \$226,525, or \$5,525 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone

(800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010-15-02 Airbus: Amendment 39-16368. Docket No. FAA-2009-0003; Directorate Identifier 2007-NM-251-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 26, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330-201, -202, -203, -223, -243, -301, -302, -303, -321, -322, -323, -341, -342, and -343 series airplanes, A340-211, -212, -213, -311, -312, and -313 series airplanes, and A340-541 and -642 airplanes, certificated in any category; all certified models, all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Several cases of corrosion and damage on the Down Drive Shafts (DDS), between the Down Drive Gear Box (DDGB) and the Input Gear Box (IPGB), on all 10 Flap Tracks (5 per wing), have been reported by AIRBUS Long Range Operators.

Investigations have revealed that corrosion and wear due to absence of grease in the spline interfaces could cause [DDS] disconnection which could result in a free movable flap surface, potentially leading to aircraft asymmetry or even flap detachment.

Emergency Airworthiness Directive (EAD) 2007-0222-E mandated on all aircraft older than 6 years since AIRBUS original delivery date of the aircraft, an initial inspection of all DDS and IPGB for corrosion and wear detection in order to replace any damaged part.

Revision 1 of EAD 2007-0222-E aimed for clarifying the compliance instructions.

[EASA AD 2008–0026] supersedes the EAD 2007–0222R1–E and mandates repetitive inspections every 6 years for all the fleet. The unsafe condition could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. The corrective actions include replacing damaged parts.

Compliance

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

Actions

(g) Do the applicable inspections and corrective actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the instructions of the applicable service information specified in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

For model—	Use Airbus Mandatory Service Bulletin—	For actions specified in paragraph—
A330–200 and –300 series airplanes ...	A330–27–3151, Revision 01, dated March 19, 2008	(g)(1)(i) and (g)(1)(ii) of this AD.
A330–200 and –300 series airplanes ...	A330–27–3152, Revision 03, dated February 22, 2010	(g)(1)(iv) and (g)(2) of this AD.
A340–200 and –300 series airplanes ...	A340–27–4151, Revision 01, dated March 19, 2008	(g)(1)(i) and (g)(1)(ii) of this AD.
A340–200 and –300 series airplanes ...	A340–27–4152, Revision 02, dated September 23, 2008 ...	(g)(1)(iv) and (g)(2) of this AD.
A340–541 and –642 airplanes	A340–27–5040, Revision 02, dated September 23, 2008 ...	(g)(2) of this AD.

(1) For Model A330–200 and –300 series airplanes, up to and including manufacturer serial number (MSN) 0420, and Model A340–200 and –300 series airplanes, up to and including MSN 0415, except MSNs 0385 and 0395: Do the applicable actions specified in paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), and (g)(1)(iv) of this AD at the applicable time specified.

(i) For airplanes on which less than 10 years have accumulated since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness as of the effective date of this AD: Within 24 months after the effective date of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. For Type 3 damaged parts, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts, do all applicable corrective actions within 18 months after doing the inspection.

(ii) For airplanes on which 10 or more years have accumulated since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness as of the effective date of this AD: Within 4 months after the effective date of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 2 and 4 on both wings for corrosion and wear detection. For any Type 3 damaged parts on flap tracks 2 and 4, do all applicable corrective actions before further flight. For any Type 2 damaged IPGB parts on flap tracks 2 and 4, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii) of this AD.

(A) For wings on which Type 3 damage is found on the DDS of flap track 2 or 4, perform simultaneous detailed visual inspections of the IPGB and of the DDS on

flap track 3 on both wings for corrosion and wear detection. For Type 3 damaged parts on flap track 3, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts, on flap track 3, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii)(A) of this AD.

(I) For wings on which Type 3 damage is found on the DDS of flap track 3, before further flight, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 1 and 5 on both wings for corrosion and wear detection. For Type 3 damaged parts on flap tracks 1 and 5, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts on flap tracks 1 and 5, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii)(A)(1) of this AD.

(2) For wings on which no Type 3 damage is found on the DDS of flap track 3, within 18 months after doing the inspection required by paragraph (g)(1)(ii)(A) of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 1 and 5 on both wings for corrosion and wear detection. For any Type 3 damaged parts on flap tracks 1 and 5, do all applicable corrective actions before further flight. For any Type 2 damaged IPGB parts on flap tracks 1 and 5, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii)(A)(2) of this AD.

(B) For wings on which no Type 3 damage is found on the DDS of flap track 2 and 4: Within 18 months after doing the inspection required by paragraph (g)(1)(ii) of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 1, 3, and 5 on both wings for corrosion and wear detection. For any Type 3 damaged parts on flap tracks 1, 3, and 5, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts on flap tracks 1, 3, and 5, do all applicable corrective actions within 18 months after

doing the inspection required by paragraph (g)(1)(ii) of this AD.

(iii) Within 30 days after performing an initial inspection required by paragraph (g)(1)(i) or (g)(1)(ii) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, report the initial inspection results only, whatever they are, to Airbus as specified in the reporting sheet of the applicable service information listed in Table 1 of this AD.

(iv) Within 6 years after performing the applicable inspection required by paragraph (g)(1)(i) or (g)(1)(ii) of this AD, and thereafter at intervals not exceeding 6 years: Perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. For Type 3 damaged parts, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts, do all applicable corrective actions within 18 months after doing the inspection.

(2) For airplanes other than those identified in paragraph (g)(1) of this AD: Within 6 years after issuance of the original French standard airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness, or within 20 months after the effective date of this AD, whichever occurs later; and thereafter at intervals not exceeding 6 years; perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. For Type 3 damaged parts, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts, do all applicable corrective actions within 18 months after doing the inspection.

(3) Actions done before the effective date of this AD in accordance with the applicable service information specified in Table 2 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 2—CREDIT SERVICE INFORMATION

Airbus mandatory service bulletin—	Revision—	Dated—
A330–27–3151	Original	August 9, 2007.
A330–27–3152	Original	August 9, 2007.

TABLE 2—CREDIT SERVICE INFORMATION—Continued

Airbus mandatory service bulletin—	Revision—	Dated—
A330–27–3152	01	March 19, 2008.
A330–27–3152	02	September 23, 2008.
A340–27–4151	Original	August 9, 2007.
A340–27–4152	Original	August 9, 2007.
A340–27–4152	01	March 19, 2008.
A340–27–5040	Original	August 9, 2007.
A340–27–5040	01	March 19, 2008.

Note 1: Airbus should be contacted in order to get appropriate information for airplanes on which the original delivery date of the airplane is unknown to the operator.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International

Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2008–0026, dated February 12, 2008, and the service information specified in Table 1 of this AD, for related information.

Material Incorporated by Reference

(j) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Airbus mandatory service bulletin—	Revision—	Dated—
A330–27–3151, including Appendix 1	01	March 19, 2008
A330–27–3152, including Appendices 1 and 2	03	February 22, 2010
A340–27–4151, including Appendix 1	01	March 19, 2008
A340–27–4152, including Appendices 1 and 2	02	September 23, 2008
A340–27–5040, including Appendix 1	02	September 23, 2008

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on June 30, 2010.

Todd G. Dixon,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–17064 Filed 7–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0671; Directorate Identifier 2010–NM–142–AD; Amendment 39–16363; AD 2010–14–18]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767–200, –300, and –300F Series Airplanes Powered by General Electric or Pratt & Whitney Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Model 767–200, –300, and –300F series airplanes. The

existing AD currently requires repetitive inspections to detect discrepancies of the 8 aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions if necessary. The existing AD also requires repetitive inspections for cracks of the closeout angle that covers the 2 aft-most fasteners in the lower tang of the midspar fitting, and related investigative and corrective actions if necessary. The existing AD also provides an optional terminating action for the repetitive inspections. This new AD reduces the compliance times for doing the inspections. This AD results from reports of cracks in the midspar fitting tangs. We are issuing this AD to detect and correct fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine.

DATES: This AD becomes effective August 6, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 6, 2010.

We must receive any comments on this AD by September 7, 2010.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; e-mail me.boecom@boeing.com; Internet <https://www.myboeingfleet.com>.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6577; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

On September 13, 2005, we issued AD 2005-19-23, amendment 39-14288 (70 FR 55519, September 22, 2005). That AD applies to certain Boeing Model 767-200, -300, and -300F series airplanes. That AD requires repetitive inspections to detect discrepancies of the eight aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions if necessary. That AD also requires repetitive inspections for cracks of the closeout angle that covers the two aft-most fasteners in the lower tang of the midspar fitting, and related investigative and corrective actions if necessary. That AD also provides an optional terminating action for the repetitive inspections. That AD resulted from a report of a crack in a closeout angle that covers the two aft-most fasteners in the lower tang of the midspar fitting, and the discovery of a crack in the lower tang of the midspar fitting under the cracked closeout angle. The actions specified in that AD are intended to prevent fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine.

Actions Since AD Was Issued

Since we issued that AD, we received two reports of cracks in the midspar fitting tangs. The first report indicated severed upper and lower tangs at the aft two fastener locations in the Number 1 pylon inboard midspar fitting. The cracks were found during a routine check of a Model 767-300 airplane at approximately 92,205 total flight hours and 14,969 total flight cycles. This airplane had incurred 408 flight cycles from the previous inspection. The second report indicated cracks in the

Number 1 pylon inboard midspar fitting lower tang, between the aft two fastener holes, on a Model 767-300 airplane at approximately 94,176 total flight hours and 15,405 total flight cycles. This airplane had incurred 830 cycles from the previous inspection.

AD 2005-19-23 specified repetitive inspection intervals between 1,500 flight cycles and 16,000 flight cycles, depending on the inspection type and location. We have determined that the affected airplanes must be inspected within 400 flight cycles since the previous inspection and, for those airplanes that have not yet been inspected, the compliance time threshold of 10,000 total flight cycles specified in AD 2005-19-23 must be reduced to 8,000 total flight cycles. We have also determined that repetitive inspection intervals must be reduced to 400 flight cycles and 6,000 flight cycles, depending on the inspection type.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010. We referred to Boeing Alert Service Bulletin 767-54A0101, Revision 4, dated February 10, 2005, for doing certain actions required by AD 2005-19-23. The procedures in Revision 5 are similar to the procedures in Revision 4. Revision 5 reduces the compliance times for doing the procedures.

We have also reviewed Boeing Alert Service Bulletin 767-54A0062, Revision 6, dated November 5, 2009; and Boeing Alert Service Bulletin 767-54A0074, Revision 1, dated April 24, 2008; which are the latest versions of certain service bulletins referred to in AD 2005-19-23 as additional sources of guidance for doing the terminating action. Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010, refers to Boeing Alert Service Bulletin 767-54A0062, Revision 6, dated November 5, 2009; and Boeing Alert Service Bulletin 767-54A0074, Revision 1, dated April 24, 2008; as additional sources of guidance for doing the terminating action in Part 4 of the alert service bulletin.

Other Relevant Rulemaking

The FAA has issued the following ADs that are related to the additional sources of guidance specified in this AD.

TABLE—OTHER RELEVANT RULEMAKING

AD	Applicability	Related Boeing Service Bulletin	AD requirement
AD 2000–07–05, amendment 39–11659 (65 FR 18883, April 10, 2000).	Certain Boeing Model 767 series airplanes.	767–54A0094	Repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut; follow-on actions, if necessary; and terminating action for the repetitive inspections.
AD 2004–16–12, amendment 39–13768 (69 FR 51002, August 17, 2004).	Certain Boeing Model 767–200, –300, and –300F series airplanes powered by Pratt & Whitney engines or General Electric engines.	767–54–0069, 767–54–0080, 767–54–0081, and 767–54A0094.	Modification of the nacelle strut and wing structure. (AD 2004–16–12 superseded AD 2001–02–07, Amendment 39–12091 and AD 2001–06–12, Amendment 39–12159.)
AD 2009–20–09, amendment 39–16032 (74 FR 50692, October 1, 2009).	Certain Boeing Model 767–200, –300, and –300F series airplanes.	767–54A0074	Repetitive inspections for fatigue cracking and corrosion of the upper link fuse pin of the nacelle struts, and related investigative and corrective actions if necessary.
AD 2010–03–08, amendment 39–16192 (75 FR 5677, February 4, 2010).	Certain Boeing Model 767–200, –300, and –300F series airplanes.	767–54A0062, 767–54–0069	Repetitive detailed and eddy current inspections to detect cracks of certain midspar fuse pins, and corrective action if necessary. (AD 2010–03–08 superseded AD 2003–03–02, Amendment 39–13026.)

FAA’s Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 2005–19–23. This AD requires accomplishing the actions specified in Boeing Alert Service Bulletin 767–54A0101, Revision 5, dated June 29, 2010, described previously, except as discussed under “Differences Between the AD and the Service Bulletin.”

Differences Between the AD and the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Steps 4.a. and 4.b. of Part 2 of the Work Instructions of Boeing Alert Service Bulletin 767–54A0101, Revision 5, dated June 29, 2010, specify actions if cracking is found and the hole size is either greater than 0.5322 inch or less than 0.5322 inch but not if the hole size

equals 0.5322 inch. This AD specifies that if cracking is found and the hole size equals 0.5322 inch, then the terminating action specified in step 4.a. of Part 2 of the Work Instructions of Boeing Alert Service Bulletin 767–54A0101, Revision 5, dated June 29, 2010, must be accomplished.

Interim Action

We consider this AD interim action. We are currently considering additional rulemaking to expand the inspection area.

FAA’s Justification and Determination of the Effective Date

Fatigue cracking in the primary strut structure could result in reduced structural integrity of the strut and consequent separation of the strut and engine. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to ensure the structural integrity of the pylon structure and midspar fittings and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2010–0671; Directorate Identifier 2010–NM–142–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII,

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the ADDRESSES section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-14288 (70 FR 55519, September 22, 2005) and by adding the following new airworthiness directive (AD):

2010-14-18 The Boeing Company:
Amendment 39-16363. Docket No. FAA-2010-0671; Directorate Identifier 2010-NM-142-AD.

Effective Date

(a) This AD becomes effective August 6, 2010.

Affected ADs

(b) This AD supersedes AD 2005-19-23, Amendment 39-14288.

Applicability

(c) This AD applies to The Boeing Company Model 767-200, -300, and -300F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from reports of cracks in the midspar fitting tangs. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine.

Compliance

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

Note 1: Notwithstanding any inspection done in accordance with AD 2005-19-23, inspect within the compliance times specified in this AD.

Initial Inspection

(g) At the applicable time specified in paragraph (h) of this AD: Do the actions specified in either paragraph (g)(1) or (g)(2) of this AD.

(1) Do a detailed inspection for cracking of the 8 aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and a surface high frequency eddy current (HFEC) inspection for cracking of the closeout angle that covers the 2 aft-most fasteners in the lower tang of the midspar fitting, in accordance with Part 1, "Detailed Inspection of Midspar Fitting and Surface High Frequency Eddy Current (HFEC) Inspection of Closeout Angle," of the Work Instructions of Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010.

(2) Do an open-hole HFEC inspection for cracking of each fastener hole, inspect to determine the size of each fastener hole, and do all applicable related investigative and corrective actions, in accordance with Part 2, "Open Hole HFEC Inspection," of the Work Instructions of Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010, except as required by paragraphs (m) and (n) of this AD, and except as provided by paragraph (p) of this AD. Do all applicable related investigative and corrective actions before further flight.

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, do the actions specified in paragraph (g) of this AD.

(1) For airplanes on which an inspection (any Part 1 or Part 2 inspection) has not been done in accordance with any service bulletin listed in Table 1 of this AD as of the effective date of this AD: Prior to the accumulation of 8,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, do the actions specified in paragraph (g) of this AD.

TABLE 1—SERVICE BULLETINS

Service Bulletin	Revision	Date
Boeing Alert Service Bulletin 767-54A0101	4	February 10, 2005.
Boeing Alert Service Bulletin 767-54A0101	5	June 29, 2010.
Boeing Service Bulletin 767-54A0101	2	January 10, 2002.
Boeing Service Bulletin 767-54A0101	3	September 5, 2002.

(2) For airplanes on which any inspection (any Part 1 or Part 2 inspection) has been done in accordance with any service bulletin listed in Table 1 of this AD as of the effective date of this AD: Within 400 flight cycles after doing the most recent inspection or within 90 days after the effective date of this AD, whichever occurs later, do the actions specified in paragraph (g) of this AD.

Repetitive Inspections

(i) If, during any detailed and surface HFEC inspection specified by paragraph (g)(1) of this AD, no cracking is found, do the actions specified in either paragraph (i)(1) or (i)(2) of this AD.

(1) Repeat the inspections specified in paragraph (g)(1) of this AD thereafter at intervals not to exceed 400 flight cycles.

(2) Within 400 flight cycles after doing the most recent inspections specified in paragraph (g)(1) of this AD, do the actions specified in paragraph (g)(2) of this AD and repeat thereafter at intervals not to exceed 6,000 flight cycles.

(j) If, during the actions specified by paragraph (g)(2) of this AD, the terminating action specified in Part 4 of the Work Instructions of Boeing Alert Service Bulletin

767-54A0101, Revision 5, dated June 29, 2010, is not done, do the actions specified in either paragraph (j)(1) or (j)(2) of this AD.

(1) Within 6,000 flight cycles after doing the actions specified in paragraph (g)(2) of this AD, do the inspections specified in paragraph (g)(1) of this AD and repeat the inspections thereafter at intervals not to exceed 400 flight cycles.

(2) Repeat the actions specified in paragraph (g)(2) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

Corrective Actions for Inspections Done per Paragraph (g)(1) of This AD

(k) If, during any inspection specified by paragraph (g)(1) of this AD, any crack is found in the midspar fitting tangs, before further flight, do the actions specified in paragraph (k)(1) or (k)(2) of this AD.

(1) Do the terminating action specified in Part 4 of the Work Instructions of Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010, except as required by paragraph (m) of this AD. Accomplishment of this paragraph terminates the requirements of this AD.

(2) Replace the midspar fitting of the strut with a new part, or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Within 8,000 flight cycles after doing the replacement, do the actions specified in either paragraph (k)(2)(i) or (k)(2)(ii) of this AD.

(i) Do the inspections specified in paragraph (g)(1) of this AD and repeat the inspections thereafter at intervals not to exceed 400 flight cycles.

(ii) Do the actions specified in paragraph (g)(2) of this AD and repeat the actions thereafter at intervals not to exceed 6,000 flight cycles.

(l) If, during any surface HFEC inspection specified by paragraph (g)(1) of this AD, any crack is found in the closeout angle, before further flight, do the open-hole HFEC inspection for cracking and all applicable related investigative and corrective actions, in accordance with Part 2, "Open Hole HFEC Inspection," and step 4.b.(2) of Part 1, "Detailed Inspection of Midspar Fitting and Surface High Frequency Eddy Current (HFEC) Inspection of Closeout Angle," of the Work Instructions of Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010, except as required by paragraphs (m) and (n) of this AD, and except as provided by paragraph (p) of this AD. If the terminating action specified in Part 4 of the Work Instructions of Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010, is not done, do the actions specified in either paragraph (l)(1) or (l)(2) of this AD.

(1) Within 6,000 flight cycles after doing the actions specified in paragraph (l) of this AD, do the inspections specified in paragraph (g)(1) of this AD and repeat the inspections thereafter at intervals not to exceed 400 flight cycles.

(2) Within 6,000 flight cycles after doing the actions specified in paragraph (l) of this AD, do the actions specified in paragraph (g)(2) of this AD, and repeat the actions thereafter at intervals not to exceed 6,000 flight cycles.

Service Bulletin Exceptions

(m) Where Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010, specifies that the manufacturer may be contacted for disposition of repair conditions: Before further flight, accomplish the repair using a method approved in accordance with the procedures specified in paragraph (r) of this AD.

(n) If, during any open-hole HFEC inspection required by paragraph (g)(2) or (l) of this AD, any crack is found in the midspar fitting and the hole size is 0.5322 inch, before further flight, do the terminating action specified in paragraph (k)(1) of this AD.

Optional Terminating Action

(o) Doing the terminating action specified in Part 4 of the Work Instructions of Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010, terminates the requirements of this AD.

Note 2: Boeing Alert Service Bulletin 767-54A0101, Revision 5, dated June 29, 2010, refers to the Boeing service bulletins in Table 2 of this AD as additional sources of guidance for doing the terminating action in paragraphs (k) and (o) of this AD.

TABLE 2—ADDITIONAL SOURCES OF GUIDANCE

Boeing Service Bulletin	Revision level	Date	Title
767-54-0052	Original	June 11, 1992	Nacelles/Pylons—Strut—Aft Lower Spar—Fastener Corrosion—Inspection and Replacement.
767-54-0061	2	November 23, 1999.	Nacelles/Pylons—Wing—to—Strut Attach Fittings—Lower Spar Bushing Inspection and Replacement.
767-54-0069	2	August 31, 2000	Nacelles/Pylons—Midspar Fitting—Underwing Sideload Fitting—Fuse Pin Replacement and Wing Rework.
767-54-0072	Original	March 13, 1997	Nacelles/Pylons—Strut Attach Upper Link—Upper Link Inspection, Rework or Replacement.
767-54-0080	1	May 9, 2002	Nacelles/Pylons—Pratt and Whitney Powered Airplanes—Nacelle Strut and Wing Structure Modification.
767-54-0081	1	February 7, 2002	Nacelles/Pylons—General Electric Powered Airplanes—Nacelle Strut and Wing Structure Modification.
767-54A0062	6	November 5, 2009	Nacelles/Pylons—Strut Attach Fuse Pins—Midspar Fuse Pin Inspection and Replacement.
767-54A0074	1	April 24, 2008	Nacelles/Pylons—Strut Attach Fuse Pins—Upper link Fuse Pin Inspection/Replacement.
767-54A0094	2	February 7, 2002	Nacelles/Pylons—Strut—to—Wing Attachment—Diagonal Brace Inspection/Rework/Replacement.
767-57-0063	1	November 30, 2000.	Wings—Side Load Underwing Fitting —Inspection/Rework.

Note 3: Certain service bulletins referenced in Table 2 of this AD are related to the ADs listed in Table 3 of this AD.

TABLE 3—OTHER RELEVANT RULEMAKING

AD	Applicability	Related Boeing Service Bulletin	AD requirement
AD 2000-07-05, amendment 39-11659.	Certain Boeing Model 767 series airplanes.	767-54A0094	Repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut; follow-on actions, if necessary; and terminating action for the repetitive inspections.

TABLE 3—OTHER RELEVANT RULEMAKING—Continued

AD	Applicability	Related Boeing Service Bulletin	AD requirement
AD 2004–16–12, amendment 39–13768.	Certain Boeing Model 767–200, –300, and –300F series airplanes powered by Pratt & Whitney engines or General Electric engines.	767–54–0069, 767–54–0080, 767–54–0081, and 767–54A0094.	Modification of the nacelle strut and wing structure.
AD 2009–20–09, amendment 39–16032.	Certain Boeing Model 767–200, –300, and –300F series airplanes.	767–54A0074	Repetitive inspections for fatigue cracking and corrosion of the upper link fuse pin of the nacelle struts, and related investigative and corrective actions if necessary.
AD 2010–03–08, amendment 39–16192.	Certain Boeing Model 767–200, –300, and –300F series airplanes.	767–54A0062, 767–54–0069.	Repetitive detailed and eddy current inspections to detect cracks of certain midspar fuse pins, and corrective action if necessary.

Optional Corrective Action for Paragraph (g)(2) or (l) of This AD

(p) In lieu of doing the related investigative and corrective actions required by paragraph (g)(2) or (l) of this AD, before further flight, replace the midspar fitting of the strut with a new part, or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Within 8,000 flight cycles after doing any

replacement, do the actions specified in either paragraph (p)(1) or (p)(2) of this AD.

(1) Do the inspections specified in paragraph (g)(1) of this AD and repeat the inspections thereafter at intervals not to exceed 400 flight cycles.

(2) Do the actions specified in paragraph (g)(2) of this AD and repeat the actions thereafter at intervals not to exceed 6,000 flight cycles.

Terminating Action Accomplished per Previous Issues of Service Bulletin

(q) Doing the terminating action specified in Part 4 of the Work Instructions of any service bulletin listed in Table 4 of this AD before the effective date of this AD is acceptable for compliance with the requirements of this AD.

TABLE 4—CREDIT SERVICE BULLETINS FOR TERMINATING ACTION

Service Bulletin	Revision	Date
Boeing Alert Service Bulletin 767–54A0101	Original	September 23, 1999.
Boeing Alert Service Bulletin 767–54A0101	4	February 10, 2005.
Boeing Service Bulletin 767–54A0101	1	February 3, 2000.
Boeing Service Bulletin 767–54A0101	2	January 10, 2002.
Boeing Service Bulletin 767–54A0101	3	September 5, 2002.

Alternative Methods of Compliance (AMOCs)

(r)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization

Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Material Incorporated by Reference

(s) You must use Boeing Alert Service Bulletin 767–54A0101, Revision 5, dated June 29, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on July 9, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–17611 Filed 7–21–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 73**

[Docket No. FAA-2007-28632; Airspace
Docket No. 07-ASW-3]

RIN 2120-AA66

**Modification of Restricted Area
R-3404; Crane, IN**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Restricted Area R-3404 at Crane, IN, in support of U.S. Navy ordnance demolition activities. The FAA is taking this action to protect nonparticipating aircraft from blast fragments generated during the demilitarization and disposal of a variety of types of unexpended ordnance at the Naval Support Activity (NSA) Crane's Demolition Range.

DATES: Effective date 0901 UTC,
September 23, 2010.

FOR FURTHER INFORMATION CONTACT:
Colby Abbott, Airspace and Rules
Group, Office of System Operations
Airspace and AIM, Federal Aviation
Administration, 800 Independence
Avenue, SW., Washington, DC 20591;
telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**History**

On Tuesday, October 23, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Restricted Area R-3404 at Crane, IN (72 FR 59971). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. There were six comments received during the NPRM comment period that raised two substantive concerns: (1) Impact to aircraft of a higher restricted area ceiling during icing conditions, and (2) lateral encroachment into VOR Federal Airway V-305.

Five commenters stated the proposal would impact users due to the ceiling of R-3404 being raised from 2,500 feet mean sea level (MSL) to 4,100 feet MSL along a major flyway between Evansville, IN, and Indianapolis, IN, when icing conditions force aircraft to lower altitudes. The FAA does not agree. The existing restricted area airspace is 1/2 nautical mile (NM) in radius and has a ceiling up to 2,500 feet MSL. The proposed modification increases the airspace to a 1 NM radius from the center of the restricted area's

existing center point, making the restricted area 2 NM in diameter, and increases the ceiling to and including 4,100 feet MSL. The aeronautical analysis of this proposal by the controlling air traffic control facilities determined that instrument flight rules (IFR) and visual flight rules (VFR) terminal operations would be minimally effected by this proposal, as well as minimum impact to public use or chartered private airports. In the event IFR aircraft should encounter icing conditions when R-3404 is activated, those IFR aircraft will be vectored by air traffic control to remain clear of the restricted area. If VFR aircraft should encounter icing conditions when the restricted area is activated, they can easily circumnavigate the 2 NM diameter of the expanded restricted area.

All six commenters expressed concern over the proposed expansion of R-3404, laterally and vertically, impacting the access to Federal Airway V-305 below 5,000 feet MSL. The FAA partially agrees. Although the proposed restricted area lies to the west of V-305 and does not interfere with the centerline of the airway, IFR aircraft flying on V-305 at 3,000 feet MSL and 4,000 feet MSL would be impacted when the proposed R-3404 is active. However, as mentioned previously, these aircraft could easily be vectored by air traffic control to remain clear of the proposed restricted area with minimal impact. With the 8 NM airway width of V-305, VFR aircraft following the Federal airway would not be required to leave the lateral confines of the airway to avoid the proposed expansion of R-3404. As mentioned above, they could easily circumnavigate the 2 NM diameter of the expanded restricted area to the east and still be following V-305. As a result, realignment of V-305 is also determined to be unnecessary.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by modifying R-3404 near Crane, IN. The modification centers the restricted area over NSA Crane's blast area (lat. 38°49'30" N., long. 86°50'08" W.), enlarges the restricted area from a 1/2 NM radius to a 1 NM radius, making the restricted area 2 NM in diameter; increases the ceiling from 2,500 feet MSL to and including 4,100 feet MSL; and changes the name of the using agency from "Commanding Officer, Naval Ammunition Depot, Crane, IN" to "U.S. Navy, Crane Division, Naval Surface Warfare Center tenant of NSA Crane."

Section 73.34 of Title 14 CFR part 73 was republished in FAA Order 7400.8S, effective February 16, 2010.

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 modifies R-3404, Crane, IN., for the protection of nonparticipating aircraft during the disposal of a variety of types of ordnance.

Environmental Review

Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500-1508), and other applicable law, the U.S. Navy prepared and published a Final Environmental Assessment (FEA) in June 2008 that analyzed the potential for environmental impacts associated with the proposed NSA Crane and Naval Surface Warfare Center (NSWC) Glendora Lake Test Facility requirements. In July 2009, the U.S. Navy issued a Finding of No Significant Impact (FONSI) based on the results of the FEA. In accordance with applicable CEQ regulations (40 CFR 1501.6) and the Memorandum of Understanding (MOU) between FAA and Department of

Defense (DOD) dated October 2005, the FAA was a cooperating agency on the FEA.

The FAA has conducted an independent review of the FEA and is adopting the FEA for this action pursuant to 40 CFR 1506.3(a) and (c) and has issued an Adoption of FEA and FONSI/Record of Decision (ROD) dated May 2010. This final rule, which increases the vertical limit and lateral boundary of R-3404, will not result in significant environmental impacts. A copy of the FAA Adoption of FEA and FONSI/ROD has been placed in the public docket for this rulemaking.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.34 [Amended]

■ 2. § 73.34 is amended as follows:

* * * * *

R-3404 Crane, IN [Revised]

Boundaries. That airspace within a 1 NM radius of lat. 38°49'30" N., long. 86°50'08" W.

Designated altitudes. Surface to and including 4,100 feet MSL.

Time of designation. Sunrise to sunset, daily from May 1 through and including November 1. Other times by NOTAM 24 hours in advance.

Controlling agency. FAA, Terre Haute ATCT.

Using agency. U.S. Navy, Crane Division, Naval Surface Warfare Center tenant of NSA Crane.

Issued in Washington, DC, July 16, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010-17951 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 234

[Docket No. DOT-OST-2007-0022]

RIN No. 2105-AE02

Posting of Flight Delay Data on Web Sites

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Direct final rule; confirmation of effective date

SUMMARY: This document confirms the effective date of the direct final rule amending the time period for uploading flight performance information to a reporting air carrier's Web site from anytime between the 20th and 23rd day of the month to the fourth Saturday of the month.

DATES: This final rule is effective on July 21, 2010.

FOR FURTHER INFORMATION CONTACT:

Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), blane.workie@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation's Office of the Secretary (OST) published a direct final rule with a request for comments in the **Federal Register** on June 21, 2010 (75 FR 34925). The direct final rule required that the reporting carriers (*i.e.*, certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues) load flight performance data onto their Web sites on Saturday, July 24, 2010, for June data, and all subsequent flight performance information on the fourth Saturday of the month following the month for which the data are that being reported. OST uses the direct final rulemaking procedure for a non-controversial rule where OST believes that there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment was received by July 6, 2010, the regulation would become effective on July 21, 2010. No adverse comments were received, and thus this notice confirms that the direct final rule will become effective on that date.

Issued July 16, 2010, in Washington, DC.

Susan Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2010-17859 Filed 7-21-10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-62520]

Technical Amendment to Rules of Organization; Conduct and Ethics; and Information and Requests

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission ("Commission") is making technical amendments to the rule by which authority is delegated to the Director of the Division of Enforcement. The amendments update references to the provision in the Securities Act of 1933 ("Securities Act") which authorizes the Commission to issue subpoenas in investigations under the Securities Act, and delete references to the Public Utility Holding Company Act of 1935 ("PUHCA").

DATES: Effective Date: July 22, 2010.

FOR FURTHER INFORMATION CONTACT:

Kenneth H. Hall, Assistant Chief Counsel, 202-551-4936, Office of Chief Counsel, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-6553.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is authorized to conduct investigations of possible violations of the Securities Act. Specifically, section 19(c) of the Securities Act¹ provides that,

For the purpose of any investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this title, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpoena [sic] witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

¹ 15 U.S.C. 77s(c).

Section 21(b) of the Securities Exchange Act of 1934 ("Exchange Act"),² section 42(b) of the Investment Company Act of 1940³ and section 209(b) of the Investment Advisers Act of 1940⁴ also include provisions authorizing investigations. The Sarbanes-Oxley Act of 2002⁵ amended section 19 of the Securities Act by inserting a new section (b), and by redesignating prior sections (b) and (c) as sections (c) and (d), respectively.⁶ As a result of the statutory amendment, section 19(b) of the Securities Act, which pertained to investigations of possible Securities Act violations, was redesignated as section 19(c). To reflect this change, the Commission is adopting technical amendments to Rule 30-4, which delegates authority to the Director of its Division of Enforcement to take certain actions during investigations, including investigations under the Securities Act. Specifically, paragraphs (a)(1), (a)(4), (a)(10), (a)(11), and (a)(13) of Rule 30-4⁷ are each being amended to refer to "section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c))."

PUHCA was repealed by the Energy Policy Act of 2005.⁸ To reflect this change, the Commission is also adopting technical amendments to Rule 30-4 to remove references to investigations brought under PUHCA. Specifically, paragraphs (a)(1), (a)(3), (a)(4), (a)(10), and (a)(11) of Rule 30-4 are each being amended to remove references to "section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c))."

II. Administrative Law Matters

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.⁹ The amendments are technical changes, adopted solely to update references to a statutory provision that remains unchanged except for its designation. For this reason, the Commission finds that it is unnecessary to publish notice of these amendments. Similarly, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Fairness Act. See 5 U.S.C. 601(2) (for purposes of

Regulatory Flexibility Act analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules.¹⁰ Because this amendment merely makes technical changes to update statutory references, no competitive advantages or disadvantages would be created.

III. Statutory Authority and Text of Amendments

We are adopting these technical amendments under the authority set forth in section 23(a) of the Exchange Act.¹¹

List of Subjects in 17 CFR Part 200

Rules of organization, Conduct and ethics, and Information and requests.

Text of Amendments

■ For the reasons set out in the preamble, title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—RULES OF ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200, subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

■ 2. Section 200.30-4 is amended by revising paragraphs (a)(1), (a)(3), (a)(4), (a)(10), (a)(11) and (13) to read as follows:

§ 200.30-4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a)(1) To designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to section 19(c) of

the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

* * * * *

(3) To terminate and close all investigations authorized by the Commission pursuant to section 20 of the Securities Act of 1933 (15 U.S.C. 77t), section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u), section 42 of the Investment Company Act of 1940 (15 U.S.C. 80a-41) and section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9).

(4) To terminate the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records in the course of investigations instituted by the Commission pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

* * * * *

(10) To institute subpoena enforcement proceedings in federal court to seek an order compelling the production of documents or an individual's appearance for testimony pursuant to subpoenas issued pursuant to paragraph (a)(1) of this section in connection with investigations pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

(11) To authorize staff to appear in federal bankruptcy court to preserve Commission claims in connection with investigations pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

* * * * *

(13) For the period from August 11, 2009 through August 11, 2010, to order

² 15 U.S.C. 78u(b).

³ 15 U.S.C. 80a-41(b).

⁴ 15 U.S.C. 80b-9(b).

⁵ Public Law 107-204, 116 Stat. 745 (2002).

⁶ Section 108(a)(1) and (2).

⁷ 17 CFR 200.30-4(a)(1), (4), (10), (11), and (13).

⁸ Public Law 109-58, 119 Stat. 624 (2005).

⁹ 5 U.S.C. 553(b).

¹⁰ 15 U.S.C. 78w(a)(2).

¹¹ 15 U.S.C. 782w(a).

the making of private investigations pursuant to section 19(c) of the Securities Act of 1933 (15 U.S.C. 77s(c)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)). Orders issued pursuant to this delegation during this period will continue to have effect after August 11, 2010.

* * * * *

Dated: July 16, 2010.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-17897 Filed 7-21-10; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB-2009-0004; T.D. TTB-86;
Re: Notice No. 97]

RIN 1513-AB64

Establishment of the Sierra Pelona Valley Viticultural Area (2010R-004P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the 9.7-square mile “Sierra Pelona Valley” American viticultural area in southern California. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Christina McMahon, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200-E, Washington, DC 20220; phone 202-453-2256.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading

statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Sierra Pelona Valley Viticultural Area

Mr. Ralph Jens Carter submitted a petition proposing the establishment of the Sierra Pelona Valley viticultural area on behalf of local grape growers. The proposed viticultural area covers 9.7 square miles and contains 96 acres of commercial vineyards. The proposed viticultural area lies 30 miles north of the City of Los Angeles, 35 miles east of the Pacific Ocean, and 20 miles southwest of the Mojave Desert. TTB notes that the proposed viticultural area is not within any established American viticultural area, and that the boundary line of the proposed viticultural area neither overlaps nor runs along any other proposed or established viticultural area boundary line. The evidence submitted in support of the petition is summarized below.

Name Evidence

The USGS Sleepy Valley and Agua Dulce maps identify the Sierra Pelona Valley as a landform within Los Angeles County. The USGS Ritter Ridge, Sleepy Valley, and Agua Dulce maps identify Sierra Pelona as a mountain range to the immediate north of the proposed Sierra Pelona Valley viticultural area.

According to the petition, the Sierra Pelona Valley is located north of California State Highway 14, between the towns of Santa Clarita and Palmdale (Los Angeles Region map, California Regional Series, Automobile Club of Southern California, 2006 edition). The proposed viticultural area, including the expansive Sierra Pelona Valley region, is adjacent to the southern foothills of the Sierra Pelona range (DeLorme Southern and Central California Atlas and Gazetteer, Seventh Edition, 2005, page 79).

The petition explains that the large Sierra Pelona Valley region, oriented northeast-to-southwest, comprises Hauser Canyon, upper Agua Dulce Canyon, and Mint Canyon, including Sleepy Valley. The petition states that in local usage “Sierra Pelona” applies to the expansive valley, as well as the mountain range to the immediate north of the valley. The Sierra Pelona Valley is the name that best describes the proposed viticultural area, according to the petitioner.

Boundary Evidence

The petition provides historical, physiographical, and geographical data to define the boundary of the proposed viticultural area.

Viticulture in the proposed Sierra Pelona Valley viticultural area started in 1995, according to the petition. By 2008, the region had 96 acres of commercial vineyards.

The petition states that the boundary encompasses the alluvial valley fill and the gently sloping foothills just to the steep inclines. The foothills extend outward for as much as 1 mile.

The geology of the proposed viticultural area includes mostly consolidated alluvium between 23 and 37 million years old, but also includes some more recent alluvium, between 1.5 and 2 million years old, according to the petition. Further uniformity in the area is provided by a granitic intrusion, ranging from 195 to 225 million years old, that spans the Sierra Pelona Valley. In contrast to the valley alluvium and the granitic intrusion, the surrounding mountains, ranging from 195 million to 4.5 billion years old, consist mainly of very different rocks.

The petition states that elevations of the proposed viticultural area vary from 2,400 to 3,400 feet. Those of the mountains to the west and of the mountain ridges to the north, east, and south vary from 3,401 to 5,187 feet. Elevations of a canyon in the Santa Clarita area, about 5 miles southwest of the proposed boundary line, drop to approximately 1,600 feet.

Distinguishing Features

The petition asserts that the distinguishing features of the proposed Sierra Pelona Valley viticultural area include climate, geology, soils, topography, and elevation. The inland location of the Sierra Pelona Valley both influences its distinguishing features and contributes to the success of its viticulture.

Climate

The petition, citing <http://www.wunderground.com> and the "Soil Survey of the Antelope Valley Area" (issued by the U.S. Department of Agriculture, Soil Conservation Service, 1970), states that precipitation in the proposed viticultural area averages between 9 and 12 inches per year and occurs mainly in winter. Citing "Daymet" (a database designed by Peter Thornton, National Center for Atmospheric Research, Climate and Global Dynamic Division, University of Colorado at Boulder), the petition states that in the Sierra Pelona Valley daily growing season temperatures can vary by 40 to 50 degrees F, with summer daytime temperatures reaching 102 degrees F, and summer nighttime temperatures frequently dropping to 50 to 60 degrees F.

To contrast the climate in the proposed viticultural area with that in the surrounding areas, the petition gives climate data for several locations outside the proposed area ("Soil Survey

of Antelope County, California"). Sandberg is at an elevation of 4,517 feet in the high mountains northwest of the proposed viticultural area, and although it has a total annual average precipitation of 12.1 inches, about the same as the upper-end precipitation in the proposed viticultural area, Sandberg has average daily growing season maximum and minimum temperatures of 77 and 54 degrees F. San Fernando, at an elevation of 977 feet in a low-lying area to the southwest of the proposed viticultural area, has a total average monthly precipitation of 16.9 inches and average daily growing season maximum and minimum temperatures of 85 and 52 degrees F. Palmdale, at an elevation of 2,665 feet in the desert due east of the proposed viticultural area, has a total average monthly precipitation of 8.9 inches and average daily growing season maximum and minimum temperatures of 87 and 55 degrees F.

Air drainage from surrounding higher elevations to the Sierra Pelona Valley floor, the petition explains, reduces the hazard of frost damage in spring. In addition, air movement across the slopes reduces the threat of leaf fungus and the need for heavy spraying of pesticides. Wind direction, according to Don McAdam, a valley resident, is frequently shifted and redirected by hills, knolls, and valleys.

The petition states that the climate of the mountainous surrounding areas does not support viticulture due to an excessively short growing season, cooler summers, and vine-killing, cold winters.

Geology

The petition states that the "Geological Map of California" (Department of Conservation, Division of Mines and Geology, compilation of Charles W. Jennings, 1977) shows that deposits of alluvium, mostly nonmarine and unconsolidated, cover most of the Sierra Pelona Valley floor. The petition further states that deposits of semiconsolidated Quaternary nonmarine alluvium cover the rest of the valley. The deposits of alluvium in the Sierra Pelona Valley have a sedimentary geology; that is, they are both sand and gravel in origin. They contrast sharply with the rocks in the areas surrounding the Sierra Pelona Valley.

The petition notes that soils on alluvial fans and terraces, like those in the proposed Sierra Pelona Valley viticultural area, are renowned throughout the world for winegrape growing ("Viticulture and the Environment," by John Gladstones, Winetitles, 1992).

The petition states that the alluvium that dominates the valley floor of the proposed viticultural area is significantly younger than the rocks in the surrounding regions. According to the petition, the alluvium dates from the Tertiary and Quaternary Periods of the Cenozoic Era, 37 million years old to present ("McGraw-Hill Concise Encyclopedia of Earth Science," 2005, and the "Geological Map of California"). The rocks on mountains to the north of the proposed viticultural area include Permian or Triassic Period schist, 195 to 280 million years old, and some Precambrian rocks, 570 million to 4.5 billion years old. The mountains to the south include Precambrian conglomerate, shale, gneiss, and sandstone.

According to the petition, the Sierra Pelona Valley is on a formation of Mesozoic granitic and metamorphic rocks, mostly gneiss and other metamorphic rocks with granitic intrusions. The petition notes that these mineral-rich rocks are particularly well suited to producing several varieties of wine, especially Syrah. To the north of the proposed viticultural area, the rocks consist of varying metasedimentary schist types of Precambrian age, but mostly of Paleozoic or Mesozoic age. A minor fault line lying along the north edge of the Sierra Pelona Valley is at the contact line between the alluvium in the Sierra Pelona Valley on the south side of the fault and the schist on the north, upland side of the fault. The south side of the fault is subsiding in places.

To the south of the proposed viticultural area, the dominant rocks are marine sedimentary and metasedimentary conglomerate, shale, sandstone, limestone, dolomite, marble, gneiss, hornfels, and quartzite. To the south and east, in the Vasquez Rocks County Park of Los Angeles County, basaltic rocks are on a major portion of the lower Vasquez Formation. The basaltic rocks separate the alluvium of the proposed viticultural area from the surrounding regions to the south.

Soils

According to the petition, climate, especially rainfall and heat, influences soils through the growth of plant types, the decomposition rate of organic matter, and the weathering of minerals ("Soil Survey of the Antelope Valley Area, California"). Rainfall in the proposed viticultural area makes it a transitional zone between desert and forest.

The soils on the valley floor in the proposed viticultural area have significant differences compared to those on the surrounding mountains. On

the valley floor and on foot slopes at the edges of the valley floor, the soils are very deep and moderately drained (General Soil Map, "Soil Survey of the Antelope Valley Area, California").

The slope-wash soils on the foot slopes are poor, and have rock fragments on the surface in many areas. However, these rock fragments diffuse and reflect sunlight to lower leaves shaded by canopy, help keep the soil warm, and increase soil moisture, all of which benefits viticulture ("Terroir, The Role of Geology, Climate, and Culture in the Making of French Wines," by James E. Wilson, University of California Press, 1998).

And although the poor soils reduce the growth rate of the vines, the wines made from the grapes of those vines have more natural balance, according to the petition. The petition explains further that the soils of the area benefit the classic grape varieties, which generally produce well only in poor sandy soils ("Terroir, The Role of Geology, Climate, and Culture in the Making of French Wines"). The reduced vine growth rate decreases the need for summer pruning, irrigation, and use of farm equipment. On the other hand, these soils have multidirectional sun exposures, which allow for the planting of a variety of grapes.

In the proposed viticultural area soil depth is 60 inches or more. The petition states that soil depth is important for vine growth because most vine roots grow to a depth of 39 inches ("The University Wine Course: A Wine Appreciation Text & Self Tutorial," by Marianne W. Baldy, The Wine Appreciation Guild, 1998). Such deep roots are important because vines can extract 1 or 2 inches of moisture for each foot of rooting depth.

In contrast, the soils on the surrounding mountains are shallow, excessively drained, and infertile. They are dominantly on steep slopes, and are subject to erosion. These soils are suited to recreation, range, and wildlife, and to use as a watershed.

Topography

The petition explains that the large Sierra Pelona Valley region, oriented northeast-to-southwest, comprises Hauser Canyon, upper Agua Dulce Canyon, and Mint Canyon, including Sleepy Valley. The USGS Agua Dulce and Sleepy Valley maps show that the long, narrow, gentle side slopes of the Sierra Pelona Valley are surrounded by projecting mountain ridges to the north, east, and south and by a mountain and a chord of radiating canyons to the west. The petition states that the valley floor itself has many isolated knolls but that

most of the valley is on gentle slopes suited to viticulture.

The USGS Agua Dulce and Sleepy Valley maps also show that intermittent tributaries in the Sierra Pelona Valley flow into Agua Dulce Canyon and create a single, south-flowing stream that eventually joins the Santa Clara River. The petition explains that the alluvium derived from rocks at higher elevations is carried downstream by these tributaries. This pattern of alluvium deposition contributes to the unique mix of mineral and chemical soil properties in the proposed viticultural area.

The petition states that fine quality winegrapes are universally associated with soils on midslopes where outwash accumulates and deeper soils form ("Terroir, The Role of Geology, Climate, and Culture in the Making of French Wines"). These midslopes, the petition notes, are sometimes called viticulture "bellies," because they hold the sediment washed from the weathered rocks above and create vineyards. In most of the proposed viticultural area, winegrapes are grown on gentle midslopes.

The petition states that the proposed viticultural area has other features besides gentle slopes favorable for viticulture. Good water and air drainage and soils with low fertility and a high mineral content produce grapevines with reduced vigor but with more natural balance.

Elevation

According to the USGS maps of the region and the petition, elevations in the proposed viticultural area vary from 2,400 to 3,400 feet. Elevations also gradually decline approximately 1,000 feet over the 5 miles from the east side to the west side of the proposed boundary line. At the town of Agua Dulce and the Agua Dulce Air Park in the Sierra Pelona Valley floor, elevations range from 2,500 to 2,600 feet.

The petition states that elevations outside of the proposed viticultural area are generally higher than those in the valley. Some close-in peaks in the Sierra Pelona Range are 5,187-foot Mount McDill to the north, and west of Mount McDill, a 4,973-foot promontory at Bear Springs and a 4,859-foot peak at Willow Springs. According to the petition and the USGS Sleepy Valley map, southeast of Sierra Pelona Valley, Windy Mountain stands at 3,785 feet and two unnamed peaks reach elevations of 3,791 and 3,706 feet, all within $\frac{1}{4}$ to $\frac{1}{2}$ mile of the 3,200-foot proposed boundary line.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 97 regarding the proposed Sierra Pelona Valley viticultural area in the **Federal Register** (74 FR 35146) on July 20, 2009. In that notice, TTB invited comments by September 18, 2009, from all interested persons. We solicited comments on the sufficiency and accuracy of the name, climate, soils, and other required information submitted in support of the petition. We expressed particular interest in receiving comments concerning the inclusion, within the boundary line, of the valleys and canyons to the west and north that surround the Sierra Pelona Valley landform, as well as comments regarding whether there would be a conflict between the terms "Sierra Pelona Valley" or "Sierra Pelona" and any currently used brand names.

In response to that notice, we received 17 comments, and 16 of those comments were clearly in support of establishing the proposed viticultural area. Several comments expressed the belief that the Sierra Pelona Valley is a unique grape growing area with a climate that is distinctive from neighboring areas. We also received comments stating that the establishment of the Sierra Pelona Valley viticultural area will have a positive effect on the local and State economy.

One commenter did not express any direct opposition to the establishment of the proposed viticultural area, but was strongly in favor of making the Antelope Valley part of the Sierra Pelona Valley AVA region. TTB notes, however, that the commenter did not submit any evidence to establish that the name "Sierra Pelona Valley" is known as referring to this additional area or any data concerning geographical features in support of this request. TTB further notes that two commenters specifically asserted that the conditions in Antelope Valley are different from those in the Sierra Pelona region. The owner of Antelope Valley Winery stated that unique conditions in the Sierra Pelona Valley lead to the creation of wines that are different from the Santa Clarita area as well as the Antelope Valley area. The President of the Antelope Valley Winegrowers Association commented that the soil and temperature conditions in the Sierra Pelona Valley differ from Antelope Valley, and that grapes in the Sierra Pelona region have a longer hang time and later harvest date than grapes in Antelope Valley.

TTB Finding

After careful review of the petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Accordingly, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the “Sierra Pelona Valley” American viticultural area in Los Angeles County, California, effective 30 days from the publication date of this document.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The maps for determining the boundary of the viticultural area are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine’s true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, “Sierra Pelona Valley,” is recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the new regulation clarifies this point.

In addition we believe that “Sierra Pelona” standing alone also is a term of viticultural significance because consumers and vintners could reasonably attribute the quality, reputation, or other characteristic of wine made from grapes grown in the proposed “Sierra Pelona Valley” viticultural area to the name “Sierra Pelona.” See 27 CFR 4.39(i)(3), which also provides that a name has viticultural significance when so determined by the appropriate TTB officer. Therefore, the part 9 regulatory text set forth in this document specifies “Sierra Pelona Valley” and “Sierra Pelona” as terms of viticultural significance for purposes of part 4 of the TTB regulations.

Once this final rule becomes effective, wine bottlers using “Sierra Pelona Valley” or “Sierra Pelona” in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use “Sierra Pelona Valley” as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the

TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name “Sierra Pelona Valley” or “Sierra Pelona” for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation upon the effective date of the establishment of the Sierra Pelona Valley viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other viticulturally significant term that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Christina McMahon of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter I, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.218 to read as follows:

§ 9.218 Sierra Pelona Valley.

(a) *Name.* The name of the viticultural area described in this section is “Sierra Pelona Valley”. For purposes of part 4 of this chapter, “Sierra Pelona Valley” and “Sierra Pelona” are terms of viticultural significance.

(b) *Approved maps.* The three United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Sierra Pelona Valley viticultural area are titled:

- (1) Agua Dulce, CA, 1995;
- (2) Sleepy Valley, CA, 1995; and
- (3) Ritter Ridge, Calif., 1958,

Photorevised 1974.

(c) *Boundary.* The Sierra Pelona Valley viticultural area is located in Los Angeles County, California. The boundary of the Sierra Pelona Valley viticultural area is as described below:

(1) The beginning point is on the Agua Dulce map at the intersection of the section 26 east boundary line, the pipeline, and Escondido Canyon Road, a secondary highway, T5N, R14W. From the beginning point, proceed in a straight line south 0.3 mile to the line’s intersection with the northeast corner of the Vasquez Rocks County Park, T5N, R14W; then

(2) Proceed southwest through section 26 along the straight lines and 90-degree turns of the county park boundary line to the line’s intersection with the southeast corner of section 27, T5N, R14W; then

(3) Proceed southwest in a straight line 0.4 mile to the line’s intersection with BM 2258, section 34, T5N, R14W; then

(4) Proceed west-northwest in a straight line 0.15 mile, crossing over the Agua Dulce Road, to the line’s intersection with the 2,400-foot elevation line and an unimproved dirt road, section 34, T5N, R14W; then

(5) Proceed generally west along the meandering 2,400-foot elevation line to the line’s intersection with the section 34 west boundary line, T5N, R14W; then

(6) Proceed north along the section 34 west boundary line 1 mile to the line’s intersection with the 2,800-foot elevation line and the section 27 west boundary line; then

(7) Proceed along the 2,800-foot elevation line first generally northeast, then northwest around Saddleback Mountain, and then north across a trail and an unimproved dirt road, to the line's intersection with the section 21 south boundary line, T5N, R14W; then

(8) Proceed straight east along the section 21 south boundary line 0.25 mile to the southeast corner of section 21, T5N, R14W; then

(9) Proceed north along the section 21 south boundary line onto the Sleepy Valley map 0.6 mile to the line's intersection with the 2,800-foot elevation line and the section 22 west boundary line, T5N, R14W; then

(10) Proceed along the 2,800-foot elevation line generally northeast around the 3,166-foot and 3,036-foot pinnacles, then continue southwest to the line's intersection with the section 22 north boundary line, T5N, R14W; then

(11) Proceed west along the section 22 north boundary line 0.2 mile to the line's intersection with the 2,600-foot elevation line, T5N, R14W; then

(12) Proceed generally west-southwest along the 2,600-foot elevation line to the line's intersection with the section 21 west boundary line, T5N, R14W; then

(13) Proceed north along the section 21 west boundary line 0.2 mile to the line's intersection with the 2,400-foot elevation line and the section 20 east boundary line, T5N, R14W; then

(14) Proceed generally southwest along the 2,400-foot elevation line to the line's intersection with an unimproved dirt road in section 20, T5N, R14W; then

(15) Proceed northwest along the unimproved dirt road 0.15 mile to its intersection with the Sierra Highway, a secondary highway, section 20, T5N, R14W; then

(16) Proceed southwest along the Sierra Highway 0.15 mile to its intersection with an unnamed stream, section 20, T5N, R14W; then

(17) Proceed in a straight line north-northwest approximately 0.3 mile to the line's intersection with the Angeles National Forest boundary line, an unnamed stream running through Rowher Canyon, and the section 17 south boundary line, T5N, R14W; then

(18) Proceed straight east, north, and east, making 90-degree turns, along the Angeles National Forest boundary line to the line's intersection with the section 7 southwest corner, T5N, R13W; then

(19) Proceed straight north along the Angeles National Forest boundary line and the section 7 west boundary line 0.5 mile to the line's intersection with the 3,400-foot elevation line, T5N, R13W; then

(20) Proceed along the 3,400-foot elevation line generally east, north, then west to the line's intersection with the section 6 west boundary line, T5N, R13W; then

(21) Proceed north along the section 6 west boundary line 0.4 mile to the line's intersection with the 3,400-foot elevation line, T5N, R13W; then

(22) Proceed generally southeast along the 3,400-foot elevation line, crossing over Latteau, Willow Springs, and Hauser Canyons and continuing onto the Ritter Ridge map, to the line's intersection with an unimproved dirt road at Summit, section 16, T5N, R13W; then

(23) Proceed south along the unnamed dirt road less than 0.1 mile, crossing the Sierra Highway, to its intersection with the 3,400-foot elevation line, section 16, T5N, R13W; then

(24) Proceed generally southwest along the 3,400-foot elevation line, meandering between the Sleepy Valley and Ritter Ridge maps and then returning to the Sleepy Valley map, to the line's intersection with the section 20 north boundary line, T5N, R13W; then

(25) Proceed in a straight line west along the section 20 north boundary line 0.2 mile to the line's intersection with the 3,200-foot elevation line, section 20, T5N, R13W; then

(26) Proceed generally southwest along the 3,200-foot elevation line to the line's intersection with the section 19 west boundary line, T5N, R13W; then

(27) Proceed in a straight line north along the section 19 west boundary line 0.15 mile to the line's intersection with a pipeline, T5N, R13W; and then

(28) Proceed southwest onto the Agua Dulce map 1.25 miles along the pipeline, returning to the beginning point.

Signed: February 17, 2010.

John J. Manfreda,

Administrator.

Approved: March 19, 2010.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2010-17960 Filed 7-21-10; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, 46, and 71

[Docket No. TTB-2009-0001; T.D. TTB-85; Re: T.D. TTB-75 and Notice No. 93]

RIN 1513-AB70

Increase in Tax Rates on Tobacco Products and Cigarette Papers and Tubes; Floor Stocks Tax on Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes; and Changes to Basis for Denial, Suspension, or Revocation of Permits

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is adopting as a final rule, with minor technical changes, temporary regulations that implemented certain provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (the Act). The regulatory amendments involved increases in the Federal excise tax rates on tobacco products and cigarette papers and tubes, the floor stocks tax provisions of the Act, and the new statutory criteria for denial, suspension, or revocation of tobacco permits.

DATES: *Effective Date:* August 23, 2010.

FOR FURTHER INFORMATION CONTACT: For questions concerning floor stocks tax, contact the National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (*FloorStocksTax@ttb.gov*, 513-684-3334 or 1-877-TTB-FAQS (1-877-882-3277)); for other questions concerning this document, contact Amy Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202-453-2265).

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Chapter 52 of the Internal Revenue Code of 1986 (IRC) contains permit, Federal excise tax payment, and related provisions regarding tobacco products and cigarette papers and tubes. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has authority to issue, deny, suspend, and revoke permits of manufacturers, importers, and export warehouse proprietors pursuant to regulations contained in parts 40, 41, 44, and 71 of title 27 of the Code of Federal Regulations (CFR). TTB also collects Federal excise taxes on tobacco products and cigarette papers and tubes

from proprietors of domestic bonded manufacturing premises pursuant to regulations contained in 27 CFR part 40; the Bureau of Customs and Border Protection (CBP) collects these taxes from importers of these products pursuant to regulations contained in title 19 of the CFR. TTB also has authority to regulate the importation and exportation of tobacco products and cigarette papers and tubes, and the removal of tobacco products and cigarette papers and tubes for use of the United States, under 27 CFR parts 41, 44 and 45, respectively. Under 27 CFR part 46, TTB has authority to administer floor stocks taxes and other miscellaneous matters involving these products.

The Children's Health Insurance Program Reauthorization Act of 2009

The Children's Health Insurance Program Reauthorization Act of 2009, (the Act), Public Law 111-3, was enacted on February 4, 2009. Section 701 of the Act increased the rates of Federal excise tax on tobacco products and cigarette papers and tubes removed from the factory or from internal revenue bond or from customs custody on or after April 1, 2009.

Section 701 of the Act also imposed a floor stocks tax on taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), and on cigarette papers and tubes, held for sale on April 1, 2009. The floor stocks tax rate is equal to the difference between the new Federal excise tax rate and the immediately prior rate. Persons likely to be holding articles for sale that are subject to the floor stocks tax include manufacturers, importers, and wholesale and retail dealers of these articles. The floor stocks tax provisions of section 701 also permit a credit against the floor stocks tax of \$500 or the amount of tax due, whichever is less, and also contain rules for handling articles in foreign trade zones and for controlled groups.

Section 702(b) of the Act amended 26 U.S.C. 5712 and 5713 to expand the basis for denial, suspension, and revocation of tobacco permits with effect from February 4, 2009.

Publication of Temporary Rule and Notice of Proposed Rulemaking

Based on the February 4, 2009, enactment and effective date of the changes to the criteria for denial, suspension, and revocation of permits and the April 1, 2009, effective date of the tax increases and floor stocks tax, TTB concluded that proper administration and enforcement of those statutory requirements necessitated the

immediate adoption of implementing regulations as a temporary rule to ensure that affected industry members would be able to act pursuant to the new regulatory requirements in a timely fashion. Accordingly, on March 31, 2009, TTB published in the **Federal Register** (74 FR 14479) a temporary rule, T.D. TTB-75, reflecting or implementing the sections of the law related to the tax rate increases, the changes to the criteria for denial, suspension, and revocation of permits, and the floor stocks tax. The temporary regulations took effect on the date of publication.

In the temporary rule, TTB amended the tobacco and cigarette papers and tubes regulations in parts 40, 41, 44, and 46 to reflect the new excise tax rates, provided examples of computations using the new tax rates, and revised subpart I of part 46 to implement the new floor stocks tax imposed by the Act. TTB also included the expanded basis for denial, suspension and revocation of tobacco permits in the pertinent sections of the TTB regulations, that is, in §§ 40.74, 40.332, 41.198, 44.92, 44.162, 71.46, and 71.49b.

In the Supplementary Information section of T.D. TTB-75, TTB provided a detailed summary of the changes brought about by sections 701 and 702(b) of the Act and also outlined the considerations that TTB applied while drafting the regulatory changes set forth in the temporary rule. In conjunction with the publication of T.D. TTB-75, TTB also published a notice of proposed rulemaking, Notice No. 93, in the **Federal Register** (74 FR 14506) on March 31, 2009. This notice invited the submission of public comments on the new regulations prescribed in T.D. TTB-75, with the comment period closing on June 1, 2009.

Discussion of Comments

TTB received seven comments on the temporary rule during the public comment period. Four of the commenters were individuals who did not indicate any organizational affiliation. The comments of these four individuals primarily concerned the terms of the legislation rather than any TTB interpretation reflected in the implementing regulations, and for this reason they are not pertinent to this final rule document. However, one of these commenters also posed two questions, which we describe and respond to below:

- Would using cigarette papers for marijuana affect the tax rate? No. The tax applies to the product as it is removed from the manufacturing

facility, and is not affected by the end use of the product.

- What is a cigarette tube? A cigarette tube is defined in 26 U.S.C. 5702 as a cigarette paper made into a hollow cylinder for use in making cigarettes.

Two commenters were tobacco company representatives. These commenters posed questions or submitted comments concerning marking and reporting requirements for "roll-your-own" tobacco. As noted in T.D. TTB-75, section 702(d) of the Act expanded the definition of "roll-your-own" tobacco to include tobacco for making cigars and tobacco for use as wrappers for cigars, effective April 1, 2009. The questions and comments on the definition of "roll-your-own" tobacco from these two commenters are not addressed in this final rule document because the definition change at issue and the related regulatory changes are the subject of a separate rulemaking, T.D. TTB-78, published in the **Federal Register** (74 FR 29401) on June 22, 2009.

Finally, the American Legacy Foundation, which identified itself as a national, independent public health foundation, commented that TTB's large cigar reporting rules should be amended to define cigarillos and provide for reporting of cigarillos separate from other large cigars. This commenter stated that "more refined information would make a valuable contribution to both tax and public health policy."

Since T.D. TTB-75 and Notice No. 93 did not address any changes to reporting categories, it would be inappropriate to consider any changes related to this issue in this final rule document. TTB may consider changes to its reporting requirements in the future if it finds it necessary to make such changes to protect the revenue.

Changes to the Temporary Regulations

As a result of a review of the temporary rule after its publication, TTB determined that it is necessary to include the following changes in this final rule document to correct errors that appeared in the regulatory texts contained in T.D. TTB-75:

- In 27 CFR 41.35, we are inserting the word "tubes" in place of "papers" in the chart showing the old and new tax rates for cigarette tubes.

- In 27 CFR 41.81(c)(4)(iii), 41.106(a)(6), and 41.110(f), we are inserting "of more than" in place of "equal to or more than". This change conforms the regulatory language to the statutory language in 26 U.S.C. 5701(a)(2).

- In 27 CFR 44.92, we are redesignating paragraphs (a)(2)(A)

through (a)(2)(C) as (a)(2)(i) through (a)(2)(iii).

Impact of T.D. TTB-78 on This Final Rule

As noted above, T.D. TTB-78 implemented other amendments made by the Act and included changes to the heading and text of § 40.25a and to the text of § 41.30, which superseded the regulatory amendments made by T.D. TTB-75. Accordingly, the T.D. TTB-75 amendments to these provisions are not adopted as part of this final rule action. In addition, T.D. TTB-78 revised the title and authority citation for part 41, and therefore we reflect the new title and authority citation in this final rule.

Adoption of Final Rule

Based on the rulemaking history outlined above, TTB has determined that, with the exception of the provisions superseded by T.D. TTB-78 noted above, the temporary regulations published in T.D. TTB-75 should be adopted as a final rule, with the corrections discussed above.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that these regulations will not have a significant economic impact on a substantial number of small entities. Any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), the temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and we received no comments.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

TTB has provided estimates of the burdens that the collections of information contained in these regulations impose, and the estimated burdens has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513-0129 and 1513-0030.

Under the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Comments concerning suggestions for reducing the burden of the collections of information in this document should be directed to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044-4412;
- 202-453-2686 (facsimile); or
- formcomments@ttb.gov (e-mail).

Drafting Information

Marjorie D. Ruhf of the Regulations and Rulings Division drafted this document. Other employees of the Alcohol and Tobacco Tax and Trade Bureau participated in its development.

List of Subjects

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 44

Aircraft, Armed Forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

The Regulatory Amendment

Accordingly, for the reasons discussed in the preamble and with the exception of the amendments to §§ 40.25a and 41.30, the temporary regulations published in the **Federal Register** at 74 FR 14479 on March 31, 2009, as T.D. TTB-75, are adopted as a final rule with the changes as discussed above and set forth below:

PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 1. The authority citation for part 41 continues to read as follows:

Authority: 26 U.S.C. 5701-5705, 5708, 5712, 5713, 5721-5723, 5741, 5754, 5761-5763, 6301, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 41.35 [Amended]

■ 2. In the table in § 41.35, in the column headed, "Product," the word "papers" is removed and the word "tubes" is added in its place wherever it appears.

§ 41.81 [Amended]

■ 3. In § 41.81, the first sentence of paragraph (c)(4)(iii) is amended by removing the words "equal to or more than" and adding, in their place, the words "of more than".

§ 41.106 [Amended]

■ 4. In § 41.106, paragraph (a)(6) is amended by removing the words "equal to or more than" wherever they appear and adding, in their place, the words "of more than".

§ 41.110 [Amended]

■ 5. In § 41.110, paragraph (f) is amended by removing the words "equal to or more than" wherever they appear and adding, in their place, the words "of more than".

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

■ 6. The authority citation for part 44 continues to read as follows:

Authority: 26 U.S.C. 448, 5701-5705, 5711-5713, 5721-5723, 5731-5734, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 44.92 [Amended]

■ 7. Section 44.92 is amended by redesignating paragraphs (a)(2)(A) through (a)(2)(C) as paragraphs (a)(2)(i) through (a)(2)(iii).

Signed: July 1, 2010.

John J. Manfreda,
Administrator.

Approved: July 1, 2010.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2010-17955 Filed 7-21-10; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0652]

RIN 1625-AA00

Safety Zone; Lyme Community Days, Chaumont Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for Lyme Community Days Fireworks on Chaumont Bay, Lyme, New York. All vessels are prohibited from transiting the zone except as specifically authorized by the Captain of the Port or a designated representative. This action is necessary and intended to ensure safety of life on navigable waters immediately prior to, during, and immediately after the fireworks event.

DATES: This rule is effective from 9:30 p.m. to 10 p.m. on July 24, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0652 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0652 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail MST2 Jessica Seguin, The Marine Events Coordinator, Coast Guard; telephone: 716-843-9353, e-mail: Jessica.L.Seguina@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary

to the public interest." 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 the permit application associated with this event was not received in time and given the risks to the public created by fireworks displays, delaying the publication of this rule would be contrary to the public interest.

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**. The permit application associated with this event was not received in time to provide for a 30 day period before making the rule effective and delaying the effective date would be contrary to the public interest because of the hazards to the public created by fireworks displays.

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Buffalo has determined that fireworks launches proximate to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of a fireworks display in conjunction with the Lyme Community Days Fireworks. The fireworks display will occur from 9:30 p.m. to 10 p.m. on July 24, 2010. The safety zone will encompass all waters of Chaumont Bay, Lyme, New York in a 210 ft radius from position 44°4'6.03" N and 76°8'54.61" W (DATUM: NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the minimal time that the area will be restricted. The Coast Guard expects this area will have an insignificant adverse impact to mariners from the zones activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit the specified portion of Chaumont Bay, New York from 9:30 p.m. until 10 p.m. on July 24, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only 30 minutes in a low vessel traffic area. Vessel traffic can pass safely around the zone. Before the effective period, we will issue maritime advisories, which include a Local Notice to Mariners and a Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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.ID, 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. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09-0652 to read as follows:

§ 165.T09-0652 Safety Zone; Lyme Community Days, Chaumont Bay, NY.

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of Chaumont Bay, Lyme, NY in a 210 ft radius from position 44°4'6.03" N and 076°8'54.61" W. (DATUM: NAD 83).

(b) *Enforcement period.* This zone will be enforced from 9:30 p.m. to 10 p.m. on July 3, 2010.

(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 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 on-scene 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 of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(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 or his on-scene representative may be contacted via VHF Channel 16.

(5) 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: July 2, 2010.

R.S. Burchell,

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

[FR Doc. 2010-17854 Filed 7-21-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0912281446-0111-02]

RIN 0648-XX54

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the directed harvest allocation total for the second seasonal period (July 1 - September 14) is projected to be reached by the effective date of this rule. From the effective date of this rule until September 15, 2010, Pacific sardine can only be harvested as part of the live bait fishery or incidental to other fisheries;

the incidental harvest of Pacific sardine is limited to 30-percent by weight of all fish per trip. Fishing vessels must be at shore and in the process of offloading at 12:01 am Pacific Daylight Time on date of closure.

DATES: Effective 12:01 am Pacific Daylight Time (PDT) July 22, 2010, through September 14, 2010.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: This document announces that based on the best available information recently obtained from the fishery and information on past effort, the directed fishing harvest allocation for the second allocation period (July 1 - September 14) will be reached and therefore directed fishing for Pacific sardine is being closed until September 15, 2010. Fishing vessels must be at shore and in the process of offloading at the time of closure. From 12:01 am on the date of closure through September 14, 2010, Pacific sardine may be harvested only as part of the live bait fishery or incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 30-percent by weight of all fish caught during a trip.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1 - December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509, if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine

fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel.

Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: July 19, 2010.

Emily H. Menashes,

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

[FR Doc. 2010-17961 Filed 7-21-10; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 75, No. 140

Thursday, July 22, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2010-BT-TP-0023]

RIN 1904-AC26

Energy Conservation Program for Consumer Products: Test Procedure for Microwave Ovens

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The U. S. Department of Energy (DOE) determined that the current active mode provisions in its test procedure for microwave ovens do not produce accurate and repeatable test results, and is also unaware of any test procedures that have been developed that address the concerns with the DOE microwave oven cooking efficiency test procedure. Elsewhere in today's **Federal Register**, DOE published a final rule to repeal the active mode test procedures for microwave ovens established pursuant to the Energy Policy and Conservation Act (EPCA). DOE is convening this public meeting to discuss and receive comments on several issues related to active mode test procedures for microwave ovens to consider in developing a new active mode microwave oven test procedure.

DATES: DOE will hold a public meeting on Thursday, September 16, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Thursday, September 2, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, September 9, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue, SW., Washington, DC 20585-0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586-2945. Please note that foreign nationals

visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures.

Any comments submitted must identify the notice of public meeting (NOPM) on the Test Procedure for Microwave Ovens, and provide the docket number EERE-2010-BT-TP-0023 and/or regulatory information number (RIN) 1904-AC26. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
2. *E-mail:* MWO-2010-TP-0023@ee.doe.gov. Include docket number EERE-2010-BT-TP-0023 and/or RIN 1904-AC26 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586-2945. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Anderson, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Tel.: (202) 586-7335. E-mail: Wes.Anderson@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue,

SW., Washington, DC 20585-0121. Tel.: (202) 586-7796. E-mail: Elizabeth.Kohl@hq.doe.gov.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. E-mail: Brenda.Edwards@ee.doe.gov.

SUPPLEMENTARY INFORMATION: Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291-6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles" for consumer products, including microwave ovens. (42 U.S.C. 6291(1)-(2) and 6292(a)(10)) Under the Act, this program consists essentially of three parts: testing, labeling, and establishing Federal energy conservation standards.

Manufacturers of covered products must use DOE test procedures to certify that their products comply with energy conservation standards adopted under EPCA and to represent the efficiency of their products. (42 U.S.C. 6295(s); 42 U.S.C. 6293(c)) DOE must also use DOE test procedures in any action to determine whether covered products comply with EPCA standards. (42 U.S.C. 6295(s)) Criteria and procedures for DOE's adoption and amendment of such test procedures, as set forth in EPCA, require that test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

DOE's test procedure for microwave ovens was established as part of an October 3, 1997, final rule that also revised the test procedures for other cooking products to measure their efficiency and energy use more

accurately. 62 FR 51976.¹ The microwave oven test procedure incorporates portions of the International Electrotechnical Commission (IEC) Standard 705–1998 and Amendment 2–1993, “Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes,” (IEC Standard 705)² and measures microwave oven cooking efficiency and energy factor (EF). *Id.* However, IEC Standard 705 has been declared obsolete by IEC, and the current IEC test procedure is IEC Standard 60705–2006, “Household microwave ovens—Methods of measuring performance” (IEC Standard 60705).

As part of the appliance standards analysis leading to a final rule published on April 8, 2009 (74 FR 16040), DOE tested 32 microwave ovens, and the Association of Home Appliance Manufacturers (AHAM) tested 21 additional units, for a total of 53 microwave ovens, according to the DOE microwave oven test procedure, using provisions from both IEC Standard 705 and IEC Standard 60705.³ DOE observed significant variability in the cooking efficiency measurements from both methods, and was unable to ascertain why similarly designed, equipped, and constructed microwave ovens showed varying efficiencies.⁴

Because DOE is not aware of other existing test procedures that produce representative and repeatable cooking efficiency measurements for microwave ovens, and because of the issues with using the existing DOE microwave oven test procedure, DOE has published a final rule elsewhere in today’s **Federal Register** to repeal the existing active mode provisions in the microwave oven test procedure.

The public meeting announced in today’s notice is the first step in considering the development of a new active mode test procedure for microwave ovens. DOE will work with industry and interested parties to discuss the various issues associated with the current microwave oven test

procedure, and to determine if any test methods are currently available to address these concerns.

DOE will make a presentation summarizing the current status and will initiate a discussion regarding any test procedures that could help address each issue. DOE encourages those who wish to participate in the meeting to make presentations that address these issues. If you would like to make a presentation during the meeting, please inform Ms. Edwards at least two weeks before the date of the meeting and provide her with a copy of your written material at least one week before the date of the meeting.

The meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law. After the meeting and a period for written statements, DOE will begin collecting data and developing a notice of proposed rulemaking for the microwave oven test procedure.

Issued in Washington, DC, on July 9, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–17774 Filed 7–21–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2008–BT–TP–0011]

RIN 1904–AB78

Energy Conservation Program for Consumer Products: Test Procedure for Microwave Ovens

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On October 17, 2008, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) in which DOE proposed test procedures for microwave ovens under the Energy Policy and Conservation Act (EPCA) to measure standby mode and off mode power use by microwave ovens. To address issues raised in comments responding to the NOPR, DOE conducted additional research and analysis. In today’s supplemental notice of proposed rulemaking (SNOPR), DOE proposes adopting definitions of modes

based on the relevant provisions from the IEC Standard 62301, *Household electrical appliances—Measurement of standby power*, Second Edition, Committee Draft for Vote (IEC Standard 62301 CDV), as well as language to clarify application of these provisions for measuring standby mode and off mode power consumption in microwave ovens. DOE will hold a public meeting to discuss and receive comments on the issues presented in this SNOPR.

DATES: DOE will hold a public meeting on Thursday, September 16, 2010, from 9 a.m. to 4 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Thursday, September 2, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, September 9, 2010.

DOE will accept comments, data, and information regarding this SNOPR before and after the public meeting, but no later than October 4, 2010. For details, see section V, “Public Participation”, of this SNOPR.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures.

Any comments submitted must identify the SNOPR on Test Procedures for Microwave Ovens, and provide the docket number EERE–2008–BT–TP–0011 and/or regulatory information number (RIN) 1904–AB78. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
2. *E-mail:* MicroOven-2008-TP-0011@ee.doe.gov. Include docket number EERE–2008–BT–TP–0011 and/or RIN 1904–AB78 in the subject line of the message.
3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th

¹ DOE’s active mode test procedure was formerly codified at appendix I to subpart B of Title 10 of the Code of Federal Regulations (CFR).

² IEC standards are available online at: <http://www.iec.ch>.

³ Both DOE’s and AHAM’s microwave oven samples contained units with manufacturer-rated output powers ranging from 700 to 1,300 W.

⁴ For more details of the cooking efficiency testing conducted as part of the appliance standards rulemaking, see the 2009 *Technical Support Document for Residential Dishwashers, Dehumidifiers, and Cooking Products and Commercial Clothes Washers*. Available online at http://www1.eere.energy.gov/buildings/appliance_standards/residential/cooking_products.html.

Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed original paper copy.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V (Public Participation) of this document.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Anderson, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Tel.: (202) 586–7335. E-mail: Wes.Anderson@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Tel.: (202) 586–7796. E-mail: Elizabeth.Kohl@hq.doe.gov.

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I. Background and Legal Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA or the Act) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) establishes the “Energy Conservation Program for Consumer Products Other Than Automobiles” for consumer products, including microwave ovens. (42 U.S.C. 6291(1)-(2) and 6292(a)(10)) Under the Act, this program consists essentially of three parts: Testing, labeling, and establishing Federal energy conservation standards.

Manufacturers of covered products must use DOE test procedures to certify that their products comply with energy conservation standards adopted under EPCA and to represent the efficiency of their products. (42 U.S.C. 6295(s); 42 U.S.C. 6293(c)) DOE must also use DOE test procedures in any action to determine whether covered products comply with EPCA standards. (42 U.S.C. 6295(s)) Criteria and procedures for DOE’s adoption and amendment of such test procedures, as set forth in EPCA, require that test procedures be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) In any rulemaking to amend a test procedure, DOE must determine to what extent the

proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

DOE is also required to amend the test procedures for covered products to address standby mode and off mode energy consumption and to integrate such energy consumption into the energy descriptor for that product unless the current test procedures already fully account for such consumption. If integration is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of IEC Standards 62301 [“Household electrical appliances—Measurement of standby power,” First Edition 2005–06 (IEC Standard 62301)^{1 2}] and IEC Standard 62087 [“Methods of measurement for the power consumption of audio, video, and related equipment,” Second Edition 2008–09]. *Id.* For microwave ovens, DOE must prescribe any such amendment by March 31, 2011. (42 U.S.C. 6295(gg)(2)(B)(vi))

Historically, DOE’s test procedure for microwave ovens appeared at appendix I to subpart B of Title 10 of the Code of Federal Regulations (CFR).³ That test procedure was part of an October 3, 1997, final rule that also revised the test procedures for other cooking products to measure their efficiency and energy use more accurately. 62 FR 51976. That final rule incorporated portions of the International Electrotechnical Commission (IEC) Standard 705–1998 and Amendment 2–1993, “Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes” to measure microwave oven cooking efficiency, but did not address energy use in the standby or off modes. *Id.*

DOE published a notice of proposed rulemaking (NORP) on October 17, 2008

¹ IEC standards are available for purchase at: <http://www.iec.ch>.

² Multiple editions of this standard are referenced in this SNOPR. Unless otherwise indicated, the terms “IEC Standard 62301” or “IEC Standard 62301 First Edition” refer to “Household electrical appliances—measurement of standby power” (First Edition, 2005–06).

³ As explained in more detail later in the preamble, DOE published a final rule to repeal the active mode test procedure for microwave ovens elsewhere in today’s **Federal Register**.

(hereafter referred to as the October 2008 TP NOPR), in which it proposed incorporating provisions from IEC Standard 62301 into the DOE active mode test procedure, as well as language to clarify application of these provisions for measuring standby mode and off mode power in microwave ovens. The October 2008 TP NOPR also proposed correcting a technical error in the calculation of microwave test cooking energy output. 73 FR 62134 (Oct. 17, 2008). DOE held a public meeting on November 14, 2008 (hereafter referred to as the November 2008 public meeting), to hear oral comments on and solicit information relevant to the October 2008 TP NOPR. Interested parties remarked upon, among other things, harmonization of standards and test procedures with those of other countries and international agencies. In particular commenters urged DOE to consider IEC Standard 62301 Second Edition, which was in the process of being finalized and published.

After the October 2008 TP NOPR was published, DOE determined that it would consider the revised version of IEC Standard 62301, *i.e.*, IEC Standard 62301 Second Edition, in the microwave oven test procedure rulemaking. The revised version was expected in July 2009. DOE anticipated, based on review of drafts of the updated IEC Standard 62301, that the revisions could include different mode definitions.

DOE later received information that IEC Standard 62301 Second Edition is not expected to be issued until late 2010. Because EPCA requires DOE to establish test procedures for standby and off mode by March 31, 2011 and DOE is conducting a concurrent energy conservation standards rulemaking for standby and off mode energy use, discussed below, DOE publishes today's SNOPR to consider the new mode definitions from the most recent draft version of IEC Standard 62301, designated as IEC Standard 62301 Second Edition, Committee Draft for Vote (IEC Standard 62301 CDV). IEC Standard 62301 CDV contains proposed amendments to IEC Standard 62301, including new mode definitions based on those proposed in IEC Standard 62301 Second Edition, Committee Draft 2 (IEC Standard 62301 CD2)⁴ and which address comments received by interested parties in response to IEC Standard 62301 CD2. As a result of this continued refinement on the basis of public comment, DOE believes that these most recent mode definitions

represent the best definitions available for the analysis in support of today's SNOPR.

As stated in the previous paragraph, DOE is considering amended microwave oven energy conservation standards addressing standby and off mode energy use concurrently with the test procedure rulemaking process. The National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100-12), which amended EPCA, established prescriptive standards for kitchen ranges and ovens, but no standards were established for microwave ovens. 42 U.S.C. 6295(h) The NAECA amendments also required DOE to conduct two cycles of rulemakings to determine whether to revise the standard. DOE undertook the first cycle of these rulemakings and issued a final rule on September 8, 1998 (63 FR 48038), in which DOE found that no amended standards were justified for electric cooking products, including microwave ovens.

DOE initiated the second cycle of energy conservation standards rulemakings for cooking products by publishing a framework document covering, in part, microwave ovens, and giving notice of a public meeting and the availability of the document. 71 FR 15059 (March 27, 2006). In its subsequent advance notice of proposed rulemaking (ANOPR) (72 FR 64432, Nov. 15, 2007; hereafter the November 2007 ANOPR) concerning energy conservation standards for commercial clothes washers and residential dishwashers, dehumidifiers, and cooking products, including microwave ovens (hereafter referred to as the appliance standards rulemaking), DOE determined that energy consumption by microwave ovens in the standby mode represents a significant portion of microwave oven energy use, and that a standard regulating such energy consumption would likely have significant energy savings. 72 FR 64432, 64441-42 (Nov. 15, 2007). Before standby power could be included in an efficiency standard for microwave ovens, however, test procedures for the measurement of standby power would be required. *Id.*

On December 13, 2007, DOE held a public meeting to receive and discuss comments on the November 2007 ANOPR (hereafter referred to as the December 2007 public meeting). At the December 2007 public meeting, DOE presented for discussion the possibility that test standard IEC Standard 62301 First Edition could be incorporated by reference into DOE's microwave oven test procedure to measure standby power. DOE also discussed clarifications to the IEC Standard 62301

test conditions at the December 2007 public meeting, including a requirement that, if the measured power is not stable, the standby mode power test would be run for a period of 12 hours with an initial clock setting of 12 a.m. This would permit more accurate measurement of average standby power consumption.

DOE published a NOPR for the appliance standards rulemaking on October 17, 2008, in which it tentatively concluded that a standard for microwave oven standby mode and off mode energy consumption would be technologically feasible and economically justified. 73 FR 62034. DOE received responses to the NOPR from interested parties regarding the harmonization of standards and test procedures with those of other countries and international agencies. As a result of these comments, DOE decided to consider the revised version of IEC Standard 62301 (*i.e.*, IEC Standard 62301 Second Edition) in the development of energy conservation standards for the standby mode and off mode power consumption of microwave ovens. As stated above, issuance of the revised version was expected in July 2009 but is now expected in late-2010, and as a result, DOE is considering the most recent draft version IEC Standard 62301 CDV for today's SNOPR.

In a final rule published on April 8, 2009 (74 FR 16040), DOE established amended standards for gas cooking products, but again found that no active mode cooking efficiency standards were justified for electric cooking products, including microwave ovens. This rulemaking completed the second cycle of rulemakings required by the NAECA amendments to EPCA. (42 U.S.C. 6295(h)(2))

In its analysis for the second cycle of rulemakings, DOE determined that the microwave oven test procedure provisions to measure cooking efficiency do not produce accurate and repeatable test results. DOE is unaware of any test procedures that have been developed that address the concerns with the DOE microwave oven cooking efficiency test procedure. DOE, therefore, repealed the regulatory provisions establishing the cooking efficiency test procedure for microwave ovens under EPCA in a final rule published elsewhere in today's **Federal Register**. DOE has also published a notice of a public meeting to discuss a separate rulemaking process to establish new provisions for measuring microwave oven energy efficiency in active (cooking) mode in today's **Federal Register**.

⁴ IEC Standard 62301 CD2 was the draft version immediately preceding IEC Standard 62301 CDV.

II. Summary of the Proposed Rule

In the October 2008 TP NOPR and this SNOPR, DOE proposes amending its test procedures for microwave ovens to:

(1) Assist DOE in the concurrent development of energy conservation standards that address use of standby mode and off mode power by this product.

(2) Address the statutory requirement to establish procedures for the measurement of standby mode and off mode power consumption.

In the October 2008 TP NOPR, DOE proposed incorporating by reference specific clauses from IEC Standard 62301 regarding test conditions and testing procedures for measuring the average standby mode and average off mode power consumption into the microwave oven test procedure.⁵ These proposals are not affected by this SNOPR, though DOE proposes in this SNOPR to incorporate two additional clauses from IEC Standards 62301, as described in more detail below. DOE also proposes in this SNOPR to incorporate into the microwave oven test procedure definitions of “active mode,” “standby mode,” and “off mode” that are based on the definitions provided in IEC Standard 62301 CDV. DOE further proposes language to clarify the application of clauses from IEC Standard 62301 for measuring standby mode and off mode power in this SNOPR. Specifically, DOE proposes defining the test duration for cases in which the measured power is not stable (*i.e.*, varies over a cycle), recognizing that the power consumption of microwave oven displays can vary based on the displayed clock time.

The EISA 2007 amendments to EPCA direct DOE to amend the microwave oven test procedure to integrate energy consumption in standby mode and off mode into the overall energy descriptor. (42 U.S.C. 6295(gg)(2)(A)) If that is technically infeasible, DOE must instead prescribe a separate standby mode and off mode energy use test procedure, if technically feasible. *Id.*

In response to the October 2008 TP NOPR, DOE received comments from interested parties regarding the accuracy and repeatability of the existing DOE

microwave oven test procedure for measuring cooking efficiency. Because of issues DOE identified with using its existing microwave oven test procedure, including the large test-to-test variation in cooking efficiency measurements, and because DOE is unaware of any test procedures that have been developed that address the concerns with the DOE microwave oven cooking efficiency test procedure raised by these interested parties, DOE repealed the provisions in the existing microwave oven test procedure relating to the measurement of cooking efficiency and energy factor (EF) elsewhere in today's **Federal Register**. Therefore, the requirement to integrate energy consumption in standby mode and off mode into an overall energy descriptor does not apply. DOE also published a notice in today's **Federal Register** announcing a public meeting to consider developing a new test procedure for active mode energy consumption of microwave ovens, and DOE will consider the statutory requirement to integrate the test procedures for standby and off mode as any active mode test procedures are developed.

As noted above, EPCA requires that DOE determine whether a proposed test procedure amendment would alter the measured efficiency of a product, thereby requiring adjustment of existing standards. (42 U.S.C. 6293(e)) Because there are currently no Federal energy conservation standards for microwave ovens (including energy use in the standby and off modes), such requirement does not apply to this rulemaking. DOE is conducting a concurrent rulemaking process to consider standby and off mode energy conservation standards and will consider this test procedure rulemaking as any standards are developed.

III. Discussion

A. Products Covered by This Test Procedure Rulemaking

This proposal would amend the test procedures for kitchen ranges and ovens to include test procedures for the measurement of standby mode and off mode power use for microwave ovens. This proposal would also clarify that the definition of “microwave oven” in 10 CFR 430.2 includes microwave ovens with or without thermal elements designed for surface browning of food and combination ovens.

DOE defines “microwave oven” as “a class of kitchen ranges and ovens which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy.” 10 CFR 430.2. In the

October 2008 TP NOPR, DOE stated that the proposed amendments would establish test procedures for all microwave ovens for which the primary source of heating energy is electromagnetic (microwave) energy, including microwave ovens with or without thermal elements designed for surface browning of food. DOE stated that the proposal did not address test procedures for combination ovens (*i.e.*, ovens consisting of a single compartment in which microwave energy and one or more other technologies, such as thermal or halogen cooking elements or convection systems, contribute to cooking the food). DOE noted that the proposal also did not propose test procedures for the type of cooking appliance classified by DOE regulations as a microwave/conventional range, which has separate compartments or components consisting of a microwave oven, a conventional oven, and a conventional cooking top. DOE requested data on the efficiency characteristics of combination ovens in the November 2007 ANOPR, but did not receive any information. DOE also noted in the October 2008 TP NOPR that if this information is made available at a later date, DOE may consider combination ovens in future proceedings. 73 FR 62134, 62137 (Oct. 17, 2008).

The Association of Home Appliance Manufacturers (AHAM), GE Consumer & Industrial (GE), Pacific Gas & Electric (PG&E), Whirlpool Corporation (Whirlpool), and Earthjustice (EJ) commented that the proposed definition for products covered by this test procedure was unclear, seeking clarification on the definition of a “microwave oven” and “combination oven” and whether combination ovens would be covered by the test procedure. (AHAM, No. 8 at pp. 1–2; GE, Public Meeting Transcript, No. 7 at pp. 16–17; PG&E, Public Meeting Transcript, No. 7 at pp. 24–25, 32; Whirlpool, Public Meeting Transcript, No. 7 at p. 21; EJ, Public Meeting Transcript, No. 7 at pp. 24, 32)

The Appliance Standards Awareness Project (ASAP) questioned the need to determine whether combination ovens fall within the definition of a microwave oven for this rulemaking, because the rulemaking is focused on standby power. (ASAP, Public Meeting Transcript, No. 7 at p. 26) GE cited DOE's statement in the October 2008 TP NOPR that the proposal does not provide test procedures for combination ovens because DOE did not have sufficient efficiency characteristic data to include these products in the rulemaking, but that microwave ovens

⁵ DOE also proposed in the October 2008 TP NOPR a technical correction to the equation for calculating the microwave oven test cooking energy output which, as stated at the time in the test procedure, produced a value with incorrect units. Because DOE published a final rule elsewhere in today's **Federal Register** that eliminated provisions for measuring microwave oven cooking energy use, including the calculation of test cooking energy output, DOE no longer is proposing such a technical correction.

with or without thermal elements are included. GE also stated that the proposed definition for microwave ovens is unclear, inconsistent with current regulations, and leads to confusion about what is a covered product. (GE, No. 9 at pp. 2–3) GE suggested that DOE review available data, determine the types of products used to generate the data, and include them in the rulemaking if there is adequate data. GE added that, if there is insufficient characteristic data to support DOE's analysis, these products should be excluded. GE also requested clarification on microwave ovens with thermal elements, because there are microwave ovens that also grill or brown. GE stated that there are units that have modes that are grill-only and microwave-only, but if there was a combination microwave-grill cycle that would classify it as a combination unit. (GE, Public Meeting Transcript, No. 7 at pp.16–17)

AHAM, likewise, noted no mention of "thermal elements designed for surface browning of food" in the definition in 10 CFR 430.2, and added that the proposed definition for microwave ovens is inconsistent with current regulations. AHAM urged DOE to clarify these definitions through a transparent process involving all interested parties. (AHAM, No. 8 at p. 2) Whirlpool added that they manufacture a product, and believes GE does as well, that can work as a microwave only, work as a convection oven, or in combination and questioned whether this would be a covered product. (Whirlpool, Public Meeting Transcript, No. 7 at p. 21)

ASAP commented that they understood a microwave grill to be a microwave and not a combination oven, questioned whether such a unit with a combined cooking cycle would be considered a covered product, and asked whether DOE had information indicating that combination ovens cannot be measured under the test procedure proposed in the October 2008 TP NOPR. (ASAP, Public Meeting Transcript, No. 7 at p. 18) PG&E stated that for products with browning functions that cook by microwave energy, the controls could be set to use only the browning function, in which case the product would not be covered (PG&E, Public Meeting Transcript, No. 7 at pp. 19–20), and noted that many microwaves in homes also have functions which would cause them to be classified as combination ovens. (PG&E, Public Meeting Transcript, No. 7, pp. 21–22) EJ stated that even a combination product would still be considered a household cooking appliance that consists of a compartment designed to

cook or heat food using microwave energy. (EJ, Public Meeting Transcript, No. 7 at p. 24)

ASAP, Alliance to Save Energy (ASE), American Council for an Energy-Efficient Economy (ACEEE), Natural Resources Defense Council (NRDC), Northeast Energy Efficiency Partnerships (NEEP), Northwest Power and Conservation Council (NPCC), and Southern California Edison (SoCal Edison) in a joint comment (hereafter "Joint Comment") supported the application of the proposed standard and test procedure to at least the category of microwave ovens specified in the October 2008 TP NOPR, and supported their application to all microwave ovens, including combination ovens, in the absence of evidence that the proposed standard and test procedure are unreasonable. (Joint Comment, No. 11 at pp. 1–2) The Joint Comment supported Whirlpool's assertion that DOE appears to be creating a new product definition, and stated that, although DOE's proposed exclusion of combination ovens does not appear in the draft text of either the proposed microwave oven efficiency standard or revision to the test procedure, the plain reading of the October 2008 TP NOPR makes it clear that some portion of this product class is proposed to be carved out for separate treatment. The Joint Comment pointed out that manufacturers have not presented evidence that the proposed test procedure *per se* is impractical or unworkable for any class of microwave ovens and recommended that the test procedure be finalized as proposed, so that standby and off mode power use of all microwave ovens can be measured, and leave the coverage of the efficiency standard to the efficiency standard rulemaking. (Joint Comment, No. 11 at p. 2)

ASAP noted that DOE elected to move the test procedure modification for microwave ovens forward to incorporate standby mode while the remainder of cooking products will be addressed by the EISA 2007 statutory date, and inquired about the interpretation that combination ovens would thus be addressed in the 2011 rulemaking. (ASAP, Public Meeting Transcript, No. 7 at pp. 29–31)

GE noted that the majority of over-the-range units are microwave only and are not combination modes (GE, Public Meeting Transcript, No. 7 at p. 33) and combination ovens represent a smaller segment of the market. (GE, Public Meeting Transcript, No. 7 at pp. 28–29) EJ commented that although combination ovens are a very small portion of the market, they represent

higher-end units that presumably would be the ones with the thermal elements and are more likely to have high-intensity displays, maybe with backing fluorescents. EJ pointed out that DOE could be allowing manufacturers to have excessive standby consumption on those products deemed to be combination ovens, if they are not covered. (EJ, Public Meeting Transcript, No. 7 at p. 32)

The Joint Comment also noted that excluding subclasses of microwave ovens that comprise a significant share of the total microwave oven market from the coverage of the standby efficiency standard could invite actions by States to set efficiency standards for those uncovered products. (Joint Comment, No. 11 at p. 2) PG&E suggested clarifying what products are covered, because California and PG&E intend to pursue a state standard for combination ovens. (PG&E, Public Meeting Transcript, No. 7 at pp. 24–25) PG&E also stated that it would advocate in California for a prescriptive standard covering just standby energy use of combination ovens to bring it in line with microwave-only products. (PG&E, Public Meeting Transcript, No. 7 at p. 32)

In response, DOE first notes that, for this SNOPR, it conducted a survey of microwave oven models currently available on the U.S. market, including countertop, over-the-range, and built-in configurations. DOE determined that fewer than 1 percent of the available models (1 out of 129) have thermal elements for grilling but no convection capability, while 16 percent (21 out of 129) are combination units (microwave + convection and possibly thermal elements). Although DOE does not have shipment-weighted data regarding the percentage of microwave ovens with thermal elements for grilling or combination ovens, DOE does not believe that including microwave ovens with thermal elements only, with or without further specification of the function of the thermal elements, would substantially affect the number or scope of covered products in this rulemaking. DOE proposes to clarify that microwave ovens with thermal elements only would be considered covered products under the definition provided in 10 CFR 430.2. Based on DOE's product literature review for the single available microwave oven with thermal elements only, DOE believes that the standby and off mode operation for microwave ovens with thermal elements only does not differ from that of microwave-only units.

DOE also proposes to clarify that combination microwave ovens (*i.e.*,

microwave ovens that incorporate convection features and possibly other means of cooking) would be considered covered products under the regulatory definition in 10 CFR 430.2 because they are capable of cooking or heating food by means of microwave energy. As a result, DOE analyzed the features and operation of these products, conducting in-store surveys and product literature reviews, to determine if additional testing procedures would be required that differ from the testing procedures for microwave-only units. DOE recognizes that combination ovens may have more sophisticated displays and menu screens, as well as additional features associated with active mode operation (*i.e.*, fans, heater elements, etc.) that may require larger power supplies than a microwave-only unit and therefore may consume more power in standby or off mode. However, based on its preliminary analysis, DOE believes that the general standby and off mode operation for combination microwave ovens does not differ from that of microwave-only units and microwave ovens with thermal elements only. The standby mode operation for combination microwave ovens, as with other types of microwave ovens, consists of an energized display with a clock.

This SNOPR does not affect DOE's proposal from the October 2008 TP NOPR that the test procedure would cover microwave ovens with and without browning (thermal) elements. However, this SNOPR clarifies what is meant by a combination oven and revises the proposal to include microwave ovens that incorporate convection systems as products to which the test procedures would be applicable. Because DOE tentatively determines that the operation in standby and off mode for microwave-only units, microwave ovens with thermal elements only, and combination microwave ovens is the same, DOE is proposing that the same test procedure amendments for standby and off mode testing, discussed in the sections below, be used for all of these product types. DOE welcomes comment on this determination and whether there are additional standby and off modes or other product features for each particular type of microwave oven that would require separate testing procedures.

B. Effective Date for the Test Procedure and Date on Which Use of the Test Procedure Would Be Required

As indicated above, EPCA requires that the microwave oven test procedure be amended to incorporate measurement of standby mode and off

mode power by March 31, 2011. While DOE published a NOPR on October 17, 2008 and subsequently a final rule on April 8, 2009 for the appliance standards rulemaking, DOE determined it appropriate to consider the revised IEC Standard 62301 Second Edition, expected in July 2009, in determining whether to adopt energy conservation standards for the standby mode and off mode power consumption of microwave ovens. As noted in section I, DOE was later notified that the revised IEC Standard 62301 would not be available until late 2010, and determined to publish today's SNOPR to consider the new mode definitions from the language in IEC Standard 62301 CDV.

The effective date of the standby and off mode test procedures would be 30 days after the date of publication in the **Federal Register** of any final rule in this test procedures rulemaking. However, DOE's amended test procedure regulations codified in the CFR would clarify that the procedures and calculations proposed in today's SNOPR need not be performed to determine compliance with energy conservation standards until compliance with any final rule establishing amended energy conservation standards for microwave ovens in standby mode and off mode is required. However, the standby mode and off mode energy consumption test procedures would need to be used by manufacturers for making any representations on standby and off mode power consumption. Specifically, clarification would also be provided that, as of 180 days after publication of any test procedure final rule, any representations as to the standby mode and off mode energy consumption of the products that are the subject of this rulemaking would need to be based upon results generated under the applicable provisions of this test procedure. (42 U.S.C. 6293(c)(2))

AHAM suggested DOE harmonize its effective date with the 2013 effective date for a 1-Watt (W) standard in other countries (AHAM, Public Meeting Transcript, No. 7 at p.10), noting that many other countries are moving to 1-W standby requirements or targets for reporting, and the European Union (EU) is moving towards manufacturer self-reporting. AHAM stated that DOE's proposed standards are going to be one of the most stringent in the world (AHAM, Public Meeting Transcript, No. 7 at pp. 34–35), and as Europe is on the forefront of standby power guidelines and clarifications (AHAM, Public Meeting Transcript, No. 7 at p. 9), DOE must ensure that test procedures are as thorough and current as possible and capable of harmonization with

international standards. (AHAM, No. 8 at p.1)

AHAM cited deficiencies in the proposed microwave oven test procedure and suggested that the test procedure be modified and reviewed based on the original timeline of March 31, 2011, for incorporation of standby power into kitchen ranges and ovens. This, AHAM suggested, would ensure that the test procedure is accurate and consistent across all products and within the international community. (AHAM, No. 8 at p. 4) GE and Whirlpool agreed with AHAM's comments regarding the status and condition of the proposed test procedure (GE, No. 9 at p. 2; Whirlpool, No. 10, at p.1), and Whirlpool also noted that the EU has promulgated a standard for standby and off mode energy consumption (1–W standby mode, 0.5–W off mode) using a draft of IEC Standard 62301, with an effective date of January 2013. Whirlpool asserted that consumers would benefit from lower product costs if manufacturers were able to plan for one harmonized effective date for standards in the United States and Europe. (Whirlpool, No. 10 at p.1)

As noted above, DOE determined it appropriate to consider the revised IEC Standard 62301 Second Edition, expected in July 2009, in developing energy conservation standards for microwave oven standby and off mode power consumption. DOE was later notified that the revised IEC Standard 62301 would not be available until late-2010 and, therefore, determined to consider the language from IEC Standard 62301 CDV. DOE noted that the EU recently enacted the Commission Regulation (EC) No. 1275/2008 of December 17, 2008, implementing design requirements for standby and off mode power for electrical and electronic household and office equipment, including microwave ovens. The regulation specifies the maximum allowable power consumption for standby mode and off mode with phased effective dates in 2010 and 2013. Although these international effective dates are not the basis for DOE's energy conservation standards rulemaking schedule for microwave ovens, DOE's determination to consider the language from IEC Standard 62301 CDV as this rulemaking proceeds will result in a methodology and an effective date which are harmonized to the extent possible with certain international standby and off mode standards.

GE commented that it could be difficult for manufacturers to meet the 1–W standard while providing consumer utility, especially for over-the-range units, which, according to GE,

cannot use Light Emitting Diode (LED) and Liquid Crystal Display (LCD) technologies. GE stated that the power consumption of LEDs varies as a function of what is illuminated, but Vacuum Fluorescent Displays (VFDs) have the same power draw even when the display is off. (GE, Public Meeting Transcript, No. 7 at p. 67) DOE plans to address issues regarding the technological feasibility and economic justification of proposed energy conservation standards for standby and off mode energy consumption for microwave ovens as part of the concurrent appliance standards rulemaking rather than this test procedure rulemaking.

The Joint Comment stated that deferring the microwave oven test procedure revision until after the finalization of the cooking products rule will result in the exclusion of subclasses of microwave ovens, which would imply that States could set efficiency standards for these products. The Joint Comment further stated that, in this case, some States may not realize these energy savings until 2020—the earliest effective date for a subsequent federal cooking products rulemaking—but cost-effective methods to reduce unnecessary standby consumption from microwave ovens are more immediately available. (Joint Comment, No. 11 at p. 2) As discussed above, DOE is considering energy conservation standards for microwave oven standby mode and off mode energy consumption in a concurrent rulemaking process.

C. Measures of Energy Consumption

Historically, DOE's microwave oven test procedure provided for the calculation of several measures of energy consumption, including cooking efficiency, energy factor (EF), and annual energy consumption, and DOE's rulemaking analyses have used EF as the energy conservation metric for microwave ovens.^{6,7}

A number of commenters provided input on the integration of standby and off mode test procedures in response to the October 2008 TP NOPR, in which DOE proposed separate metrics (average standby mode power (P_{SB}) in W and average off mode power (P_{OFF}) in W, rather than EF) to measure standby

mode and off mode power given the measurement variability in the active mode test procedure and related concerns. 73 FR 62134, 62139 (Oct. 17, 2008).

AHAM commented that it is not practical to include standby and off mode power into a single energy descriptor because standby power is a substantial fraction of the overall energy use of a microwave oven (AHAM, No. 8 at pp. 3–4), while the Joint Comment supported DOE's conclusion for a separate metric. (Joint Comment No. 11 at p. 4) Whirlpool agreed that, although a combination energy descriptor is arithmetically possible, such a metric would be illogical and should not be pursued. (Whirlpool, No. 10 at p. 1) PG&E commented that microwave ovens do not have high annual energy usage, and that the range of cooking efficiency between the best and the worst is only 5–7 percent; this implies that cooking efficiency is not a significant opportunity for regulation, but that standby efficiency is significant. (PG&E Public Meeting Transcript, No. 7 at p. 41)

ASAP also cited substantial problems with the test procedure for measuring cooking efficiency that have not yet been addressed, including a lack of repeatable and consistent results and the possibility that the challenge of dealing with cooking efficiency is being compounded by rating the cooking efficiency of combination ovens in their various cooking modes. (ASAP, Public Meeting Transcript, No. 7 at p. 25) PG&E noted that heat transfer in a microwave oven depends on the specific resistivity of the load, and that pure water has relatively low specific resistivity, and items that might be cooked in a microwave oven would have more salt and thus absorb microwave energy more efficiently than pure water. PG&E noted that, while water is easily obtainable for testing, using it probably results in lower cooking efficiency measurements than would be expected from using actual food products. (PG&E, Public Meeting Transcript, No. 7 at pp. 44–45)

DOE addressed the issues with the cooking efficiency measurement in its repeal of the active mode test procedure and notice announcing a public meeting to discuss the development of new active mode test procedure published elsewhere in today's **Federal Register**. DOE also believes that it is infeasible to specify a food load in the test procedure at this time. Specification of a food load would require additional analysis and inputs from interested parties to understand what a representative food load is and how to ensure consistency in food properties from test to test. DOE

is unaware of any test procedures that have been developed that address the concerns with the DOE microwave oven cooking efficiency test procedure discussed above. DOE is also unaware of any research or data on consumer usage indicating what a representative food load would be, or any data showing how changes to the representative test load would affect the measured EF or repeatability of test results. For these reasons, DOE proposes only to establish the test procedure for microwave ovens to address standby mode and off mode energy consumption in today's SNOPR. However, DOE welcomes consumer usage data on representative food loads, as well as data indicating how changes to the test load would affect the measured EF and on the repeatability of such test results.

D. Incorporating by Reference IEC Standard 62301 for Measuring Standby Mode and Off Mode

EPCA, as amended by EISA 2007, requires that DOE consider the most current versions of IEC Standards 62301 and 62087 when amending test procedures to include standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A))

DOE noted in the October 2008 TP NOPR that IEC Standard 62301 provides for the measurement of standby power in electrical appliances, including microwave ovens, and, thus, is applicable to the proposed amendments to the test procedure. As discussed in more detail below, the SNOPR does not affect DOE's proposal of the clauses from sections 4 and 5 of IEC Standard 62301 identified in the October 2008 TP NOPR, but proposes to incorporate by reference two additional paragraphs in response to comments. DOE also reviewed IEC Standard 62087, which specifies methods of measurement for the power consumption of TV receivers, VCRs, set top boxes, audio equipment, and multi-function equipment for consumer use. IEC Standard 62087 does not, however, include measurement for the power consumption of electrical appliances such as microwave ovens. Therefore, DOE determined that IEC Standard 62087 was not suitable for the proposed amendments to the microwave oven test procedure for this rulemaking. 73 FR 62134, 62139 (Oct. 17, 2008).

In considering IEC Standard 62301, DOE noted that the microwave oven standby power data that AHAM provided to DOE for the energy conservation standards rulemaking were based on measurements of standby power in accordance with IEC Standard 62301, as were the data DOE gathered in response to interested parties'

⁶ As stated previously, DOE published a final rule elsewhere in today's **Federal Register** repealing the active mode test procedure for microwave ovens because of measurement variations incurred through use of the test procedure.

⁷ DOE previously defined microwave oven EF in 10 CFR 430.23 (i)(2) as the ratio of (Annual Useful Cooking Energy Output/Annual Total Energy Consumption), which was equivalent to microwave cooking efficiency (Test Energy Output/Test Energy Consumption).

comments on the framework document in that rulemaking. As stated in the October 2008 TP NOPR, DOE conducted a test program to analyze the suitability of IEC Standard 62301 for incorporation into the DOE microwave oven test procedure. Specifically, DOE sought to determine whether the IEC Standard 62301 test conditions and procedures would be suitable for incorporation into the DOE test procedure for microwave ovens to measure standby mode power use. Test data affirm that, with additional specifications added for test cycle duration and starting clock time, IEC Standard 62301 appears suitable for inclusion in the DOE test procedure for that purpose. 73 FR 62134, 62139 (Oct. 17, 2008).

In the October 2008 TP NOPR, DOE also considered harmonization of test procedures with international standby programs, such as the International Energy Agency (IEA) "1-Watt Plan."⁸ DOE stated that it believes that incorporating IEC Standard 62301 into the DOE test procedure will provide harmonization with most international standards for standby power in microwave ovens. 73 FR 62134, 62140 (Oct. 17, 2008).

In the October 2008 TP NOPR, DOE also proposed incorporating specific clauses from IEC Standard 62301 by reference into the DOE test procedure for microwave ovens for the measurement of standby and off mode power. These clauses provide test conditions and testing procedures for measuring the average standby mode and average off mode power consumption: section 4 of IEC Standard 62301 provides conditions for the supply voltage waveform, ambient room air temperature, and power measurement meter tolerances to provide for repeatable and precise measurements of standby mode and off mode power consumption; and section 5 of IEC Standard 62301 clarifies the measurement of standby mode for units with a short-duration higher power state before a lower power state, and provides methods for measuring standby mode and off mode power when the power measurement is stable and unstable (*i.e.*, varies over a representative cycle). *Id.* Thus, DOE proposed incorporating the same clauses from IEC Standard 62301 for measuring both standby mode and off mode power consumption.

DOE also stated in the October 2008 TP NOPR that it believes that the proposed amendments to the microwave oven test procedure would provide a

uniform and widely accepted test method for measuring standby mode and off mode power consumption. DOE also believes that the proposed amendments to the microwave oven test procedure would provide a method to measure the standby energy use of not just the clock display, but all microwave oven components, such as control electronics and power supply losses. *Id.*

Finally, DOE recognized that the IEC is developing an updated test procedure (IEC Standard 62301 Second Edition). As discussed above, DOE proposed microwave oven test procedure amendments using IEC Standard 62301 First Edition 73 FR 62314, 62140–41 (Oct. 17, 2008). DOE also stated in the October 2008 TP NOPR that the IEC projected publication of the new test procedure in July 2009. DOE now understands that the revised IEC test procedure is not expected to be published until late 2010. For purposes of the EPCA requirement to consider the most current version of IEC Standard 62301, therefore, DOE considered IEC Standard 62301 First Edition for the October 2008 NOPR and this SNO PR. (42 USC 6295(gg)(20)(A).

AHAM supports the inclusion of Section 4 and Section 5 from IEC Standard 62301 into the measurement of standby power. (AHAM, Public Meeting Transcript, No. 7 at pp. 52–53), but commented that DOE does not specify how the microwave oven should be set up during testing. AHAM also noted that DOE references IEC Standard 62301 Paragraph 5.1 "General" and Paragraph 5.3 "Procedure," but neglects to reference Paragraph 5.2 "Preparation of Appliance or Equipment." AHAM asserted that this step is crucial to a robust procedure, and that DOE should accept the clarification from IEC Standard 62301, Section 5.2 that "[t]he appliance shall be tested at factory or 'default' settings. Where there are no indications for such settings, the appliance shall be tested as supplied." (AHAM, No. 8 at p. 3) The Joint Comment supported this recommendation. (Joint Comment, No. 11 at p. 4) GE also deemed the October 2008 TP NOPR unclear on how the unit should be set up for the standby measurement, and reinforced the importance of harmonizing with IEC Standard 62301. (GE, No. 9 at p. 3)

DOE agrees that incorporating paragraph 5.2, "Selection and preparation of appliance or equipment," of IEC Standard 62301 provides clarification to the installation requirements for standby mode and off mode energy consumption testing. DOE also agrees that paragraph 5.2 of IEC Standard 62301 provides additional

guidance regarding specifications for test setup that would result in a measure of standby and off mode energy consumption that best replicates actual consumer usage. For these reasons, DOE proposes in today's SNO PR to incorporate by reference paragraph 5.2 of IEC Standard 62301.

PR China underscored the importance of taking into account the accuracy of the equipment providing electrical supply for testing; pointing out that IEC Standard 62301 has a provision that the electrical supply should be 120 volts (V) ± 1 percent and 60 Hertz (Hz) ± 1 percent. PR China also noted that, according to Article 2.4 of the World Trade Organization/Technical Barriers to Trade Agreement (WTO/TBT Agreement),⁹ members should use existing technical regulations and international standards as a basis for their technical regulations. PR China recommended that DOE adopt the same requirements as those in IEC Standard 62301 or provide reasonable scientific basis for having different requirements. (PR China, No. 12 at p. 3)

DOE notes that section 4.3 of IEC Standard 62301 specifies the electrical supply requirements, stating that "where this standard is referenced by an external standard or regulation that specifies a test voltage and frequency, the test voltage and frequency so defined. Where the test voltage and frequency are not defined by an external standard, the test voltage and test frequency shall be * * * 115 V ± 1 percent and 60 Hz ± 1 percent for North America. In addition, section 4.3 of IEC Standard 62301 specifies that some single phase voltages can be double the nominal voltage specified for that region, which would result in a voltage requirement of 230V ± 1 percent for North America. DOE believes that the accuracy of the electrical supply, including voltage and frequency, specified in IEC Standard 62301 are generally recognized as suitable for producing robust standby and off mode power measurements in microwave ovens. However, DOE conducted a product literature review to analyze the electrical supply requirements for microwave ovens available on the U.S. market and determined that all microwave ovens specify a rated voltage of 120V or 240V (for a small number of combination microwave ovens) and a frequency of 60 Hertz (Hz). For this reason, DOE proposes in today's SNO PR to specify electrical supply requirements of 120/240 V ± 1 percent

⁸For more information on IEA's "1-Watt Plan," visit <http://www.iea.org/textbase/subjectqueries/standby.asp>.

⁹For more information on this agreement, please visit: http://www.wto.org/english/tratop_e/tbt_e/tbtagr_e.htm.

and 60 Hz \pm 1 percent in section 2.2.1 of the DOE microwave oven test procedure. As noted in section 4.3 of IEC Standard 62301, the proposed voltage requirement of 120/240 V for standby and off mode testing would supersede the requirement of 115/230 V specified in IEC Standard 62301.

As discussed above in section III.A, because DOE has tentatively concluded that the operation in standby and off mode is the same for microwave-only units, microwave ovens with thermal elements only, and combination microwave ovens, DOE is proposing that the same test procedure amendments for standby and off mode testing discussed in this section be used for all of these product types.

E. Definitions of "Active Mode," "Standby Mode," and "Off Mode"

DOE proposed using the EPCA definitions of "active mode," "standby mode," and "off mode" in the October 2008 TP NOPR. EPCA defines "standby mode" as the condition in which an energy-using product is connected to a main power source and offers one or more of the following user-oriented or protective functions: A remote switch (including remote control), internal sensor, or timer to facilitate the activation or deactivation of other functions (including active mode; and continuous functions, including information or status displays (including clocks) or sensor-based functions. (42 U.S.C. 6295(gg)(1)(A)(iii))

EPCA defines "off mode" as the condition in which an energy-using product is connected to a main power source and is not providing any standby mode or active mode function. (42 U.S.C. 6295(gg)(1)(A)(ii))

EPCA defines "active mode," which is referenced in the definition of "off mode," as the condition in which an energy-using product is connected to a main power source, has been activated, and provides one or more main functions. (42 U.S.C. 6295(gg)(1)(A)(i))

As discussed in the October 2008 TP NOPR, DOE considers "main functions" for a microwave oven to be those operations in which the magnetron and/or thermal element is energized for at least a portion of the time for purposes of heating, cooking, and/or defrosting the load. 73 FR 62134, 62141 (Oct. 17, 2008). DOE noted that a microwave oven with a continuously energized display or cooking sensor, or a microwave oven that automatically powers down certain energy-consuming components after a cooking cycle and waits to detect an event to trigger re-energization of these components, would be considered capable of

operation in standby mode but not off mode. DOE additionally noted that if the microwave oven is equipped with a manual power on/off switch, which completely cuts off power to the appliance (*i.e.*, removes or interrupts all connections to the main power source, in the same manner as unplugging the appliance), the microwave oven would not be in the "off mode" when the switch is in the "off" position. *Id.*

AHAM and Whirlpool both stated that DOE's incorporation of the EISA 2007 standby and off mode definitions into the proposed microwave oven test procedure does not acknowledge the substantial effort and progress made by the IEC in clarifying these definitions during the past year. AHAM affirmed that IEC Standard 62301 CD2, even in draft form, should be included in this rulemaking to ensure that international consistency in standards and testing is obtained to the greatest extent practical. AHAM further stated that DOE can clarify the EISA 2007 language using IEC Standard 62301 CD2, which would result in a stronger, more consistent test procedure. (AHAM, No. 8 at p. 2; Whirlpool, No. 10 at p. 2) Whirlpool noted that EISA 2007 (Section 310 (gg)(1)(B)) allows the Secretary to amend the definitions of standby mode and off mode, taking into account revisions to IEC Standard 62301, and suggested DOE adopt IEC Standard 62301 CD2, along with the definitions and examples proposed by AHAM and Whirlpool, as discussed in section III.E. (Whirlpool, No. 10 at pp. 2–3) EJ disputed DOE's assumption that it cannot consider any pending amendments to IEC Standard 62301. (EJ, Public Meeting Transcript, No. 7 at p. 80) PG&E supports harmonization with international standards because of the international markets for these products. (PG&E, Public Meeting Transcript, No. 26 at p. 35) PR China suggested DOE amend its testing measures in accordance with IEC Standard 62301 or provide reasonable scientific basis for not doing so, noting that this is in accordance with Article 2.4 of the TWO/TBT Agreement. PR China suggested the U.S. government further harmonize standards in order to facilitate international trade. (PR China, No. 12 at p. 4)

AHAM commented that IEC Standard 62301 CD2 modernizes and clarifies the definitions for each mode, and proposed that DOE consider incorporating this language, or the clarifications AHAM provided in its submitted comments, into the DOE microwave oven test procedure (AHAM, No. 8 at pp. 2, 4, 5–6) Whirlpool supported the mode definitions and clarifying examples developed by AHAM members.

(Whirlpool, No. 10 at pp. 2–3) AHAM stated that the industry's premise for this proposal is harmonization with the international community—in particular, Europe—on standby power standards. AHAM stated that its proposal utilizes elements of IEC Standard 62301 CD2 and the European directive published in June 2008 and provides clarification to EISA 2007 requirements for microwave ovens. (AHAM, No. 8 at p. 2) AHAM's proposed definitions include:

Off Mode

Off mode describes the status of an appliance when it is connected to the main electricity supply and is not providing any function. Off mode may persist for an indefinite period of time.

Off Mode includes:

1. LED or some other indication of off mode condition;
2. Electric noise reduction capacitor, choke or filter;
3. The state where a one-way remote control device will turn the product off, but cannot be used to activate the product;
4. Leakage current will occur in some appliances, and may include voltage and current flow in 208/230 volt appliances where only one leg of the line is isolated by the switch;
5. May include electrical energy flow to a primary transformer of some electronics units.

Standby Mode

Standby mode describes the status of an appliance when it is connected to the mains electricity supply and is not performing its primary function, but is providing a consumer or protective function as defined by the manufacturer's instructions. Standby mode for an appliance is the power (wattage) consumed after it has been automatically or manually placed in Standby mode and allowed to stabilize. Standby mode may persist for an indefinite period of time. Standby mode may allow activation of other modes by local or remote switch.

Standby Mode includes continuous subsidiary functions such as:

1. Continuous time of day displays at the lowest power state selectable by the user;
2. Power required to perform two-way consumer convenience remote control operation;
3. Sensor maintenance power (keeping sensors warm) at the lowest power state selectable by the user;
4. Low voltage power supplies for controls, switches, memories and clocks.

Active Mode

Active mode describes the state of an appliance when it is connected to the main electricity supply and is providing

one or more of the primary functions required of it by the consumer in accordance with the manufacturer's instructions. Active modes may or may not persist for an indefinite period of time, but must be initially activated by the consumer.

Active Mode includes:

1. Washing or drying clothing; heating, cooking or warming food; heating or cooling air; heating or cooling water; cleaning, drying, or warming dishes; disposing of food; compacting trash; dehumidifying, vacuuming, brewing coffee, ironing clothes, toasting bread, or any other traditional task expected of a home appliance.

2. Preparing to start a cycle or appliance program while in a delay start or a timed control format when required;

3. Waiting for a resume signal when in a "pause" mode in the midst of a program or cycle;

4. Receiving or searching for signals from power or utilities companies as part of an energy management or demand management system;

5. Cycling heaters or other components based upon input from time, temperature, or other internal, or external control sensors;

6. Maintaining a temperature or condition;

7. Providing lighting, or ventilation when required by the consumer or as a result of an action. [This includes night lights, over the range (over-the-range) microwave oven lights, dryer drum lights, etc.]

8. Continuous protective (safety) functions (e.g. water leakage detectors).

9. Actively completing safety or reliability functions such as removing residual heat from controls or ovens, automatic fans used to protect over-the-range microwave ovens from cooktop heat, cleaning filters, etc. [These functions are considered active in that they are a result of the requirements placed upon the appliance by the consumer.]

(AHAM, No. 8 at pp. 5–6)

The Joint Comment supported DOE's proposal in the October 2008 TP NOPR to use the EPCA definitions of active mode, off mode, and standby mode for the microwave oven test procedure, noting that these definitions were enacted the previous year with the explicit support of AHAM and efficiency advocates, and opposed AHAM's proposed definitions and clarifications. The Joint Comment stated that the revisions proposed by AHAM constitute a significant re-write of the statutory scheme, with an apparent bias toward redefining standby functions as off mode functions or active mode

functions. (Joint Comment, No. 11 at pp. 2–3) According to the Joint Comment:

1. An LED display light and the power drawn to enable a remote control device to turn the product off are both standby functions rather than off mode functions.

2. The components of a protective function, such as controlling electronic noise, fall within the statutory definition of standby mode, rather than off mode.

3. The continuous protective functions and the search for utility demand management signals to resume activity, both proposed by AHAM as active mode functions, are more properly considered standby functions under the statute. *Id.*

The Joint Comment stated that designating power consuming activities as off mode rather than standby mode for reasons of harmonization is problematic in this rulemaking because DOE has proposed an efficiency standard for microwave oven standby power without concurrently proposing a standard for off mode power. The Joint Comment also stated that the lack of an off mode efficiency standard invites gaming the standby standard, a process that it believes will gain significant traction if the AHAM recommendations for modified definitions are accepted. The Joint Comment also stated that AHAM's language qualifying that the continuous time of day displays and sensor maintenance power should be measured at the lowest power state selectable by the user is not required by statute and should not be accepted by DOE. (Joint Comment, No. 11 at pp. 3–4)

In response to the Joint Comment as it relates to the test procedure rulemaking and as discussed in section I, after the October 2008 TP NOPR was published, DOE determined it appropriate to consider IEC Standard 62301 Second Edition in developing the test procedure for standby and off mode. DOE anticipated, based on review of drafts of the updated IEC Standard 62301, that the revisions could include different mode definitions. At that time, the revised standard was expected in July 2009. Later, however, DOE received information that IEC Standard 62301 Second Edition would not be available until late 2010. As a result, DOE decided to publish today's SNOPR to consider the new mode definitions from the latest draft version, IEC Standard 62301 CDV.

DOE believes the definitions of standby mode, off mode, and active mode provided in IEC Standard 62301 CDV expand upon the EPCA mode definitions and provide additional

guidance as to what functions are associated with each mode. DOE also believes that the comments received by IEC on IEC Standard 62301 CD2, and the resulting amended mode definitions proposed in IEC Standard 62301 CDV, demonstrate significant participation of interested parties in the development of the best possible definitions. For these reasons, in today's SNOPR DOE is proposing definitions of standby mode, off mode, and active mode based on the definitions provided in IEC Standard 62301 CDV. DOE believes that the mode definitions in the draft versions of IEC Standard 62301 Second Edition represent a substantial improvement over those in IEC Standard 62301, and represent the best available definitions at this time as confirmed by the review and inputs from interested parties as part of the IEC rulemaking process. For the reasons discussed in section III.A, DOE believes that the proposed definitions of standby, off, and active mode in today's SNOPR would be applied to microwave-only units, microwave ovens with thermal elements only, and combination microwave ovens. DOE will address standards for standby mode and off mode energy use in a separate energy conservation standards rulemaking, as discussed in section I.

DOE is proposing in today's SNOPR to define "standby mode" as the condition in which an energy-using product is connected to a mains power source and offers one or more of the following user oriented or protective functions which may persist for an indefinite time:¹⁰ a remote switch (including remote control), internal sensor, or timer to facilitate the activation of other modes (including activation or deactivation of active mode); and continuous functions, including information or status displays (including clocks) or sensor-based functions.

DOE is proposing an additional clarification for standby mode that continuous clock functions include a timer that operates continuously, provides regular scheduled tasks (e.g. switching), and may or may not be

¹⁰The actual language for the standby mode definition in IEC Standard 62301 CDV describes "* * * user oriented or protective functions which usually persist" rather than "* * * user oriented or protective functions which may persist for an indefinite time." DOE notes, however, that section 5.1 of IEC Standard 62301 CDV states that "a mode is considered persistent where the power level is constant or where there are several power levels that occur in a regular sequence for an indefinite period of time." DOE believes that the proposed language, which was originally included in IEC Standard 62301 CD2, encompasses the possible scenarios foreseen by section 5.1 of IEC Standard 62301 CDV without unnecessary specificity.

associated with a display. This definition was developed based on the definitions provided in IEC Standard 62301 CDV, and expands upon the EPCA mode definitions to provide additional clarifications as to which functions are associated with each mode. Under this definition of standby mode, remote controls and low voltage power supplies for controls, switches, memories and clocks would be considered as operating in standby mode. DOE believes that a requirement for measuring standby power at “the lowest power state selectable by the user” is inconsistent with the proposed conditions for measuring standby mode because such a provision would potentially require the device to be operated at settings other than the “factory or ‘default’ settings” specified for testing in paragraph 5.2 of IEC Standard 62301. Therefore, DOE does not intend to incorporate such a provision in the definition of standby mode.

DOE is proposing to define off mode as the condition in which the energy-using product is connected to a mains power source, is not providing any active or standby mode function, and may persist for an indefinite time.¹¹ Off mode would also include an indicator that shows the user only that the product is in the off position.

Under this proposed definition, an energized LED or other indication that shows the user only that the product is in the off position would be considered part of off mode, provided that no other standby or active mode functions are energized. However, if any energy is consumed by the appliance in the presence of a one-way remote control, the unit would be considered to be operating in standby mode because the remote control would be used to deactivate other mode(s). Electrical leakage and any energy consumed for electrical noise reduction, which are not specifically categorized as standby power functions, would be indicative of off mode.

Whirlpool commented that the addition of off mode to the proposed rule is necessary to ensure that all

power consumption is properly accounted for (Whirlpool, No. 10 at p. 2), and questioned the need to differentiate between an electromechanical control versus a manual operation that puts the microwave oven into off mode, because power may not be consumed by either option. (Whirlpool, Public Meeting Transcript, No. 7 at pp. 57–58) PG&E noted that there may be some small power demand in the off mode, and commented that if the power demand were zero because the electromechanical control was receiving no power, then the appliance would technically be in the disconnected mode and not the off mode. PG&E subsequently noted that there is no clear distinction between off mode and disconnected mode, especially in situations where a device is equipped with a manual on/off switch. (PG&E, Public Meeting Transcript, Notice, No. 7 at pp. 58–59)

ASAP stated that DOE’s definition of off-mode is stretching the interpretation of the statutory language, and did not agree that zero power (e.g. plugged in but turned off with a switch) would necessarily indicate disconnected mode rather than off mode. ASAP asserted that the language regarding off mode was placed into law to clarify definitions for consumers and manufacturers, and to facilitate DOE in setting standards for products that were not off when consumers thought they were off. (ASAP, Public Meeting Transcript, No. 7 at pp. 60–61) Additionally, ASAP inquired whether it is correct that testing is required for a device with off mode capability even though there is no reporting requirement or standard. (ASAP, Public Meeting Transcript, No. 7 at pp. 77–79)

The Joint Comment further stated that the October 2008 TP NOPR erred in stating that a microwave oven with a manual power on/off switch would not be in off mode when the switch was in the off position because the switch’s physical gap to the main power supply has interrupted the electrical connection. The Joint Comment asserted that this interpretation is not required by law, which only refers to a product “connected to a main power source”, and term “connected” should be satisfied by the product being plugged into a power source. (Joint Comment, No. 11 at p. 2) The Joint Comment noted that the significance of distinguishing the off mode is limited in the test procedure rulemaking, but more important in the efficiency standard rulemakings that address off mode. The Joint Comment also stated that products with hard-off switches should be

accounted for in the off mode condition, and such a design option would allow consumers to reduce energy use and increase their overall energy savings. According to the Joint Comment, DOE’s “mischaracterization” of the off-mode definition will discourage manufacturers from reintroducing mechanical switches that could reduce or eliminate off-mode power consumption from their products. (Joint Comment, No. 11 at p. 3)

DOE examined the issue of how to classify a microwave oven that is plugged in to the main power supply but is not consuming energy due to the presence of an on/off switch. DOE first reviewed the discussion provided in annex A of IEC Standard 62301 CDV; according to section A.2, disconnected mode is included as a mode definition because many products are removed by users from mains power sources for substantial periods of time. DOE interprets this condition to refer to the power cord being unplugged from the power source. Section A.2 further states that “[a] product may have several off modes or it may have no off mode. Switches on products that are labeled as power, on/off or standby may not reflect the mode classification based on the actual functions active in that mode.” Although this statement does not definitively establish a means by which to treat the presence of a power or on/off switch, DOE infers it to mean that products equipped with such switches can operate in off or standby mode(s), depending on what components may remain energized with the switch in the “off” position. However, this discussion is silent on whether activation of an on/off switch can place the product in disconnected mode. Considering section A.2 in total, DOE concludes that disconnected mode for microwave ovens would be associated only with the removal of the power cord from the power source. Based on this review and acknowledging that classification of an on/off switch as operating in off mode in the absence of other energy use associated with standby mode would encourage manufacturers to provide such an energy-saving feature, DOE revises its determination proposed in the October 2008 TP NOPR and tentatively concludes that zero energy consumption due to activation of an on/off switch would be indicative of off mode rather than a disconnected mode.

In response to ASAP’s question of whether testing would be required for a device with off mode capability even though there is no reporting requirement or standard, DOE notes, as discussed in section III.B, that any representations as to the standby and off

¹¹ As with the definition for standby mode, IEC Standard 62301 CDV qualifies off mode as one that “* * * usually persists” rather than one that “* * * may persist for an indefinite time.” For the same reasons as discussed for standby mode, DOE is proposing the latter definition. In addition, the off mode definition in IEC Standard 62301 states it is not providing a network mode function. Since DOE is unaware of any microwave oven that incorporates a network function, such as reactivation via network command or network integrity communication, it is not proposing to include this language in the definition of off mode in today’s SNOPR.

mode energy consumption for microwave ovens would need to be based upon results generated under the applicable provisions of this test procedure.

Finally, DOE is proposing to define active mode as the condition in which the energy-using product “is connected to a mains power source, has been activated, and provides one or more main functions,” with the additional clarification that “delay start mode is a one off user initiated short duration function that is associated with an active mode.” DOE notes that IEC Standard 62301 CD2 provided additional clarification that “delay start mode is a one off user initiated short duration function that is associated with an active mode.” IEC Standard 62301 CDV eliminated this clarification; however, in response to comments on IEC Standard 62301 CD2 that led to IEC Standard 62301 CDV, IEC stated that delay start mode is a “one-off” function of limited duration, which suggests that IEC does not consider it as part of standby mode although no conclusion is made as to whether it would be considered part of active mode.

DOE is tentatively proposing to consider delay start mode as part of active mode because it is a condition of finite duration that is user-initiated and uniquely associated with a cooking cycle. DOE determined that cooking or warming of food would be considered active mode functions as well. DOE does not believe that it has sufficient information on the remainder of the conditions specified by AHAM as part of active mode for microwave ovens to determine whether the conditions should be classified as such under the proposed definition of active mode. However, DOE believes that many of these functions may not persist for an indefinite time and, therefore, would not be considered part of standby mode or off mode. DOE invites information and comments on specific functions that would be associated with microwave oven active mode.

DOE also notes that section 3.9 of IEC Standard 62301 CDV defines disconnected mode, as “the status in which all connections to mains power sources of the energy using product are removed or interrupted.” IEC Standard 62301 CDV also adds a note that common terms such as “unplugged” or “cut off from mains” also describe this mode, and that this mode is not part of the low power mode category. DOE believes that there would be no energy use in a “disconnected mode,” and therefore is not proposing a definition or testing methods for such a mode in the

DOE test procedure for microwave ovens.

F. Specifications for the Test Methods and Measurements for Microwave Oven Standby Mode and Off Mode Testing

DOE noted in the October 2008 TP NOPR that, because IEC Standard 62301 is written to provide a certain degree of flexibility so that the test standard can be used to measure standby mode and off mode power for most household electrical appliances (including microwave ovens), it does not specify the test method for measuring the power consumption in cases in which the measured power is not stable. Section 5.3.2 of IEC Standard 62301 states that “[i]f the power varies over a cycle (*i.e.*, a regular sequence of power states that occur over several minutes or hours), the period selected to average power or accumulate energy shall be one or more complete cycles in order to get a representative average value.” 73 FR 62134, 62141 (Oct. 17, 2008). For the October 2008 TP NOPR, DOE investigated the possible regular sequences of power states for microwave ovens in order to propose clarifying language to IEC Standard 62301 that would provide accurate and repeatable test measurements. DOE’s testing of standby power led it to propose the test period in cases in which the power is not stable as “a 12-hour \pm 30-second period” to assure comparable and valid results. *Id.*

AHAM and Whirlpool agreed with DOE’s conclusion that a 12-hour test period would measure all possible configurations for a 12-hour clock, but commented that such an approach is impractical and costly and would be a constraint on resources, including laboratory space and time. (Whirlpool, Public Meeting Transcript, No. 7 at pp. 70–71; AHAM, Public Meeting Transcript, No. 7 at pp. 69–70) Whirlpool commented that running a 12-hour test would be a huge drain on facilities and would require substantial investment to expand those facilities, adding that their testing is done on the production line in order to assure product quality. (Whirlpool, Public Meeting Transcript, No. 7 at pp. 70–71) AHAM and Whirlpool commented that the test period of 12 hours \pm 30 seconds should only apply to displays where the power consumption varies within the number of segments lit, such as LEDs. (Whirlpool, No. 10 at p. 3; AHAM, No. 8 at p. 3) ASAP also questioned if the 12-hour test would be required for all units, or whether it would just be for units with LED displays. (ASAP, Public Meeting Transcript, No. 7 at pp. 74–45) ASAP requested responses from

manufacturers about the difficulty in obtaining a representative standby power measurement due to the clock start time, and asked if it is possible to use a shorter interval that could be multiplied to obtain the equivalent of a 12-hour measurement. (ASAP, Public Meeting Transcript, No. 7 at p. 72)

AHAM and Whirlpool also disagreed with DOE’s statement that the proposed test procedure “obviates the need for a specific starting time, which could not be ensured for microwave ovens that have an automatic power-down feature.” AHAM and Whirlpool commented that IEC Standard 62301 states that a product’s standby power should be measured in its low power state, so if a display powers down, then the microwave oven should be allowed to stabilize until the unit powers down, and then standby power is measured. AHAM and Whirlpool stated that the benefit of a 12-hour test is unclear, as there is no need to capture power usage during the power down mode. (AHAM, No. 8 at p. 3; Whirlpool, No. 10 at p. 4) AHAM also commented that if a microwave oven powers down, the display would no longer be powered, so the starting clock time does not matter. (AHAM, Public Meeting Transcript, No. 7 at p. 69)

The Joint Comment responded to AHAM’s comments, stating that since there is no assurance regarding the length of time a unit with power down capability might require to power down to a stable state, the Joint Comment supports DOE’s approach of a 12-hour test period, which would more realistically capture standby energy use by measuring the energy consumed in standby both before and after the device powers down. The Joint Comment also stated that it is open to considering a shorter test cycle as long as comparative testing shows that energy use is the same. Absent such testing, The Joint Comment supports DOE’s proposal for a 12 hour \pm 30 second test period where the unit’s power consumption is not stable. (Joint Comment, No. 11 at p. 4)

Whirlpool and AHAM stated that the number of segments of 7-segment LEDs lit over 12 hours can be averaged, and there are 10-minute periods that are representative of the 12-hour cycle, which DOE should consider using instead of the 12-hour cycle. Whirlpool added that using these 10-minute periods would yield the same results as taking a 12-hour average, but would be much faster. (Whirlpool, Public Meeting Transcript, No. 7 at pp. 72–73; AHAM, Public Meeting Transcript, No. 7 at p. 69) GE supported a 10-minute test for establishing a baseline, and agreed that a 12-hour test of three of each model is

difficult. (GE, Public Meeting Transcript, No. 7 at pp. 71–72) AHAM and Whirlpool proposed the following method for determining standby power on a unit with a display:

If the appliance has a clock that is displayed in Standby Mode and the clock does not result in any power fluctuations, standby power will be measured for at least 10 minutes. If the appliance has a clock that is displayed in Standby Mode and changes in the display segments affects the power measurements, the clock will be set to allow the testing to begin at 3:33 and the unit stabilized as specified above. Average or accumulated energy (based on Section 5.3.2 of IEC 62301 2007 CD2, see below) will be measured from 3:33 through 3:42 (10 full minutes) following the general conditions for measurement outlined in Section 4 of IEC 62301 Ed.2 CD2. This specific 10 minute interval provides the same average number of display segments as a 12-hour measurement period (14.6). (AHAM, No. 8 at p. 3; Whirlpool, No. 10 at p. 4)

ASAP suggested setting the clock at 1:11 for the standby power test. (ASAP, Public Meeting Transcript, No. 7 at p. 68) As noted above, the Joint Comment

stated that it is open to considering a shorter test cycle as long as comparative testing shows that energy use is the same, and absent such testing, the Joint Comment supports DOE’s proposal for a 12 hour ± 30 second test period where the unit’s power consumption is not stable. (Joint Comment, No. 11 at p. 4)

DOE investigated tests method to determine standby power over a shorter period than 12 hours. DOE first evaluated using 18 different clock display times to produce a standby power measurement representative of a 12-hour cycle, as discussed in appendix 5B of the November 2007 ANOPR technical support document (TSD). Using this method, the standby power consumption and line voltage are measured as the clock is cycled through all the possible digit combinations (in terms of active elements) and then a regression analysis is performed to quantify the impact of the number of lit elements (by digit) and voltage on power consumption. The results were then integrated across the number of minutes that each active element combination is “on” through the course of the 12 hours. As noted in chapter 5 of the November 2007 ANOPR TSD, the

results for average standby power consumption using the methodology described above produced results that were within 1 to 2 percent of the 12 hour test results.

For this SNOPR, DOE also investigated whether a single 10-minute measurement period with a starting clock time of 3:33, as suggested by AHAM and Whirlpool, would be a reasonable proxy for the 12-hour standby power measurement in the event that power consumption is not stable. DOE analysis indicates that the proportion of time that each possible number of segments in a 7-segment LED display that are lit over the 10-minute time period from 3:33 to 3:42 is representative of the distribution of lit segments over a 12-hour period with an arbitrary starting time. This suggests that the 10-minute test period starting at 3:33 would produce average standby power measurements that are comparable to average standby power measured over 12 hours. Table 1 shows the comparison of average standby power measured for 11 units in DOE’s microwave oven test sample using the 18-point, and 10-minute methodologies as compared to the 12-hour test.

TABLE 1—COMPARISON OF METHODOLOGIES FOR MEASURING MICROWAVE OVEN STANDBY POWER

Test Unit	Display type	12-Hour Method		18-Point Method		10-Minute Method	
		Standby watts*	Standby watts*	Standby watts*	Percent difference	Standby watts*	Percent difference
1	LCD	1.567	1.552	1.552	−0.99	1.592	1.60
2	LCD	1.571	1.560	1.560	−0.70	1.554	−1.08
3	LCD	1.812	1.812	1.812	0.03	1.801	−0.61
4	LCD	1.490	1.475	1.475	−0.96	1.492	0.17
5	LCD	1.859	1.847	1.847	−0.60	1.874	0.84
6	LCD	3.788	3.798	3.798	0.26	3.818	0.81
7	LCD	3.641	3.642	3.642	0.04	3.606	−0.95
8	LED	1.802	1.796	1.796	−0.35	1.797	−0.32
9	LED	1.825	1.820	1.820	−0.25	1.816	−0.47
10	LED	3.185	3.177	3.177	−0.27	3.290	**3.28
11	VFD	5.600	5.611	5.611	0.20	5.607	0.13

* Standby power measurements are scaled to normalize the supply power to 120.0 volts.

** For this test, the supply power was significantly different than 120.0 volts. Therefore, DOE believes the scaling of the measured standby power and thus the percentage difference from the 12-hour standby power measurement are not valid.

Within DOE’s limited test sample, the average standby power measured over the specified 10-minute test period agrees within 2 percent with average standby power measured over 12 hours. Therefore, DOE tentatively concludes that a 10-minute measurement period with a starting time of 3:33 provides a valid measure of standby energy use for those microwave ovens with power consumption varying according to the time displayed on the clock. DOE proposes in today’s SNOPR to specify that, for microwave ovens for which standby power consumption is not

stable, the clock display shall be set at 3:33 at the conclusion of the stabilization period and the test period shall be 10 minutes.

DOE recognizes that both the 18-point and 10-minute approaches for accelerated standby testing offer the possibility that a microwave oven could be programmed to alter its behavior when such a test is detected in order to minimize measured standby power consumption. For example, a microwave oven could be programmed to turn off its cooking sensors and/or dim its display only during the display

times associated with the 18 measurement points or between display times 3:33 and 3:42.

DOE notes that the microwave oven test procedure is designed to provide a measurement consistent with representative average consumer use of the product, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (e.g. a display of only 3:33 to 3:42). DOE’s proposal reflects the statutory requirement, and the Department’s longstanding view, that the overall objective of the test

procedure is to measure the product's energy consumption during a representative average use cycle or period of use. 42 U.S.C. 6293(b)(3). Further, the test procedure requires specific conditions during testing that are designed to ensure repeatability while avoiding excessive testing burdens. Although certain test conditions specified in the test procedure may deviate from representative use, such deviations are carefully designed and circumscribed in order to attain an overall calculated measurement of the energy consumption during representative use. Thus, it is—and has always been—DOE's view that products should not be designed such that the energy consumption drops during test condition settings in ways that would bias the overall measurement to make it unrepresentative of average consumer use. DOE proposes to address this issue through this test procedure and related certification requirements. Accordingly, DOE's proposed language both (1) makes explicit in the regulatory text the Department's long held interpretation that the purpose of the test procedure is to measure representative use and (2) proposes a specific mechanism—the waiver process—as a mandatory requirement for all products for which the test procedure would not properly capture the energy consumption during representative use.

DOE seeks comment on this proposed language to address products equipped with controls or other features that modify the operation of energy-using components during testing. The language does not identify specific product characteristics that could make the test procedure unsuitable for testing certain products (e.g. modification of operation based on display time) but rather describes such characteristics generally, in order to assure that the language can apply to any potential features that would yield measurements unrepresentative of the product's energy consumption during a representative use cycle.

Regarding test burden, DOE believes that the number of units to be tested according to the sampling requirements in 10 CFR 430.24(i) is reasonable and, with a 5-minute stabilization period and a 5-minute or 10-minute test time depending on whether the standby power consumption is stable, would not substantially add to manufacturer test burden and would allow manufacturers that conduct testing on the production line in order to assure product quality to continue to do so.

G. Other Issues

DOE proposed in the October 2008 TP NOPR to change the value of a conversion factor, used in the microwave oven active mode calculations to correct an erroneous value. 73 FR 62134, 62141–42 (Oct. 17, 2008). AHAM and Whirlpool supported DOE's proposed technical correction to the conversion factor. (AHAM, No. 8 at p. 4; Whirlpool, No. 10 at p. 4) Because the active mode provisions were removed from the microwave oven test procedure in the final rule published elsewhere in today's **Federal Register**, the need for the technical correction is obviated and no such amendments are proposed in today's SNOPR.

H. Compliance With Other EPCA Requirements

Section 323(b)(3) of EPCA requires that test procedures shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

DOE stated in the October 2008 TP NOPR that it believes that the incorporation of clauses regarding test conditions and methods in IEC Standard 62301, along with the modifications described above, would satisfy this requirement. DOE also noted that the proposed amendments to the DOE test procedure incorporate a test standard that is widely used and accepted internationally to measure standby power in standby mode and off mode. Based on DOE testing and analysis of IEC Standard 62301, DOE determined in the October 2008 TP NOPR that the proposed amendments to the microwave oven test procedure produce standby mode and off mode average power consumption measurements that represent an average use cycle both for cases in which the measured power is stable and when the measured power is unstable (i.e., varies over a cycle). DOE also stated that the test methods and equipment that the amendments would require for measuring standby power in microwave ovens do not differ substantially from the test methods and equipment in the then-current DOE test procedure for measuring microwave oven cooking efficiency, and therefore manufacturers would not be required to make a major investment in test facilities and new equipment. For these reasons, DOE concluded in the October 2008 TP NOPR that the amended test procedure would produce test results

that measure the power consumption of a covered product during a representative average use cycle as well as annual energy consumption, and that the test procedure would not be unduly burdensome to conduct. 73 FR 62134, 62142 (Oct. 17, 2008).

For similar reasons to those stated above, the proposed amendments in today's SNOPR to measure the standby and off mode power consumption of microwave ovens would also not require manufacturers to make major investments in test facilities and new equipment and would not be unduly burdensome to conduct. In addition, today's SNOPR proposes a significantly shorter test duration than the 12 hours that was proposed in the October 2008 TP NOPR.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (<http://www.gc.doe.gov>). DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

In conducting this review, DOE first determined the potential number of affected small entities. The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it

employs fewer than the threshold number of workers specified in 13 CFR part 121 according to the North American Industry Classification System (NAICS) codes. The SBA's Table of Size Standards is available at: http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf. The threshold number for NAICS classification 335221, *Household cooking appliance manufacturers*, which includes microwave oven manufacturers, is 750 employees. DOE surveyed the AHAM member directory to identify manufacturers of microwave ovens. In addition, as part of the appliance standards rulemaking, DOE asked interested parties and AHAM representatives within the microwave oven industry if they were aware of any small business manufacturers. DOE consulted publicly available data, purchased company reports from sources such as Dun & Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a small business manufacturing facility and have their manufacturing facilities located within the United States. Based on this analysis, DOE understands that only multinational companies with more than 750 employees, and their wholly owned subsidiaries, exist in this industry. As a result, DOE does not expect any small businesses to be impacted by the proposed rule.

For these reasons, DOE tentatively concludes and certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE seeks comment on this certification and will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 1910-1400. Public reporting burden for compliance reporting for energy and water conservation standards is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data

collection, including suggestions for reducing the burden, to DOE (see **ADDRESSES**) and by e-mail to *Christine J. Kymn@omb.eop.gov*.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for microwave ovens. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 4, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this proposed rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and

prescribes Federal preemption of State regulations as to the test procedures that are the subject of today's proposed rule. States can petition DOE for a waiver of such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires

a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." UMRA requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at <http://www.gc.doe.gov>). Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of \$100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's SNOPR and concluded that it is consistent with applicable policies in the OMB and DOE guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. The definition of a "significant energy action" is any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal were to be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of OIRA also did not designate the proposed rule as a significant energy action. Therefore, it is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95-91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA; Pub. L. 95-70) (15 U.S.C. 788). Section 32 essentially provides that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates testing methods contained in sections 4 and 5 of the commercial standard, IEC Standard 62301. DOE has evaluated this standard and is unable to conclude

whether it fully complies with the requirements of section 32(b) of the FEAA, *i.e.*, whether it was developed in a manner that fully provides for public participation, comment, and review. DOE will consult with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in this standard before prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this SNOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586-2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Anyone who has an interest in today's notice, or who represents a group or class of persons with an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this SNOPR between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or e-mail to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, or Brenda.Edwards@ee.doe.gov. Persons who wish to speak should include in their request a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to be heard to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. Requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

DOE will conduct the public meeting in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on each specific topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others.

Participants should be prepared to answer DOE's and other participants' questions. DOE representatives may also ask participants about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending if time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586-9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the transcript are available for purchase from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the

beginning of this SNOPIR. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document that includes all of the information believed to be confidential, and one copy of the document with that information deleted. DOE will make its own determination as to the confidential status of the information and treat it accordingly.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include the following: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. Covered Products

DOE invites comment on the proposal to clarify the definition of a "microwave oven" provided in 10 CFR 430.2 to cover microwave ovens with or without thermal elements designed for surface browning of food as well as combination microwave ovens (*i.e.*, microwave ovens that incorporate convection features and possibly other cooking means). DOE also welcomes comment on the proposal that the same testing procedures and calculations can be applied to each of these types of microwave ovens, and

whether there are additional standby and off modes or other product features for each particular type of microwave oven that would require separate testing procedures. (See Section III.A.)

2. Cooking Efficiency Test Load

DOE welcomes comment on test procedures and methods for the active mode cooking efficiency that address the concerns with repeatability and consistency of test results. DOE also welcomes consumer usage data on representative food loads, as well as data indicating how changes to the test load would affect the measured EF and on the repeatability of such test results. DOE will consider such information in its separate rulemaking to develop new methods of measuring microwave oven active mode cooking efficiency. (See section III.C.)

3. Incorporation of IEC Standard 62301

DOE invites comment on the adequacy of IEC Standard 62301 to measure standby mode and off mode power for microwave ovens in general, and on the suitability of incorporating into DOE regulations the specific provisions described in section III.D.

4. Mode Definitions

DOE seeks comment on its proposed definitions of standby mode, off mode, and active mode, which are based on the language in IEC Standard 62301 CDV. DOE also seeks comment on specific functions that would be classified as standby, off, and active modes. (See section III.E.)

5. Test Cycle

DOE seeks comment on its proposed clarification to IEC Standard 62301, in which DOE specifies a test period of 10 minutes with an initial clock display time of 3:33 for microwave ovens for which the measured power is not stable, and the test burden associated with such testing requirements. (See section III.F.)

6. Test Procedure Waivers for Products for Which Test Measurements Are Not Representative

DOE seeks comment on the proposed language requiring petition for waivers to address products equipped with controls or other features that modify the operation of energy using components during the energy test. DOE seeks comment on whether more specific definition could or should be provided to define either the product characteristics that would make the test procedure unsuitable for use or to define representative average use. (See section III.F.)

VI. Approval of the Office of the Assistant Secretary

The Assistant Secretary of DOE's Office of Energy Efficiency and Renewable Energy has approved publication of today's Supplemental Notice of Proposed Rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental Relations, Small businesses.

Issued in Washington, DC, on July 9, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of chapter II of title 10, Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by revising the definition for “Microwave oven” to read as follows:

* * * * *

Microwave oven means a class of kitchen ranges and ovens comprised of household cooking appliances consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and combination ovens.

* * * * *

3. Section 430.23 is amended by adding paragraph (i)(13) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

(i) * * *

(13) The energy test procedure is designed to provide a measurement consistent with representative average consumer use of the product, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (e.g. specified display times). If (1) a product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use

and (2) applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data), the prescribed procedure may not be used. Examples of products that cannot be tested using the prescribed test procedure include those products that can exhibit operating parameters (e.g. display wattage) for any energy using component that are not predictably varying functions of operating conditions or control inputs—such as when a display is automatically dimmed when test conditions or test settings are reached. A manufacturer wishing to test such a product must obtain a waiver in accordance with the relevant provisions of 10 CFR part 430.

* * * * *

4. Appendix I to Subpart B of Part 430 is amended:

- a. By adding a note after the heading;
- b. In section 1. *Definitions*, by:
 1. Redesignating sections 1.1 through 1.4 as sections 1.2 through 1.5;
 2. Redesignating section 1.5 as section 1.7;
 3. Redesignating sections 1.6 through 1.8 as sections 1.9 through 1.11;
 4. Redesignating sections 1.9 and 1.10 as sections 1.14 and 1.13, respectively;
 5. Adding new sections 1.1, 1.6, 1.8, and 1.12;
- c. In section 2. *Test Conditions*, by:
 1. Revising sections 2.1.3, 2.2.1, 2.5, and 2.6;
 2. Adding new sections 2.2.1.1, 2.2.1.2, and 2.9.1.3; and
- d. In section 3. *Test Methods and Measurements*, by revising sections 3.1.1, 3.1.1.1, 3.1.2, 3.1.3, 3.1.3.1, 3.2.3, and 3.3.13.

The additions and revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

Note: All representations related to standby mode and off mode energy consumption of microwave ovens made after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE TEST PROCEDURE FINAL RULE IN THE FEDERAL REGISTER] must be based on results generated under this test procedure (i.e., sections 2.1.3, 2.2.1, 2.5, 2.9.1.3, 3.1.3, 3.2.3, and 3.3.13 of this appendix I). Determination of compliance with any energy conservation standard for standby and off mode made after [DATE 3 YEARS AFTER DATE OF PUBLICATION OF ANY MICROWAVE OVEN STANDARDS FINAL RULE] must also be based on results generated under this test procedure.

* * * * *

1. *Definitions*

* * * * *

1.1 *Active mode* means the condition in which a microwave oven is connected to a mains power source, has been activated, and provides one or more main functions. Delay start mode is a one off user-initiated short duration function that is associated with an active mode.

* * * * *

1.6 *IEC 62301* refers to the test standard published by the International Electrotechnical Commission, titled “Household electrical appliances—Measurement of standby power,” Publication 62301 First Edition 2005–06. (Incorporated by reference, see § 430.3)

* * * * *

1.8 *Off mode* means the condition in which a microwave oven is connected to a mains power source and is not providing any standby mode or active mode function and where the mode may persist for an indefinite time.

* * * * *

1.12 *Standby mode* the condition in which a microwave oven is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (1) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (2) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (e.g. switching) and that operates on a continuous basis.

* * * * *

2. *Test Conditions*

* * * * *

2.1.3 *Microwave ovens*. Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in Section 2.2.1. The microwave oven shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3). A watt meter shall be installed in the circuit and shall be as described in Section 2.9.1.3.

* * * * *

2.2.1 *Electrical supply*.

2.2.1.1 *Voltage*. Maintain the electrical supply to the conventional range, conventional cooking top, and conventional oven being tested at 240/120 volts except that basic models rated only at 208/120 volts shall be tested at that rating. Maintain the voltage within 2 percent of the above specified voltages. For microwave oven testing, maintain the electrical supply to the microwave oven at 120/240 volts and 60 hertz. Maintain the electrical supply for microwave oven testing within 1 percent of the specified voltage and frequency.

2.2.1.2 *Supply voltage waveform*. For the microwave oven testing, maintain the electrical supply voltage waveform as indicated in Section 4, Paragraph 4.4 of IEC

62301 (incorporated by reference; see § 430.3).

* * * * *

2.5 Ambient room air temperature.

During the test, maintain an ambient room air temperature, T_R, of 77±9° F (25±5° C) for conventional ovens and cooking tops, or as indicated in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3) for microwave ovens, as measured at least 5 feet (1.5 m) and not more than 8 feet (2.4 m) from the nearest surface of the unit under test and approximately 3 feet (0.9 m) above the floor. The temperature shall be measured with a thermometer or temperature indicating system with an accuracy as specified in Section 2.9.3.1.

2.6 Normal nonoperating temperature.

All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in Section 1.7, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in Sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4, as applicable.

* * * * *

2.9.1.3 Standby mode and off mode watt meter. The watt meter used to measure standby mode and off mode shall have a resolution as specified in Section 4, Paragraph 4.5 of IEC 62301 (incorporated by reference; see § 430.3). The watt meter shall also be able to record a "true" average power as specified in Section 5, Paragraph 5.3.2(a) of IEC 62301.

* * * * *

3. Test Methods and Measurements

3.1 Test methods.

3.1.1 Conventional oven. Perform a test by establishing the testing conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix, and adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal nonoperating temperature as defined in Section 1.7 and described in Section 2.6. Set the conventional oven test block W₁ approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for at least one complete thermostat "cut-off/cut-on" of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 Self-cleaning operation of a conventional oven. Establish the test conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix. Adjust any pilot lights of a conventional gas oven in accordance with the manufacturer's instructions and turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal nonoperating temperature as defined in Section 1.7 and described in Section 2.6. Then set the conventional oven's self-cleaning process in accordance with the

manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

* * * * *

3.1.2 Conventional cooking top. Establish the test conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix. Adjust any pilot lights of a conventional gas cooking top in accordance with the manufacturer's instructions and turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in Section 1.7 and described in Section 2.6. Set the test block in the center of the surface unit under test. The small test block, W₂, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W₃, shall be used on electric surface units over 7 inches (177.8 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25±5 percent of the maximum energy input rate. After 15±0.1 minutes at the reduced energy setting, turn off the surface unit under test.

* * * * *

3.1.3 Microwave oven.

3.1.3.1 Microwave oven test standby mode and off mode power. Establish the testing conditions set forth in Section 2, "TEST CONDITIONS," of this Appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3 of IEC 62301. For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:33 at the end of the stabilization period specified in Section 5, Paragraph 5.3, and use the average power approach described in Section 5, Paragraph 5.3.2(a), but with a single test period of 10 minutes +0/-2 sec. If a microwave oven is capable of operation in either standby mode or off mode, as defined in Sections 1.12 and 1.8, respectively, or both, test the microwave oven in each mode in which it can operate.

* * * * *

3.2.3 Microwave oven test standby mode and off mode power. Make measurements as specified in Section 5, Paragraph 5.3 of IEC 62301 (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, measure the average standby mode power of the microwave oven, P_{SB}, in watts as specified in Section 3.1.3.1. If the microwave oven is capable of operating in off mode, measure the average off mode power of the microwave oven, P_{OFF}, as specified in Section 3.1.3.1.

* * * * *

3.3.13 Record the average standby mode power, P_{SB}, for the microwave oven standby mode, as determined in Section 3.2.3 for a

microwave oven capable of operating in standby mode. Record the average off mode power, P_{OFF}, for the microwave oven off mode power test, as determined in Section 3.2.3 for a microwave oven capable of operating in off mode.

[FR Doc. 2010-17775 Filed 7-21-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2010-0323; Airspace Docket No. 10-ANE-106]

Proposed Establishment of Class E Airspace; Lancaster, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Lancaster, NH, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Special Standard Instrument Approach Procedure (SIAP) serving the Weeks Medical Center. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before September 7, 2010.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001; Telephone: 1-800-647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2010-0323; Airspace Docket No. 10-ANE-106, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5588.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing

reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2010-0323; Airspace Docket No. 10-ANE-106) and be submitted in triplicate to the Docket Management System (*see ADDRESSES* section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2010-0323; Airspace Docket No. 10-ANE-106." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at http://www.faa.gov/airports/airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see the ADDRESSES* section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Lancaster, NH to provide controlled airspace required to support the special SIAPs for Weeks Medical Center. The existing Class E airspace extending upward from 1,200 feet above the surface would be modified for the safety and management of IFR operations by lowering the base of controlled airspace to 700 feet above the surface.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Weeks Medical Center, Lancaster, NH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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 Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE NH E5 Lancaster, NH [New]

Weeks Medical Center, NH
(Lat. 44°29'07" N., long. 71°33'17" W.)

Point in Space Coordinates
(Lat. 44°29'33" N., long. 71°34'41" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 44°29'33" N., long. 71°34'41" W.) serving the Weeks Medical Center.

Issued in College Park, Georgia, on July 13, 2010.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010-17952 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2010-0321; Airspace Docket No. 10-ANE-104]

Proposed Establishment of Class E Airspace; Wolfeboro, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Wolfeboro, NH, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) Special Standard

Instrument Approach Procedure (SIAP) serving Huggins Hospital. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

DATES: Comments must be received on or before September 7, 2010.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey, SE., Washington, DC 20590-0001; Telephone: 1-800-647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2010-0321; Airspace Docket No. 10-ANE-104, at the beginning of your comments. You may also submit and review received comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Richard Horrocks, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5588.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2010-0321; Airspace Docket No. 10-ANE-104) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Comments wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2010-0321; Airspace Docket No. 10-ANE-104." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A

report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at http://www.faa.gov/airports/airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory circular No. 11-2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Wolfeboro, NH to provide controlled airspace required to support the special SIAPs for Huggins Hospital. The existing Class E airspace extending upward from 1,200 feet above the surface would be modified for the safety and management of IFR operations by lowering the base of the controlled airspace to 700 feet above the surface.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant

rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Huggins Hospital, Wolfeboro, NH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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 Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

ANE NH E5 Wolfeboro, NH [New]
Huggins Hospital, NH

(Lat. 43°34'56" N., long. 71°12'06" W.)

Point in Space Coordinates

(Lat. 43°35'15" N., long. 71°11'19" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 43°35'15" N., long. 71°11'19" W.) serving the Huggins Hospital.

Issued in College Park, Georgia, on July 13, 2010.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010-17954 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 38, 39, and 40

RIN 3038-AC91

Business Continuity and Disaster Recovery

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing a rule that would establish standards for recovery and resumption of trading and clearing operations by designated contract markets ("DCMs") and registered derivatives clearing organizations ("DCOs") that the Commission determines to be critical financial markets or core clearing and settlement organizations in the event of a wide-scale disruption affecting such entities' trading or clearing operations. These proposed standards would require such entities to maintain business continuity and disaster recovery resources sufficient to meet a same-day recovery time objective for trading and clearing, and maintain geographic dispersal of infrastructure and personnel sufficient to enable achievement of a same-day recovery time objective, in the event of a wide-scale disruption. The proposed amendments also revise application guidance and acceptable practices under the Core Principles for DCMs relating to business continuity and disaster recovery matters that would harmonize acceptable practices for DCMs and DCOs.

DATES: Comments must be received on or before August 23, 2010.

ADDRESSES: Comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may

be submitted via e-mail at BCDR@cftc.gov. "Business Continuity and Disaster Recovery" must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. Comments may also be submitted at <http://www.regulations.gov>. All comments must be submitted in English, or if not, accompanied by an English translation.

FOR FURTHER INFORMATION CONTACT:

Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, 202-418-5092, rwasserman@cftc.gov; David Taylor, Special Counsel, Division of Market Oversight, 202-418-5488, dtaylor@cftc.gov; Jocelyn Partridge, Special Counsel, Division of Clearing and Intermediary Oversight, 202-418-5926, jpartridge@cftc.gov; or Cody J. Alvarez, Attorney Advisor, Division of Market Oversight, 202-418-5404, calvarez@cftc.gov; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

While the experience of the Commission is that DCMs and DCOs registered with it maintain adequate business continuity and disaster recovery ("BC-DR") programs, the Commission believes that additional regulatory steps should be taken to further improve the resiliency and recovery capabilities of registered entities, particularly those organizations which meet the financial sector's accepted definitions of "critical financial markets" and "core clearing and settlement organizations."¹ These accepted definitions come from the *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System*, commonly known as the "White Paper," that was issued by the Board of Governors of the Federal Reserve System ("Fed"), the Department of the Treasury ("Treasury"), and the Securities and Exchange Commission ("SEC") in 2003.² Although the Commission did not participate in the issuance of the White Paper, the Commission has determined that it would be appropriate to apply standards

¹ See *infra* note 2.

² 68 FR 17809 (April 11, 2003). The White Paper considers new risks present in the post-September 11 environment, addresses steps needed to strengthen the overall resilience of the U.S. financial system in the event of a wide-scale disruption, and is the principal source of common business continuity and disaster recovery standards applicable across the U.S. financial sector.

analogous to those set forth in the White Paper to DCMs and DCOs.³

B. Standards Established by Regulators of Comparable Financial Entities

The White Paper explained that critical financial markets are those markets that provide the means for financial institutions to adjust their cash and securities positions and those of their customers in order to manage liquidity, market, and other risks to their organizations, and provide support for the provision of a wide range of financial services to U.S. businesses and consumers. The White Paper defined "critical financial markets" as "markets for [(1)] federal funds, foreign exchange, and commercial paper; [(2)] U.S. government and agency securities; and [(3)] corporate debt and equity securities."⁴ "Core clearing and settlement organizations" are those that (a) provide clearing and settlement services for critical financial markets, or (b) act as large-value payment systems operators and present systemic risk should they be unable to perform.⁵ This proposal would apply these White Paper standards to futures markets related to the aforementioned instruments and extend it to futures markets for essential physical commodities.

The Commission believes that some of the registered entities regulated by the Commission may be "critical financial markets" or "core clearing and settlement organizations." They provide the means for financial institutions to adjust their financial positions and those of their customers in order to manage liquidity, market, and other risks, and provide support for provision of a wide range of financial services to U.S. businesses and consumers. Their products include futures on U.S. government and agency securities, equity indexes, foreign exchange and physical commodities that comprise critical components of the world financial system. For these reasons, it might present unacceptable risks to the U.S. financial system if these entities were to become inoperative and unavailable for an extended period of time for any reason up to and including a wide-scale disruption. The ability of critical financial markets and core clearing and settlement organizations to recover and resume trading and clearing promptly in the event of a wide-scale

³ Because there are no Derivatives Transaction Facilities ("DTEFs") currently registered with the Commission, the Commission has chosen to refrain from similarly modifying any regulations or guidance applicable to DTEFs at this time.

⁴ See 68 FR at 17811.

⁵ See *id.* at 17811.

disruption is important to the U.S. economy.

The White Paper calls for core clearing and settlement organizations to have the capacity to meet a same-day recovery time objective (“RTO”); that is, the capacity to recover and resume clearing and settlement activities within the business day on which the disruption occurs.⁶ Further, the White Paper recognizes that the ability to meet a same-day RTO during a wide-scale disruption requires an appropriate level of geographic diversity between primary and backup sites, with the latter as far away as necessary to avoid being subject to the same set of risks as the primary site. Backup sites should not rely on the same transportation, telecommunications, power, water, or other critical infrastructure components as the primary location. In addition, operation of the backup site should not be impaired by a wide-scale evacuation at, or the inaccessibility of staff that service, the primary site. Therefore, the White Paper calls for core clearing and settlement organizations to maintain backup facilities that are a significant distance away from their primary facilities, a distance sufficient to address the risk that a wide-scale disruption could make the organization’s labor pool across the entire metropolitan or other geographic area of the primary site (including adjacent communities economically integrated with it) unavailable to support achievement of the organization’s RTO.⁷

While the White Paper defines critical financial markets, it establishes an RTO only for core clearing and settlement organizations. The *Policy Statement: Business Continuity Planning for Trading Markets* issued by the Securities and Exchange Commission (“SEC Policy Statement”) establishes an RTO and a geographic dispersal of disaster recovery resources requirement for U.S. securities markets.⁸ The SEC Policy Statement recognizes that U.S. securities markets collectively constitute critical financial markets. It establishes a next-day, rather than same-day, RTO for securities markets because securities trading is “relatively fungible across markets,” since most securities are traded on more than one market.⁹ As a result, if trading on one securities

market were incapacitated, that trading could be shifted to one or more of the other securities markets. By contrast, trading of futures is generally not fungible across markets. The geographic dispersal requirement for securities markets set in the SEC Policy Statement is the same as that set forth in the White Paper for core clearing and settlement organizations.

C. Applicable Provisions of the Commodity Exchange Act

The Commodity Exchange Act (“CEA” or “Act”) provides for the protection of the “public interest” through a system of effective self-regulation of trading facilities, clearing systems and markets participants under Commission oversight. As specifically set forth in the Act, ensuring the integrity of the futures markets and the avoidance of systemic risk are critical functions of the Commission.¹⁰ Accordingly, the Commission believes that this proposal relating to BC–DR standards is essential for the proper functioning of the futures markets and the U.S. financial system.

The BC–DR requirements currently applicable to DCMs are set forth in Core Principle 6, *Emergency Authority* (“Core Principle 6”),¹¹ Core Principle 9, *Execution of Transactions* (“Core Principle 9”),¹² and Part 38 of the Commission’s Regulations. The BC–DR requirements currently applicable to DCOs are set forth in Core Principle I, *System Safeguards* (“Core Principle I”)¹³ and Part 39 of the Commission’s Regulations. Pursuant to these provisions, DCMs and DCOs are required to have appropriate emergency authority, emergency procedures, backup facilities, and disaster recovery plans. Such entities must also ensure the proper functioning, adequate capacity, and security of their automated trading and clearing systems, and conduct adequate testing and review of those systems.

With respect to DCMs, Core Principle 6, *Emergency Authority*, requires DCMs to adopt rules providing for the exercise of emergency authority. The Application Guidance set forth in Appendix B to Part 38 of the Commission’s Regulations relating to Core Principle 6 notes that this authority should allow the DCM to

“intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention.”¹⁴ Core Principle 9, *Execution of Transactions*, also requires DCMs to “provide a competitive, open, and efficient market and mechanism for executing transactions.” Consistent with Core Principle 9, DCMs are required to periodically test and review automated systems to ensure proper system functioning, adequate capacity, and security.¹⁵

With respect to DCOs, Core Principle I, *System Safeguards*, requires DCOs to maintain “a program of oversight and risk analysis to ensure that the automated systems of the [DCO] function properly and have adequate capacity and security.” It also requires DCOs to “maintain emergency procedures and a plan for disaster recovery, and to periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.”¹⁶

In the near-decade that has passed since the Act’s Core Principles were established by the Commodity Futures Modernization Act of 2000 (“CFMA”),¹⁷ historical events have resulted in substantial and important changes in BC–DR standards for financial sector organizations. The events of September 11, 2001, the Northeast regional power outages of 2003, the economic events of 2008–2009, and the current rise in cyber threats have resulted in important lessons learned, and in changed thinking about how normal financial institution operations could be disrupted, and the preparedness principles that should be followed to ensure the financial sector’s ability to recover and resume operations promptly after a disruption. In light of these developments, and of the vital importance of critical financial markets and core clearing and settlement organizations to the national economy, the Commission believes that the additional, new standards proposed for those DCMs and DCOs that the Commission may determine to be critical financial markets or core clearing and settlement organizations are essential to ensure the capacity of such entities to recover and resume operations promptly in the event they are affected by a wide-scale disruption.

⁶ The White Paper also mentions, as an aspirational “overall goal,” an RTO of two hours for core clearing and settlement organizations.

⁷ See generally, White Paper, 68 FR at 17813.

⁸ See 68 FR 56656 (October 1, 2003) (Release No. 34–48545; File No. S7–17–03).

⁹ We understand that an exception to this general observation is the listing and trading of certain index option products that may be subject to exclusive licensing arrangements.

¹⁰ Section 3(b), 7 U.S.C. 5(c). Congress gave the Commission broad authority in Section 8a(5) of the Act, 7 U.S.C. 12a(5), to make and promulgate rules, such as those contained in this Proposal, that are reasonably necessary to prevent disruptions to market integrity, ensure the financial integrity of futures and options transactions and promote the avoidance of systemic risk.

¹¹ 7 U.S.C. 7(d)(6).

¹² 7 U.S.C. 7(d)(9).

¹³ 7 U.S.C. 7a–1(c)(2)(I).

¹⁴ See Application Guidance set forth in Appendix B to Part 38 of the Commission’s Regulations relating to Core Principle 6.

¹⁵ See Application Guidance set forth in Appendix B to Part 38 of the Commission’s Regulations relating to Core Principle 9.

¹⁶ See Section 5b(c)(2)(I) of the Act, 7 U.S.C. 7a–1(c)(2)(I).

¹⁷ See Public Law 106–554 (December 21, 2000).

The Commission also believes that, to better ensure the resiliency of futures and options trading and the ability of the industry to respond to current threats to its operations, the application guidance and acceptable practices language concerning BC-DR standards applicable to all DCMs should be updated and harmonized with the BC-DR standards applicable to DCOs. The proposed amendments to the existing BC-DR standards for all DCMs also seek to better explain those standards through the use of current terms of art with respect to BC-DR matters. The Commission believes the approach to BC-DR standards taken by the White Paper and the SEC Policy Statement, particularly with respect to the recovery time objective and geographic dispersal requirements needed to provide resiliency in the event of a wide-scale disruption, is appropriate for the Commission to take in adopting requirements applicable to registered entities that are critical financial markets or core clearing and settlement organizations.

The Commission believes that certain DCMs and DCOs may be critical financial markets or core clearing and settlement organizations. Some DCMs and DCOs provide the means for financial institutions to adjust their financial positions and those of their customers in order to manage liquidity, market, and other risks, and provide support for provision of a wide range of financial services to U.S. businesses and consumers. The available products include futures contracts and related options on U.S. government and agency securities, equity indexes, foreign exchange and physical commodities that comprise critical components of the world financial system. For these reasons, it might present unacceptable risks to the U.S. financial system if such DCMs or DCOs were to become inoperative and unavailable for an extended period of time for any reason up to and including a wide-scale disruption, and their ability to recover and resume trading and clearing promptly in the event of a wide-scale disruption may be critically important to the U.S. economy. Mitigating systemic risk through the application of consistent, same-day RTOs for clearing and settlement activities across the nation's critical financial markets in the event of a wide-scale disruption may be important to financial sector resiliency. Sufficient geographic dispersal of BC-DR resources, including both technology and personnel, is an essential means of ensuring that critical financial markets and core clearing and settlement

organizations have the ability to recover and resume trading and clearing within a same-day RTO.

II. Proposed New Regulation 40.9

The Commission proposes amendments to Part 40 of its Regulations as follows: (1) The addition of new definitions in Regulation 40.1; (2) adoption of new Regulation 40.9 setting forth same-day RTO and geographic dispersal requirements for critical financial markets and core clearing and settlement organizations; and (3) the adoption of new Appendix E providing guidance regarding the Commission's determination of critical financial markets and core clearing and settlement organizations. The Commission also proposes to amend the application guidance provided in Appendix B to Part 38 and Appendix A to Part 39 of the Commission's regulations to incorporate the new Part 40 requirements.

Five new definitions are proposed to be added to Regulation 40.1. The terms defined include "critical financial market," "core clearing and settlement organization," "relevant area," "recovery time objective," and "wide-scale disruption."

Proposed Regulation 40.1(j) would define "critical financial market" to mean a DCM that provides the means for financial institutions to adjust their financial positions and those of their customers in order to manage liquidity, market, and other risks to their organizations, and provides support for the provision of a wide range of financial services to businesses and consumers in the United States, particularly including markets whose trading impacts federal funds, foreign exchange, commercial paper, U.S. government and agency securities, corporate debt, equity securities, or physical commodities of broad, major importance to the national or international economy.

Proposed Regulation 40.1(k) would define "core clearing and settlement organization" as a DCO that provides clearing and settlement services integral to a critical financial market (or to multiple DCMs that are critical financial markets on a collective rather than individual basis).

Proposed Regulation 40.1(l) would define "relevant area," for the purposes of Part 40, as the metropolitan or other geographic area within which a critical financial market or core clearing and settlement organization has physical infrastructure or personnel necessary for it to, as appropriate, (a) conduct electronic trading, (b) disseminate market data and provide price reporting,

(c) conduct electronic surveillance and maintain access to audit trail information, or (d) conduct activities necessary to the clearance and settlement of existing and new contracts, including communities economically integrated with, adjacent to, or within normal commuting distance of that metropolitan or other geographic area.

Proposed Regulation 40.1(m) would define "recovery time objective" as the time period within which an entity should be able to achieve recovery and resumption of, as appropriate, (a) electronic trading, (b) market data dissemination and price reporting, (c) access to audit trail information and electronic surveillance tools, or (d) clearing and settlement of existing and new contracts, after those capabilities become temporarily inoperable for any reason up to or including a wide-scale disruption.

Proposed Regulation 40.1(n) would define "wide-scale disruption" to mean an event that causes a severe disruption or destruction of transportation, telecommunications, power, water, or other critical infrastructure components in a relevant area, or an event that results in the evacuation or unavailability of the population in a relevant area.

Proposed Regulation 40.9(a) would require any registered entity that the Commission determines is a critical financial market or core clearing and settlement organization to maintain a disaster recovery plan and BC-DR resources, including infrastructure and personnel, sufficient to enable it to achieve a same-day RTO in the event of a wide-scale disruption affecting the relevant area of any of its normal-use trading or clearing operations.

Proposed Regulation 40.9(b) would provide that a same-day RTO is one calling for recovery and resumption of trading and clearing within the business day on which the disruption occurs.¹⁸

Proposed Regulation 40.9(c) would set forth the minimal requirements for geographic dispersal of infrastructure and personnel needed to meet a same-day RTO. It would provide that infrastructure sufficient to enable a critical financial market or core clearing

¹⁸ The same-day RTO is not intended to mandate the specific response of a particular entity to a particular disaster. Rather, the objective is intended to establish the recovery goal that the BC-DR plans of certain registrants must be designed to meet and, in turn, the resources that such registrants are expected to allocate to ensure that they are capable of achieving the objective. The Commission recognizes that a wide-scale disruption could occur near the close of a business day, and would interpret this requirement in a practical manner in such an event.

and settlement organization to meet a same-day recovery time objective after interruption of normal trading and clearing by a wide-scale disruption must be located outside the relevant area of the infrastructure the entity normally relies upon to (a) conduct electronic trading, (b) disseminate market data and provide price reporting, (c) conduct electronic surveillance and maintain access to audit trail information, or (d) conduct activities necessary to the clearance and settlement of existing and new contracts, and may not rely on the same critical transportation, telecommunications, power, water, or other critical infrastructure components as the infrastructure the entity normally relies upon for such activities. It would also provide that personnel sufficient to enable the critical financial market or core clearing and settlement organization to meet a same-day recovery time objective, after interruption of normal trading or clearing by a wide-scale disruption affecting the relevant area in which the personnel the entity normally relies upon to engage in such activities are located, must live and work outside that relevant area, so that they will not be made unavailable by a wide-scale evacuation or unavailability of personnel who live or work in that relevant area.

Proposed Regulation 40.9(d) would require every registered entity that the Commission determines is a critical financial market or core clearing and settlement organization to conduct regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve a same-day RTO in the event of a wide-scale disruption.

New Appendix E to Part 40 would provide guidance on the process the Commission will follow, and the factors it will consider, to determine that a registered entity is a critical financial market or a core clearing and settlement organization. Appendix E would also describe the notice and opportunity for comment that the Commission would provide in this connection.

In connection with its proposal to adopt new Regulation 40.9, the Commission has also proposed conforming amendments to certain application guidance provisions of Commission Regulations relating to various Core Principles. Specifically, Appendix B to Part 38 and Appendix A to Part 39 are proposed to be amended to revise acceptable practices provisions under Core Principle 6 and Core Principle 9 in Part 38 and application guidance under Core Principle I in Part 39, to note that Proposed Regulation

40.9 would govern the obligations of registered entities that the Commission determines to be critical financial markets or core clearing and settlement organizations, with respect to maintenance and geographic dispersal of disaster recovery resources sufficient to meet a same-day RTO in the event of a wide-scale disruption. These proposed revisions would further note that, therefore, Proposed Regulation 40.9 itself would establish the application guidance and acceptable practices for core principle compliance relating to those matters set forth in Regulation 40.9.

As previously discussed, the Commission in this proposal would amend the acceptable practices provisions for Core Principle 9 set forth in Appendix B to Part 38, to harmonize the language of those provisions regarding BC-DR matters with the language of the parallel application guidance provisions for Core Principle I in Part 39. Moreover, the proposed revisions would also better explain the BC-DR standards currently applicable to DCMs. DCMs that have not been determined to be critical financial markets would be subject to the generally applicable BC-DR requirements set forth in these revisions, but would not be required to comply with the additional obligations imposed on critical markets by new Regulation 40.9. The Commission is aware that proposed legislation pending before Congress would amend the Act,¹⁹ including certain portions that govern DCMs and DCOs.²⁰ At the time the Commission approved this proposed rulemaking, that legislation contained provisions that would create a new Core Principle 20, *System Safeguards*, explicitly setting forth BC-DR requirements for all DCMs. In the event that this pending legislation is enacted into law, the proposed application guidance and acceptable practices provisions relating to Core Principle 9 set forth below may be considered by the Commission in connection with creation of application guidance and acceptable practices provisions relating to Core Principle 20.

III. Proposed Effective Date

The Commission requests comment on a reasonable date for the proposed amendments to become effective.

IV. Solicitation of Comments

The Commission requests comments on all aspects of the proposed rule

amendments, including the question of what RTO (e.g., the proposed same-day RTO or the aspirational two-hour RTO also mentioned in the White Paper) is appropriate. As noted above, at the time that the Commission approved this proposal, legislation was pending before Congress that would amend the CEA. The Commission specifically requests comment on the effect, if any, the legislation would have on this proposal.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that Federal agencies, in proposing rules, consider the impact of those rules on small businesses.²¹ New requirements related to the proposed rule amendments would fall on DCMs and DCOs which the Commission may determine to be critical financial markets or core clearing and settlement organizations. The Commission has previously determined that DCMs and DCOs are not small entities for purposes of the RFA.²² Accordingly, the Commission does not expect the rules proposed herein to have a significant economic impact on any small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

These proposed rule amendments will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act.²³ All recordkeeping or information collection requirements relevant to the subject of this proposed rulemaking, or discussed herein, already exist under current law. Accordingly, the Paperwork Reduction Act does not apply. The Commission invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the amendments proposed herein.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing a

²¹ 5 U.S.C. 601 *et seq.*

²² See 47 FR 18618 at 18619 (April 30, 1982) with respect to DCMs, and 66 FR 45604 at 45609 (August 29, 2001) with respect to DCOs.

²³ 44 U.S.C. 3501 *et seq.*

¹⁹ 11 U.S.C. 1 *et seq.*

²⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. (2010).

new regulation or order under the Act.²⁴ By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new rule or to determine whether the benefits of the adopted rule outweigh its costs. Rather, section 15(a) requires the Commission to “consider the costs and benefits” of a subject rule. Section 15(a) further specifies that the costs and benefits of proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.²⁵

As discussed above, the proposed rule amendments would require DCMs and DCOs that the Commission determines to be critical financial markets or core clearing and settlement organizations to (1) maintain business continuity and disaster recovery resources sufficient to meet a same-day RTO for trading and clearing, and (2) maintain geographic dispersal of infrastructure and personnel sufficient to enable achievement of a same-day RTO in the event of a wide-scale disruption. The Commission cannot fully quantify the costs that would be borne by such entities in complying with the proposed rule amendments, as the Commission has not yet determined which entities are critical financial markets or core clearing or settlement organizations. Moreover, the cost to comply with the proposed rule amendments would be likely to vary depending on the nature and location of infrastructure and personnel available to enable achievement of a same-day RTO that are presently maintained by each such entity.

Notwithstanding the potential costs that could be incurred by DCMs or DCOs that the Commission determines to be critical financial markets or core clearing and settlement organizations in complying with the proposed rule

amendments, the Commission believes the benefits of the proposed rule amendments are significant and important. The ability of critical financial markets and core clearing and settlement organizations to recover and resume trading and clearing promptly in the event of a wide-scale disruption is significant to the U.S. economy. Therefore, the proposed rule amendments may be crucially important to sound risk management practices for such markets, an area of concern that may deserve great weight in this connection. As such, they may be needed to protect market participants and ensure the continued efficiency, competitiveness, financial integrity, and price discovery function of such markets in the event of a wide-scale disruption. Accordingly, the Commission believes that the proposal is consistent with the Act and would serve to protect the public interest by promoting market integrity and the avoidance of systemic risk.

After considering the costs and benefits noted above, the Commission has determined to issue the proposed rule amendments. The Commission invites public comment on its application of the cost-benefit provision. Commenters are also invited to submit any data that they may have quantifying the costs and benefits of the proposed rule amendments with their comment letter.

VI. Text of Proposed Amendments

List of Subjects

17 CFR Part 38

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 39

Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 40

Commodity futures, Reporting and recordkeeping requirements.

In light of the foregoing, and pursuant to the authority in the Act, and in particular Sections 3, 5, 5c(a) and 8a(5) of the Act, the Commission hereby proposes to amend Parts 38, 39, and 40 of Title 17 of the Code of Federal Regulations as follows:

PART 38—DESIGNATED CONTRACT MARKETS

1. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. Amend Appendix B to Part 38 by revising paragraph (b) of Core Principle 6; and paragraph (a)(2) and paragraph (b) of Core Principle 9, to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 6 of section 5(d) of the Act:
EMERGENCY AUTHORITY * * *

* * * * *

(b) *Acceptable practices.* Commission Regulation 40.9 governs the obligations of designated contract markets that the Commission has determined to be critical financial markets with respect to maintenance and geographic dispersal of disaster recovery resources sufficient to meet a same-day recovery time objective in the event of a wide-scale disruption. Therefore, Regulation 40.9 itself establishes the guidance and acceptable practices for core principle compliance in that respect.

* * * * *

Core Principle 9 of section 5(d) of the Act:
EXECUTION OF TRANSACTIONS * * *

* * * * *

(a) * * *

(2) The board of trade shall:

(i) Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures;

(ii) Establish and maintain a program of regular, periodic testing to ensure that all automated systems used by the board of trade function properly and have adequate security and capacity; and

(iii) Establish and maintain emergency procedures, backup facilities, a disaster recovery plan, and regular, periodic testing to ensure timely recovery and resumption of order processing and trade matching, market data dissemination and price reporting, market and trade practice surveillance, and maintenance of a comprehensive and accurate audit trail.

* * * * *

(b) *Acceptable practices.* (1) Testing and review of automated systems should be conducted by qualified, independent professionals. Such qualified independent professionals may be independent contractors or employees of the board of trade, but should not be persons responsible for development or operation of the systems being tested. Pursuant to the provisions of Commission Regulations Sections 1.31 and 1.35, the board of trade must keep records of all such tests, and make all test results available to the Commission upon request.

(2) In fulfilling its obligations set forth in the Application Guidance above with respect to its automated systems, the board of trade should follow the guidelines issued by the International Organization of Securities Commissions (“IOSCO”) in 1990 (the “IOSCO Principles”), and adopted by the Commission on November 21, 1990 (55 FR 48670), as supplemented and amended, and any similar guidelines issued by the Commission or its staff.

²⁴ 7 U.S.C. 19(a).

²⁵ E.g., *Fishermen’s Dock Co-op., Inc. v. Brown*, 75 F.3d 164 (4th Cir. 1996); *Center for Auto Safety v. Peck*, 751 F.2d 1336 (DC Cir. 1985) (agency has discretion to weigh factors in undertaking cost-benefit analyses).

(3) Commission Regulation 40.9 governs the obligations of registered entities that the Commission has determined to be critical financial markets, with respect to maintenance and geographic dispersal of disaster recovery resources sufficient to meet a same-day recovery time objective in the event of a wide-scale disruption. Therefore, Regulation 40.9 itself establishes the guidance and acceptable practices for core principle compliance in that respect.

* * * * *

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 7b as added by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

4. Amend Appendix A to Part 39 by adding a new paragraph 3 after paragraph 2.b. of the guidance under Core Principle I, as follows:

Appendix A to Part 39—Application Guidance and Compliance With Core Principles

* * * * *

Core Principle I: SYSTEM SAFEGUARDS

* * * * *

2. * * *

b. * * *

3. Commission Regulation 40.9 governs the obligations of derivatives clearing organizations that the Commission determines to be core clearing and settlement organizations, with respect to maintenance and geographic dispersal of disaster recovery resources sufficient to meet a same-day recovery time objective in the event of a wide-scale disruption. Therefore, Regulation 40.9 itself establishes the guidance for core principle compliance in that respect.

* * * * *

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

5. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law No. 110–246, 122 Stat. 1624 (June 18, 2008).

6. Amend § 40.1 by adding paragraphs (j) through (n) to read as follows:

§ 40.1 Definitions.

* * * * *

(j) *Critical financial market* means a designated contract market that provides the means for financial institutions to adjust their financial positions and those of their customers in order to manage liquidity, market, and other risks to their organizations, and provides support for the provision

of a wide range of financial services to businesses and consumers in the United States, particularly including markets whose trading impacts federal funds, foreign exchange, commercial paper, U.S. government and agency securities, corporate debt, equity securities, or physical commodities of broad, major importance to the national and international economy. Guidance as to how the Commission will determine whether a registered entity is a critical financial market is set forth in Appendix E to Part 40.

(k) *Core clearing and settlement organization* means a derivatives clearing organization that provides clearing and settlement services integral to a critical financial market (or to multiple designated contract markets that are critical financial markets on a collective rather than individual basis). Guidance as to how the Commission will determine whether a derivatives clearing organization is a core clearing and settlement organization is set forth in Appendix E to Part 40.

(l) *Relevant area* means the metropolitan or other geographic area within which a critical financial market or core clearing and settlement organization has physical infrastructure or personnel necessary for it to, as appropriate, conduct electronic trading, disseminate market data and provide price reporting, conduct electronic surveillance and maintain access to audit trail information, or conduct activities necessary to the clearance and settlement of existing and new contracts; including communities economically integrated with, adjacent to, or within normal commuting distance of that metropolitan or other geographic area.

(m) *Recovery time objective* means the time period within which an entity should be able to achieve recovery and resumption of, as appropriate, electronic trading, market data dissemination and price reporting, access to audit trail information and electronic surveillance tools, or clearing and settlement of existing and new contracts, after those capabilities become temporarily inoperable for any reason up to or including a wide-scale disruption.

(n) *Wide-scale disruption* means an event that causes a severe disruption or destruction of transportation, telecommunications, power, water, or other critical infrastructure components in a relevant area, or an event that results in an evacuation or unavailability of the population in a relevant area.

7. Add § 40.9 to read as follows:

§ 40.9 Disaster recovery requirements for critical financial markets and core clearing and settlement organizations.

(a) Each designated contract market or derivatives clearing organization that the Commission determines is a critical financial market or a core clearing and settlement organization must maintain a disaster recovery plan and business continuity and disaster recovery resources, including infrastructure and personnel, sufficient to enable it to achieve a same-day recovery time objective in the event that its normal trading or clearing and settlement capabilities become temporarily inoperable for any reason up to and including a wide-scale disruption.

(b) A same-day recovery time objective is a recovery time objective within the same business day on which normal trading or clearing and settlement capabilities become temporarily inoperable for any reason up to and including a wide-scale disruption.

(c) To ensure its ability to achieve a same-day recovery time objective in the event of a wide-scale disruption, each designated contract market or derivatives clearing organization that the Commission determines is a critical financial market or a core clearing and settlement organization must maintain a degree of geographic dispersal of both infrastructure and personnel such that:

(1) Infrastructure sufficient to enable the entity to meet a same-day recovery time objective after interruption of normal trading and clearing by a wide-scale disruption is located outside the relevant area of the infrastructure the entity normally relies upon to conduct electronic trading, disseminate market data and provide price reporting, conduct electronic surveillance and maintain access to audit trail information, or conduct activities necessary to the clearance and settlement of existing and new contracts, and does not rely on the same critical transportation, telecommunications, power, water, or other critical infrastructure components the entity normally relies upon for such activities; and

(2) Personnel sufficient to enable the entity to meet a same-day recovery time objective, after interruption of normal trading or clearing by a wide-scale disruption affecting the relevant area in which the personnel the entity normally relies upon to engage in such activities are located, live and work outside that relevant area.

(d) Each registered entity that the Commission determines is a critical financial market or core clearing and settlement organization must conduct

regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve a same-day recovery time objective in the event of a wide-scale disruption.

* * * * *

8. Add Appendix E to Part 40 to read as follows:

Appendix E to Part 40—Guidance on Critical Financial Market and Core Clearing and Settlement Organization Determination

(a) *Critical financial market determination.* (1) The Commission may determine, in its discretion, whether a designated contract market is a critical financial market. In making such a determination, the Commission will evaluate each such entity on a case-by-case basis, giving consideration to whether the entity provides the means for financial institutions to adjust their financial positions and those of their customers in order to manage liquidity, market, and other risks to their organizations, and provides support for the provision of a wide range of financial services to businesses and consumers in the United States; or whether the entity conducts trading that impacts Federal funds, foreign exchange, commercial paper, U.S. government and agency securities, corporate debt, equity securities, or physical commodities of broad, major importance to the national and international economy. The Commission may also consider other relevant factors that it finds important.

(2) The Commission will notify the designated contract market that it intends to undertake a determination with respect to whether it is a critical financial market. The entity may provide written data, views, and arguments relevant to the Commission's determination. Any such written data, views, and arguments shall be filed with the Secretary of the Commission, in the form and manner specified by the Commission, within 30 calendar days of receiving notice or within such other time specified by the Commission. After prompt consideration of all relevant information, the Commission will issue an order directly to the designated contract market explaining the Commission's determination of whether it is a critical financial market as defined by § 40.1(j).

(b) *Core clearing and settlement organization determination.* (1) The Commission may determine, in its discretion, whether a derivatives clearing organization is a core clearing and settlement organization. In making such a determination, the Commission will evaluate each such entity on a case-by-case basis, giving consideration to whether the entity provides clearing and settlement services integral to a critical financial market (or to multiple designated contract markets that are critical financial markets on a collective rather than individual basis). The Commission may also consider other relevant factors that it finds important.

(2) The Commission will notify the derivatives clearing organization that it intends to undertake a determination with

respect to whether it is a core clearing and settlement organization. The entity may provide written data, views, and arguments relevant to the Commission's determination. Any such written data, views, and arguments shall be filed with the Secretary of the Commission, in the form and manner specified by the Commission, within 30 calendar days of receiving notice or within such other time specified by the Commission. After prompt consideration of all relevant information, the Commission will issue an order directly to the derivatives clearing organization explaining the Commission's determination of whether it is a core clearing and settlement organization as defined by § 40.1(k).

Issued in Washington, DC, on July 14, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010-17606 Filed 7-21-10; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2007-0092]

RIN 0960-AG72

Amendments to Procedures for Certain Determinations and Decisions

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise the procedures for how claimants who request hearings before administrative law judges (ALJs) may seek further review of their fully favorable revised determinations based on prehearing case reviews or fully favorable attorney advisor decisions. We also propose to notify claimants who receive partially favorable determinations based on prehearing case reviews that an ALJ will still hold a hearing unless all parties to the hearing tell us in writing that we should dismiss the hearing requests. We expect that these changes will simplify the process and free up scarce administrative resources that we can better use to reduce the hearings level case backlog.

DATES: To ensure that your comments are considered, we must receive them no later than September 20, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2007-0092 so that we can associate your comments with the correct regulation:

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend this method for submitting your comments. Visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function of the Web page to find docket number SSA-2007-0092 and then submit your comment. Once you submit your comment, the system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately as we must manually post each comment. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966-2830.

3. *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Joshua Silverman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 594-2128. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Background

In most cases, we decide claims for benefits using an administrative review process that consists of four levels: Initial determination, reconsideration, hearing, and appeal. 20 CFR 404.900 and 416.1400. We make an initial determination at the first level. A claimant who is dissatisfied with the initial determination may request

reconsideration.¹ A claimant dissatisfied with the reconsidered determination may request a hearing before an ALJ. Finally, if dissatisfied with the ALJ's decision, a claimant may request that the Appeals Council review that decision.² After a claimant has completed these administrative steps and received our final decision, he or she may request judicial review of the final decision in Federal district court.

We handle requests for ALJ hearings in several ways. Most claimants receive a decision from an ALJ.³ An ALJ may hold a hearing and issue a fully favorable, partially favorable, or unfavorable decision. An ALJ may issue a decision without holding an oral hearing if the claimant and any other parties waive their right to appear at a hearing or if the decision is fully favorable.

At the ALJ hearing level, there are two other ways we may issue favorable determinations or decisions without holding hearings. A State agency or one of our components may issue a fully favorable revised determination under the prehearing case review process in 20 CFR 404.941 and 416.1441. An attorney advisor may issue a fully favorable decision under the attorney advisor process in 20 CFR 404.942 and 416.1442. These processes help us adjudicate cases pending at the hearing level more quickly while preserving claimants' right to a hearing before an ALJ.

Current Prehearing Case Review

The prehearing case review process allows us to refer a case back to the component that issued the determination under review. That component decides whether to revise its determination and issue a fully or partially favorable revised determination. We may conduct a prehearing case review if:

1. Additional evidence is submitted;

¹ For disability claims, ten States participate in a "prototype" test under 20 CFR 404.906 and 416.1406. In these States, we eliminated the reconsideration step of the administrative review process. Claimants and other parties who are dissatisfied with the initial determinations on their disability cases may request a hearing before an ALJ. The ten States are: Alabama, Alaska, California (Los Angeles North and West Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania.

² We define the words "determination" and "decision" in 20 CFR 404.901 and 416.1401. At the initial and reconsideration levels of the administrative review process, we issue "determinations." ALJs issue "decisions," as does the Appeals Council when it reviews an ALJ's decision.

³ An ALJ may also send the case to the Appeals Council with a recommended decision or dismiss a request for a hearing. 20 CFR 404.953(c), 404.957, 416.1453(d), and 416.1457.

2. There is an indication that additional evidence is available;

3. There is a change in the law or regulations; or

4. There is an error in the file or some other indication that the prior determination may be revised.

20 CFR 404.941(b), 416.1441(b).

Our current regulations state that, if we issue a fully favorable revised determination, we notify the claimant and all other parties that the ALJ will dismiss the hearing request unless a party requests that the hearing proceed. The claimant or other party must make this request in writing within 30 days after the date we mail the notice of the revised determination.

If we issue a partially favorable revised determination, we notify the claimant and all other parties that we will continue with the ALJ hearing unless the claimant and all other parties agree to dismiss the hearing request. However, our current regulations do not specify how the claimant and all other parties must tell us that they agree to dismiss this hearing request.

Current Prehearing Decisions by Attorney Advisors

Attorney advisors in our Office of Disability Adjudication and Review may conduct specific prehearing proceedings and, if appropriate, make fully favorable decisions based on the record. Attorney advisors may conduct prehearing proceedings under circumstances similar to those under which we conduct prehearing case reviews. 20 CFR 404.942(b) and 416.1442(b). If an attorney advisor issues a fully favorable decision, we wait 30 days before we dismiss the hearing request. We created the 30-day period to allow time for a claimant or other party to ask us to proceed with the hearing.

Proposed Changes

Our adjudicative experience shows that claimants who receive a fully favorable determination or decision rarely ask us to continue with a hearing. Our experience shows that claimants may become confused when they receive a notice dismissing their request for a hearing several weeks after they received a fully favorable determination or decision on their claim. As a result, we spend administrative resources: (1) Processing the dismissals of requests for hearing because we must wait until the 30-day period ends before we dismiss the request for hearing; (2) answering claimants' questions; and (3) explaining what the dismissal notice means.

We believe that changing our procedures would both simplify the process and free scarce administrative

resources that we can better use to reduce the hearings level case backlog.

Therefore, we propose to revise the way claimants can obtain further review fully favorable and partially favorable prehearing case review determinations and fully favorable attorney advisor decisions. The proposed changes preserve a claimant's right to have an ALJ hearing, even when we have issued a fully favorable determination or decision under one of these processes.

As is our current policy, whenever a claimant or other party seeks further review of a favorable determination or decision, we consider the entire case record and determination or decision. Further review of a favorable determination or decision may result in a determination or decision that is less favorable or unfavorable to a claimant.

Proposed Procedures for Prehearing Case Reviews

If we issue a fully favorable revised determination in the prehearing case review process, we propose that an ALJ will dismiss a request for a hearing soon after the reviewing component issues the fully favorable determination. The notice accompanying the ALJ's order of dismissal will advise all parties that they have 60 days from the date they receive the notice to request that the ALJ vacate the dismissal of the hearing request. The administrative law judge will extend the 60-day time limit if a party making a request shows that he or she had good cause for missing the deadline. If a party timely requests that the ALJ vacate the dismissal, the ALJ will vacate the dismissal, reinstate the request for a hearing, and offer all parties an opportunity for a hearing.

If we issue a partially favorable determination in the prehearing case review process, we propose that an ALJ will proceed to hold a hearing unless all parties to the hearing tell us in writing that they agree to dismiss the hearing request. If we receive a written statement(s) agreeing to a dismissal before an ALJ mails a notice of his or her decision, we will dismiss the request for a hearing.

We propose to include these changes in 20 CFR 404.941, 404.960, 416.1441, and 416.1460.

Proposed Procedures for Attorney Advisor Prehearing Decisions

If an attorney advisor issues a fully favorable decision, we propose to consider the decision to be a hearing-level decision, and we will not issue a notice of dismissal of the hearing request. We propose that if a party to the hearing disagrees with the attorney advisor's decision for any reason, the

party will have 60 days after receiving notice of the decision to request that an ALJ reinstate the request for a hearing. The ALJ will extend the 60-day time limit if the party making the request shows that he or she had good cause for missing the deadline. If a party timely requests that the ALJ reinstate the request for a hearing, the ALJ will reinstate the request for a hearing and offer all parties to the hearing an opportunity for a hearing. We will process the fully favorable attorney advisor's decision while the hearing proceeds normally.

We propose to include these changes in 20 CFR 404.942 and 416.1442.

Other Changes

We propose to change "wholly favorable" to "fully favorable" in 20 CFR 404.941, 404.948, 416.1441, and 416.1448. We also propose to make additional changes for clarity in 20 CFR 404.948, 404.960, 416.1448, and 416.1460. These minor changes would make the language in these sections consistent with other related sections but would not alter their meaning.

Finally, if we issue these proposed rules as final rules, we will review and determine whether we need to revise Social Security Ruling 97-2p, which explains our current procedures for prehearing case reviews when new medical evidence is submitted.

Clarity of These Proposed Rules

Executive Order (E.O.) 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

When Will We Start To Use These Rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective

date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of relevant comments we received, responses to them, and an explanation of how we will apply the new rules.

Regulatory Procedures

Executive Order 12866

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, OMB reviewed them.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they only affect individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements and are not subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend title 20 of the Code of Federal Regulations part 404 subpart J and part 416 subpart N as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.941 by revising paragraphs (c), (d), and, (e) to read as follows:

§ 404.941 Prehearing case review.

* * * * *

(c) *Notice of a prehearing revised determination.* If we revise the determination in a prehearing case review, we will mail a written notice of the revised determination to all parties at their last known addresses. We will state the basis for the revised determination and advise all parties of the effect of the revised determination on the request for a hearing.

(d) *Effect of a fully favorable revised determination.* If the revised determination is fully favorable to you, we will tell you in the notice that an administrative law judge will dismiss the request for a hearing. When the administrative law judge dismisses the request for a hearing, the notice of dismissal will tell you that, if you or another party to the hearing disagrees with the revised determination for any reason, you or another party may request that the administrative law judge vacate the dismissal and reinstate your request for a hearing. If you wish to request that the administrative law judge vacate the dismissal and reinstate your hearing request, you must do so within 60 days after you receive the dismissal notice. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 404.911 to determine whether good cause exists. If the request is timely, an administrative law judge will vacate the dismissal, reinstate the request for a hearing, and offer you an opportunity for a hearing.

(e) *Effect of a partially favorable revised determination.* If the revised determination is partially favorable to you, we will tell you in the notice what was not favorable. We will also tell you that an administrative law judge will proceed to hold the hearing you requested unless you and all other parties to the hearing agree in writing to dismissal of the request for a hearing. If we receive the written statement(s) agreeing to dismissal of the request for a hearing before an administrative law judge mails a notice of his or her

hearing decision, an administrative law judge will dismiss the request for a hearing.

3. Amend § 404.942 by revising paragraphs (d), (e) introductory text, (e)(1), and (f)(3) to read as follows:

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(d) *Notice of a decision by an attorney advisor.* If the attorney advisor issues a fully favorable decision under this section, we will mail a written notice of the decision to all parties at their last known addresses. We will state the basis for the decision and advise all parties that, if a party disagrees with the decision for any reason, the party may request that an administrative law judge reinstate the request for a hearing. If a party wishes to request that the administrative law judge reinstate the hearing request, the party must do so within 60 days after receiving notice of the decision. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 404.911 to determine whether good cause exists. If the request is timely, an administrative law judge will reinstate the request for a hearing and offer you an opportunity for a hearing.

(e) *Effect of an attorney advisor's decision.* An attorney advisor's decision under this section is binding unless—

(1) You or another party to the hearing submits a timely request that an administrative law judge reinstate the request for a hearing under paragraph (d) of this section;

* * * * *

(f) * * *

(3) Make the decision of an attorney advisor under paragraph (d) of this section subject to review by the Appeals Council if the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the decision under § 404.969.

* * * * *

4. Amend § 404.948 by revising the second sentence of paragraph (a), and paragraph (b)(1)(ii), to read as follows:

§ 404.948 Deciding a case without an oral hearing before an administrative law judge.

(a) *Decision fully favorable.* * * * The notice of the decision will state that you have the right to an oral hearing and to examine the evidence on which the ALJ based the decision.

(b) * * *

(1) * * *

(ii) You live outside the United States, you do not inform us that you wish to

appear, and there are no other parties who wish to appear.

* * * * *

5. Revise § 404.960 to read as follows:

§ 404.960 Vacating a dismissal of a request for a hearing before an administrative law judge.

(a) Except as provided in paragraph (b) of this section, an administrative law judge or the Appeals Council may vacate a dismissal of a request for a hearing if, within 60 days after the date you receive the dismissal notice, you request that we vacate the dismissal and show good cause why we should not have dismissed the request for a hearing. The Appeals Council may decide to vacate a dismissal on its own initiative within 60 days after we mail the notice of dismissal. The Appeals Council will inform you in writing if it vacates the dismissal.

(b) If an administrative law judge dismissed your request for a hearing because you received a fully favorable revised determination under the prehearing case review process in § 404.941, but you still wish to proceed with the hearing, then you must follow the procedure in § 404.941(d) to request that an administrative law judge vacate his or her order dismissing your request for a hearing.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

6. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

7. Amend § 416.1441 by revising paragraphs (c), (d), and, (e) to read as follows:

§ 416.1441 Prehearing case review.

* * * * *

(c) *Notice of a prehearing revised determination.* If we revise the determination in a prehearing case review, we will mail a written notice of the revised determination to all parties at their last known addresses. We will state the basis for the revised determination and advise all parties of the effect of the revised determination on the request for a hearing.

(d) *Effect of a fully favorable revised determination.* If the revised determination is fully favorable to you, we will tell you in the notice that an administrative law judge will dismiss the request for a hearing. When the

administrative law judge dismisses the request for a hearing, the notice of dismissal will tell you that, if you or another party to the hearing disagrees with the revised determination for any reason, you or another party may request that the administrative law judge vacate the dismissal and reinstate your request for a hearing. If you wish to request that the administrative law judge vacate the dismissal and reinstate your hearing request, you must do so within 60 days after you receive the dismissal notice. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 416.1411 to determine whether good cause exists. If the request is timely, an administrative law judge will vacate the dismissal, reinstate the request for a hearing, and offer you an opportunity for a hearing.

(e) *Effect of a partially favorable revised determination.* If the revised determination is partially favorable to you, we will tell you in the notice what was not favorable. We will also tell you that an administrative law judge will proceed to hold the hearing you requested unless you and all other parties to the hearing agree in writing to dismissal of the request for a hearing. If we receive the written statement(s) agreeing to dismissal of the request for a hearing before an administrative law judge mails a notice of his or her hearing decision, an administrative law judge will dismiss the request for a hearing.

8. Amend § 416.1442 by revising paragraphs (d), (e) introductory text, (e)(1), and (f)(3) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(d) *Notice of a decision by an attorney advisor.* If the attorney advisor issues a fully favorable decision under this section, we will mail a written notice of the decision to all parties at their last known addresses. We will state the basis for the decision and advise all parties that, if a party disagrees with the decision for any reason, the party may request that an administrative law judge reinstate the request for a hearing. If a party wishes to request that the administrative law judge reinstate the hearing request, the party must do so within 60 days after receiving notice of the decision. The administrative law judge will extend the time limit if you show that you had good cause for missing the deadline. The administrative law judge will use the standards in § 416.1411 to determine

whether good cause exists. If the request is timely, an administrative law judge will reinstate the request for a hearing and offer you an opportunity for a hearing.

(e) *Effect of an attorney advisor's decision.* An attorney advisor's decision under this section is binding unless—

(1) You or another party to the hearing submits a timely request that an administrative law judge reinstate the request for a hearing under paragraph (d) of this section;

* * * * *

(f) * * *

(3) Make the decision of an attorney advisor under paragraph (d) of this section subject to review by the Appeals Council if the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the decision under § 416.1469.

* * * * *

9. Amend § 416.1448 by revising the second sentence of paragraph (a), and paragraph (b)(1)(ii), to read as follows:

§ 416.1448 Deciding a case without an oral hearing before an administrative law judge.

(a) *Decision fully favorable.* * * * The notice of the decision will state that you have the right to an oral hearing and to examine the evidence on which the ALJ based the decision.

(b) * * *

(1) * * *

(ii) You live outside the United States, you do not inform us that you wish to appear, and there are no other parties who wish to appear.

* * * * *

10. Revise § 416.1460 to read as follows:

§ 416.1460 Vacating a dismissal of a request for a hearing before an administrative law judge.

(a) Except as provided in paragraph (b) of this section, an administrative law judge or the Appeals Council may vacate a dismissal of a request for a hearing if, within 60 days after the date you receive the dismissal notice, you request that we vacate the dismissal and show good cause why we should not have dismissed the request for a hearing. The Appeals Council may decide to vacate a dismissal on its own initiative within 60 days after we mail the notice of dismissal. The Appeals Council will inform you in writing if it vacates the dismissal.

(b) If an administrative law judge dismissed your request for a hearing because you received a fully favorable revised determination under the prehearing case review process in § 416.1441, but you still wish to proceed with the hearing, then you must follow

the procedure in § 416.1441(d) to request that an administrative law judge vacate his or her order dismissing your request for a hearing.

[FR Doc. 2010-17896 Filed 7-21-10; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA-2008-0038]

RIN 2125-AF24

National Tunnel Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA solicits comments concerning the establishment of National Tunnel Inspection Standards (NTIS). The NTIS would set minimum tunnel inspection standards that apply to all tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways. The agency proposes modeling the NTIS after the existing National Bridge Inspection Standards (NBIS) as applicable. The NTIS would include requirements for inspection procedures for structural elements and functional systems, including mechanical, electrical, hydraulic and ventilation systems; qualifications for inspectors; inspection frequencies; and a National Tunnel Inventory (NTI).

DATES: Comments must be received on or before September 20, 2010. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, or submit electronically at <http://www.regulations.gov>, or fax comments to (202) 493-2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search

the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the U.S. Department of Transportation's (DOT) 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://DocketsInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Jesus M. Rohena, P.E., Office of Bridge Technology, HIBT-10, (202) 366-4593, or Mr. Robert Black, Office of the Chief Counsel, HCC-30, (202) 366-1359, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal Docket Management System at <http://www.regulations.gov>. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

Background

The safety and security of our Nation's tunnels are of paramount importance to the FHWA. Recognizing that tunnel owners are not mandated to inspect tunnels routinely and that inspection methods vary among entities that inspect tunnels, the FHWA and the Federal Transit Administration developed guidelines for the inspection of tunnels in 2003. The guidelines, known as the "Highway and Rail Transit Tunnel Inspection Manual," (HRTTIM) were updated in 2005.¹ In addition, the FHWA developed Tunnel Management Software to help tunnel owners manage their tunnel inventory. However, tunnel owners have not adopted the software uniformly, and the FHWA recognizes the limitations of the software.

After investigating the fatal July 2006 suspended ceiling collapse in the Central Artery Tunnel in Boston,

¹ The Federal Highway Administration/Federal Transit Administration "Highway and Rail Transit Tunnel Inspection Manual," 2005 edition, is available in electronic format at: <http://www.fhwa.dot.gov/bridge/tunnel/management/>.

Massachusetts, the National Transportation Safety Board (NTSB) stated in its report that, “had the Massachusetts Turnpike Authority, at regular intervals between November 2003 and July 2006, inspected the area above the suspended ceilings in the D Street portal tunnels, the anchor creep that led to this accident would likely have been detected, and action could have been taken that would have prevented this accident.” Among its recommendations, the NTSB suggested that the FHWA seek legislative authority to establish a mandatory tunnel inspection program similar to the NBIS that would identify critical inspection elements and specify an appropriate inspection frequency. Additionally, the DOT Inspector General (IG), in testimony before Congress in October 2007, highlighted the need for a tunnel inspection and reporting system to ensure the safety of the Nation’s tunnels, stating that the FHWA “should develop and implement a system to ensure that States inspect and report on tunnel conditions.” Additionally, the IG stated that “FHWA should move aggressively on this rulemaking and establish rigorous inspection standards as soon as possible.”

The NTIS would implement these NTSB and IG recommendations. The FHWA proposes modeling the NTIS after the existing NBIS, located at 23 CFR 650, Subpart C. The agency proposes adding the NTIS under Subpart E of 23 CFR Part 650—Bridges, Structures, and Hydraulics.

The NTIS would require the proper safety inspection and evaluation of tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways. The NTIS are needed to ensure that all structural, mechanical, electrical, hydraulic and ventilation systems, and other major elements of our Nation’s tunnels are inspected and tested on a regular basis. The NTIS would also ensure safety for the surface transportation users of our Nation’s highway tunnels, and would make tunnel inspection standards consistent across the Nation. Additionally, tunnel inspections would help protect Federal investment in such key infrastructure.

Timely tunnel inspection is vital to uncovering safety problems and preventing failures. When corrosion or leakage occur, electrical or mechanical systems malfunction, or concrete cracking and spalling signs appear, they may be symptomatic of dire problems. The importance of tunnel inspection was demonstrated in the summer of 2007 in the I-70 Hanging Lake tunnel in Colorado when a ceiling and roof

inspection uncovered a crack in the roof that was compromising the structural integrity of the tunnel. This discovery prompted the closure of the tunnel for several months for needed repairs. The repairs included removal of more than 30 feet of soil fill material from the top of the tunnel roof, temporary support of the roof from the inside of the tunnel, removal of the suspended ceiling, and the design and construction of a new slab cast on top of the existing roof to reinforce and add extra structural capacity. To accomplish the repair, the eastbound tube under the cracked roof was closed to traffic, and the adjacent westbound tube was converted to a tube with bi-directional traffic. Even though the eastbound tunnel was closed for 7 months, and the repair cost approximately \$6 million, the repairs helped prevent a potential safety incident.

A preliminary tunnel survey conducted in 2003 suggests that there are approximately 350 highway tunnels in the Nation, although no comprehensive national inventory for tunnels currently exists. The FHWA additionally estimates that tunnels represent nearly 100 linear miles—approximately 517,000 linear feet—of Interstates, State routes, and local routes. Most of these tunnels range in age from 51 to 100 years, and some tunnels were constructed in the 1930s and 1940s. The FHWA anticipates that the NTIS would help create a national inventory of tunnels that would lead to a more accurate assessment of the number and condition of tunnels in the Nation.

Tunnels like the Central Artery tunnel in Massachusetts, the Lincoln Tunnel in New York, the Fort McHenry and the Baltimore Harbor tunnels in Maryland, just to mention a few, are a vital part of the national transportation infrastructure. These tunnels handle a huge volume of daily traffic. For example, according to the Port Authority of New York and New Jersey, the Lincoln Tunnel carries approximately 120,000 vehicles per day, making it the busiest vehicular tunnel in the world. The Fort McHenry Tunnel handles a daily traffic volume of more than 115,000 vehicles. Any disruption of traffic in these or other highly traveled tunnels would result in lost productivity. Because tunnels are vital to the local, regional, and national economies, and to our national defense, it is imperative that these facilities are properly maintained and inspected to ensure the safe passage of the traveling public and goods.

Currently, there is no uniformity with respect to how frequently tunnels are

inspected. The frequency of tunnel inspections varies from daily to every 10 years. Some inspectors in colder climates walk through air ducts on a daily basis to identify potential icing problems due to water leakage. Some inspectors examine mechanical and electrical equipment on a daily basis, while others perform such inspections on a monthly basis. Under the proposed NTIS, State departments of transportation (State DOTs) and Federal agencies owning tunnels would be responsible for ensuring compliance with the NTIS for tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways. The proposed NTIS would require that these tunnels are inspected routinely, that the findings of such inspections are reported to the FHWA, and that deficiencies are corrected in a timely manner.

Summary of Comments Received to the Advance Notice of Proposed Rulemaking (ANPRM)

The FHWA issued an ANPRM on November 18, 2008, at 73 FR 68365, to solicit public comments regarding 14 categories of information related to tunnel inspections to help FHWA develop the NTIS. The FHWA received comments on the docket from 20 commenters, including: 9 State DOTs (Alaska, California, Massachusetts, Oregon, Ohio, Pennsylvania, New Jersey, Florida, and Washington); 1 metropolitan transit authority (Triborough Bridge and Tunnel Authority/Metropolitan Transit Authority Bridges and Tunnels (TBTA/MTA)); 3 engineering consulting firms (United Technologies Corporation (UTC), Jacobs Associates, and PB Americas); 2 private citizens; and 4 organizations (American Society of Civil Engineers (ASCE), American Association of State Highway Transportation Officials (AASHTO), American Council of Engineering Companies (ACEC), and National Fire Protection Association (NFPA)). Additionally, in a letter to Secretary LaHood, Congressman Joseph Capuano of Massachusetts expressed support for the development of NTIS. Commenters overwhelmingly supported the development of NTIS and agree that FHWA should model the NTIS after the NBIS.

Discussion of ANPRM Comments Concerning NTIS

Applicability

In the ANPRM, the FHWA proposed that the NTIS apply to all Federal-aid

funded highway tunnels on public roads in the 50 States, District of Columbia, and Puerto Rico. In his letter to Secretary LaHood, Congressman Capuano asserted that the NTIS should apply to all highway tunnels, but recognized that current law may limit FHWA's authority to only Federal-aid highway tunnels.

Definition of a Tunnel

In the ANPRM, FHWA asked several questions related to the definition of a "tunnel," including what requirements the FHWA should incorporate into the definition of a "tunnel," whether there should be a minimum length or other criteria required before a tunnel is subject to the NTIS, and whether the FHWA should adopt the AASHTO or NFPA tunnel definition. In general, most commenters expressed support for adoption of the AASHTO tunnel definition with modifications. Ohio DOT, PB Americas, TBTA/MTA, Jacobs Associates, ACEC, and ASCE commented that the tunnel definition should include a minimum length. PB Americas commented that the NTIS should adopt the AASHTO definition and add a length requirement of 800 feet. Jacobs Associates indicated that the agency should consider a minimum structure length-to-height ratio of three to define a tunnel. The ASCE expressed support for a minimum length of 20 feet. Ohio DOT and ACEC commented the NTIS should have a length requirement; however, they did not suggest a length. The NFPA commented that the definition of tunnel need not contain a minimum length; however, tunnels should be categorized by tunnel length. The AASHTO, New Jersey DOT, TBTA/MTA, Washington State DOT, and Pennsylvania DOT commented the NTIS should adopt the AASHTO definition of a tunnel. The ACEC asserted that the tunnel definition should include tunnels that have been created by a group of bridges, airtight structures, parking, or other facilities built close to each other.

Inspection Procedures

In the ANPRM, FHWA asked if the proposed NTIS should adopt the inspection techniques and standards described in the HRTTIM. Most commenters agreed that the NTIS should either adopt or utilize the HRTTIM with respect to inspections and ratings. The ACEC asserted that the HRTTIM should be adopted, but with modifications. California DOT (Caltrans) commented that the HRTTIM needed significant modifications and, in particular, noted that the HRTTIM lacked guidance relative to the

inspection of electrical and mechanical components and other functional systems. Accordingly, Caltrans proposed that the NTIS should consider States' existing inspection guidelines. Ohio DOT objected to the use of the HRTTIM, but offered no alternative suggestions.

The FHWA also asked whether additional sources of inspection standards should be considered. A number of commenters, including the ACEC, PB Americas, ASCE, AASHTO and others, recommended that the NTIS develop and require a more element-level-based rating system. Additionally, ASCE and Pennsylvania DOT recommended that the NTIS incorporate a tunnel sufficiency rating. The New Jersey DOT stated that for functional systems, owners should have the discretion to determine or establish the type of inspection and frequency. The AASHTO asserted that inspections should be routinely conducted at frequencies based on need, whereas in-depth inspections should be conducted as determined by the owner. Several commenters noted that risk-based inspection types and frequencies should be considered. The ASCE commented that a risk-based approach would address the inspection needs of geotechnical aspects of a tunnel. The Massachusetts Highway Department (MassHighways) and the ACEC noted that special inspections should be triggered based on findings from the routine inspection. MassHighways further noted that the actual type of inspection should be left to the owner's discretion, while the ACEC recommended yearly visual inspections and in-depth inspections on a 2-year cycle.

In the ANPRM, FHWA asked if tunnel inspections should include evaluation of emergency response and non-emergency operational procedures. Oregon DOT noted the importance of reviewing inspector safety issues such as confined space and traffic safety requirements. A number of commenters also indicated that some review or assessment of tunnel security and emergency response procedures or measures might be appropriate, although the New Jersey DOT asserted that actual tracking and evaluation of these security systems could be problematic.

Regarding whether there are any special inspection procedures for new tunnels that should be included in inspector manuals, some commenters recommended that FHWA review and incorporate into the NTIS inspection procedures or guidelines developed by other agencies or in other countries. In

particular, commenters pointed to the National Cooperative Highway Research Program (NCHRP) 20-07 Task 261 report and the AASHTO Movable Bridge Inspection, Evaluation and Maintenance Manual.

Frequency and Type of Inspections

In the ANPRM, the FHWA asked what tunnel elements and systems should be inspected routinely. Oregon DOT indicated that drainage systems should be inspected twice per year, and liner; portal slopes; geotechnical elements; and lighting, ventilation, electrical, and fire control systems should be inspected at a frequency determined by the owner based on risk factors. New Jersey DOT commented that drainage systems, tunnel structural supports (rock bolts, *etc.*), liner, portals, portal slopes, lighting system and shut-off, ventilation, fire suppression system, traffic visibility provisions, and bicycle and pedestrian facilities should be inspected. Ohio DOT recommended that structural items, mechanical, electrical, and emergency systems should be included in inspections. The TBTA/MTA suggested that roadways, suspended ceiling, ventilation system, drainage, geometrical alignment, signal, emergency telephone lines, and call boxes should be inspected. The AASHTO asserted that all tunnel systems should be part of an inspection program, including emergency response elements and operational procedures. The AASHTO also indicated that inspections should include structural, mechanical, electrical, emergency response, and fire protection systems; geotechnical elements; wall tiles, water pumps; emergency gates; evacuation tunnels; communication devices; traffic signals; and lighting. The AASHTO further suggested that inspectors should look for evidence of excessive seepage, settlement, or instability impacting the tunnel walls, roof, floor, portals, ceiling, or air shafts.

In the ANPRM, the FHWA asked what inspection frequency the NTIS should establish for tunnel elements and systems. In general, most commenters recommended that the NTIS should require inspections every 24 months. The AASHTO and Oregon DOT suggested that the NTIS should require tunnel owners to establish a frequency for inspection based on a list of risk factors because some tunnels may require more frequent inspections than others. Ohio DOT and New Jersey DOT recommended that emergency systems should be inspected more frequently depending on the tunnel. The TBTA/MTA commented that elements directly affecting public safety and traffic

continuity must be inspected on a routine basis. The AASHTO commented that frequency should be determined based on need. MassHighways asserted that inspection frequencies should be established for each component based on risk and vulnerability to the tunnel operating environment and mean time to failure. The ACEC commented that inspection frequency could be based on the function of the inspected item or system, the age of the structure, and the overall condition, and that certain, more fragile safety-related systems might require an inspection in close intervals, possibly on a monthly variable schedule, even in new facilities. Jacobs Associates suggested that tunnel inspections should be reviewed by an outside qualified reviewer every 5 years. The ASCE commented that the inspection frequencies may need to vary depending on the complexity of the systems, the age of the systems, and the operational characteristics of the tunnel facility. The ASCE further proposed that the FHWA should consider European practices identified in NCHRP 20–07 Task 261, the European Scan Tour, and other related sources. PB Americas advised that routine inspections should occur every 2 years, while inspections of critical elements must be performed after any emergency event. Caltrans stated that the NTIS should be flexible to allow States to establish their own inspection frequencies, with the exception of structural components, which could be inspected at intervals similar to inspection under the NBIS.

In the ANPRM, the FHWA asked whether a minimum frequency for tunnel inspection should be established. The majority of commenters stated that there should be a minimum frequency, and most commenters favoring a specific interval suggested a 2-year interval. Most commenters stated that more frequent inspections should be required in many cases to account for the wide variety of tunnel type and complexity, but that owners should determine inspection frequency. Jacobs Associates, ACEC, and PB Americas thought that the maximum interval of 12 months for visual inspections is appropriate for most tunnels, with a hands-on inspection completed at 2-year or longer intervals. The AASHTO, Oregon DOT, and ACEC stated that a longer interval of 4 to 6 years should be granted for new tunnels or tunnels with no advanced or unique structural elements and systems. The AASHTO indicated that intervals up to 6 years could be established for mechanical and electrical systems, but most commenters thought that these systems should be

inspected or tested more frequently than tunnel structures.

In the ANPRM, we asked whether the NTIS should identify various types of inspections, and if so, what types of inspections should be defined. The majority of commenters noted that routine or visual inspections should be conducted at a more frequent interval than in-depth inspections, and that functional systems should receive inspections at different frequencies depending on risk and the complexity and condition of the systems.

In the ANPRM, we asked whether the frequency of each type of inspection should vary according to the type of inspection. All commenters agreed that inspection frequency should vary by type of inspection and that owners should determine the frequencies of routine and special inspections based on tunnel condition, age, and risk factors. Commenters noted that systems that owners actively operate may not need to be inspected as frequently as mechanical and electrical systems that are operated only in an emergency mode. The majority of commenters further suggested that structural systems of a tunnel should be inspected with the same frequency as a bridge (at a minimum every 2 years). The ASCE asserted that for non-seismic zones, inspections of geotechnical related items initially should be established on a minimum schedule, but may be adjusted to a longer frequency if historic inspection data indicate low risk of problems. For seismic zones, the ASCE recommended inspections should occur immediately following an earthquake.

The FHWA asked in the ANPRM whether the NTIS should include a risk-based frequency to account for the complexity of each tunnel. All commenters agreed that the NTIS should include a risk-based approach to establish the inspection frequency. Caltrans recommended that risk-based inspection frequencies should only apply to structural components. PB Americas indicated that a risk-based frequency should be established based on tunnel age, condition, and maintenance. The ACEC recommended that a minimum visual inspection be conducted every year and more extensive, hands-on inspections be conducted every 2 years. The ACEC also suggested that the NTIS should include a default inspection frequency for use in the absence of a structured risk-based assessment.

In the ANPRM, we asked what factors (e.g., age, traffic, length, ventilation, urban or rural location) should be included in a risk-based frequency inspection system. Commenters

generally included the following as key risk factors to consider during inspections: Average Daily Traffic, Average Daily Truck Traffic, length, age, condition, detour length, presence of mechanical or ventilation systems, design and construction type, submerged (or above water level), presence of security systems, geotechnical environments through which the tunnel is built (such as faults, aggressive or corrosive soils), tunnel location importance, strategic values, seismic risk or vulnerability, and traffic accident frequency. The ASCE commented that not all factors should carry the same weight, and the weighting of individual factors could vary from one structure to another.

Equipment and System Inspection

In the ANPRM, the FHWA indicated the NTIS likely would include requirements for inspection procedures for structural, mechanical, electrical, hydraulic or ventilation systems, and other major tunnel elements. In general, all commenters agreed the NTIS should require inspection of all systems in a tunnel. Oregon DOT remarked that the NTIS should not contain arbitrary frequency or type of inspections, but general guidelines with a requirement that the owner establish an appropriate inspection process for each tunnel. The AASHTO recommended inspecting portals, drainage systems, roadway surfaces, and air shafts. The NFPA recommended that security systems should be installed, inspected, tested, and maintained in accordance with NFPA 731, Standard for the Installation of Electronic Premises Security Systems.

Qualifications of Personnel

The FHWA also asked in the ANPRM whether inspector qualification requirements should be the same as those established in the HRTTIM and what should be required in terms of tunnel inspector training, education, and experience. In general, the commenters observed that the HRTTIM provides for minimum inspector qualification requirements, but commented that the HRTTIM needs to be expanded to specifically include all pertinent disciplines, including electrical, mechanical, structural, geotechnical, geological, lighting, ventilation, and communications. Most commenters suggested that there should be a distinction between qualification requirements for Team Leaders and for other team members. Those commenters further proposed that Team Leaders should be professional engineers (PEs) licensed in the discipline specific to the tunnel inspection requirements and that

tunnel inspection team members qualifications should parallel NBIS qualification requirements. The ACEC advised that FHWA should also consider the AASHTO T-20 document in determining inspector requirements. The ASCE noted that tunnel inspectors should be familiar with tunnel design and construction. Ohio DOT asserted that the HRTTIM should not be adopted because a PE is not necessary for tunnel inspections. The AASHTO proposed that States should establish tunnel inspector qualifications based on the needs of the tunnels in each State's inventory. Washington State DOT contended that it is not necessary to require a tunnel inspection Team Leader to have tunnel design experience. Oregon DOT stated that tunnel inspection team members should be registered PEs.

Most commenters recommended that the National Highway Institute (NHI) provide training in tunnel design and inspection, similar to what it provides for bridge inspectors (*i.e.*, comprehensive initial training with periodic refresher training), and that other discipline-specific inspection training should be required for team members performing certain aspects of tunnel inspections. Florida DOT maintained that comprehensive training should be required for the Team Leader with discipline specific training required for other specialists on the team. Many commenters advocated for tunnel inspector training under the NTIS that parallels bridge inspector training under the NBIS. The AASHTO stated that training should be required that would allow States to certify tunnel inspectors, while MassHighways commented that a nationally established training program would help foster consistency of tunnel inspections across the States. The ASCE suggested inspectors should complete refresher training every 3 to 5 years. The ACEC commented that training should include an inspector safety component. The commenters that addressed education requirements recommended that an inspection Team Leader should be a licensed PE with a 4-year degree and that other team members should have at least a high school diploma unless their specialty requires a college degree. Pennsylvania DOT suggested that inspection teams should be structured with qualified individuals certified through education and experience.

Most commenters recommended that the NTIS specify separate experience requirements for Team Leaders and team members, and discipline-specific experience requirements for inspectors. Many commenters asserted that tunnel

inspector experience requirements should parallel requirements under the NBIS. New Jersey DOT stated its concern that if the NTIS make specific training in tunnel design mandatory, the pool of potential inspectors with this particular expertise would result in higher costs than necessary. The TBTA/MTA suggested that any "rating" given for a tunnel component or overall tunnel, would be much more experience-based than ratings generated in a bridge inspection. The ACEC recommended that the Team Leader have a minimum of 5 years of experience. Jacobs Associates recommended that the Team Leader have a minimum of 15 years of experience. The ASCE commented that inspector experience requirements should be tied to the complexity of the tunnel and the level of inspection (*e.g.*, initial, in-depth, and periodic). Caltrans suggested that inspector experience requirements should be based on the feature(s) being inspected and the expertise required.

Record Keeping

The ANPRM also requested comments about who should be required to keep records of highway tunnel inspections performed within the State, whether the record keeping requirements contained in the HRTTIM are sufficient, and how long tunnel inspection records should be maintained.

In general, commenters stated that State DOTs should retain a centralized database for their tunnels and that other tunnel owners should retain these records themselves and also send the records to the State DOTs. Additionally, the commenters recommended that all records be reported to the FHWA similar to the requirements of the NBIS. Commenters further suggested that the record keeping requirements in the HRTTIM provide a good starting point, but consideration should be given to developing tunnel-specific core elements and condition codes (or ratings) for those elements that would lend themselves to an asset management system. Washington State DOT asserted that the HRTTIM should be modified to be less specific about repair priorities and more specific about inventory data retention. Many of the commenters recommended that the NTIS record keeping requirements mirror the NBIS. Oregon DOT commented that the tunnel condition assessment should be incorporated into the National Bridge Inventory (NBI) submittal. The AASHTO suggested that tunnel inspection records for local streets and roads should be separate and the responsibility of the owner. The ACEC

indicated that site-specific or other special conditions might be required for new tunnels and should be specified by the tunnel designer. The ASCE pointed out that the HRTTIM does not currently provide condition codes (or ratings) for individual elements in a tunnel and that a new system should be considered that would encompass the full spectrum of structural, mechanical and electrical components to be inspected. Pennsylvania DOT asserted that commonly recognized element-level recording should be followed to provide the basis for maintenance needs.

Most commenters recommended that tunnel inspection records be kept for the life of the structure similar to the NBIS. However, AASHTO suggested that inspection records should be kept for several years after the tunnel is replaced. The NFPA recommended records retention for four inspection cycles for at least 10 years. The ACEC asserted that tunnel inspection records should be retained for seven inspection cycles, and PB Americas suggested that tunnel inspection records should be retained for a period of at least 7 years.

The ACEC commented that the FHWA should consider homeland security concerns in establishing the NTIS. For example, ACEC noted that detailed tunnel records should not be released without proper authorization and identification. The ACEC also suggested that the FHWA should consult with other relevant Federal agencies on the security risks for the disclosure of potentially sensitive information.

Rating

In the ANPRM, the agency requested comments regarding whether a condition-based rating system should be used for rating tunnel elements. The Florida, Oregon and Ohio DOTs, along with the TBTA/MTA and Jacob Associates, agreed that a condition rating system similar to that in the NBIS should be used to rate tunnel elements. However, a number of commenters, including the ASCE, ACEC, Caltrans and others, commented that some sort of rating system should be used, but generally agreed that a system similar to that used in the NBIS is too subjective and that a more element-level rating system should be developed and incorporated in the NTIS. Some commenters also noted that a tunnel sufficiency rating similar to that used under the NBIS should be developed and incorporated into the NTIS.

The FHWA also asked if the ratings should be used for funding decisions. The New Jersey DOT suggested that a prioritization system tied to element ratings would be appropriate. However,

Caltrans indicated that the rating and prioritization of electrical and mechanical components would not be appropriate because repairs to these systems are needs-based. The ACEC and the Oregon DOT disagreed. The ACEC commented that a prioritization system could create the potential for owners to neglect maintenance of their tunnels.

MassHighways and AASHTO recommended that a rating matrix be developed wherein various elements would be rated and their condition tracked. The AASHTO recommended that such a matrix could include items such as costs, risk, consequence, and time to repair.

National Tunnel Inventory Database

In the ANPRM, the FHWA asked what tunnel data elements should be collected (name, age, length, width, height, number of lanes, *etc.*) and included in the tunnel inventory database. The ASCE suggested collecting data on geometric information, lane clearances, overburden characteristics and complete description of the mechanical systems, water and ground water, temporary ground support, type and number of geotechnical instrumentation, documentation of performance during an earthquake, and structural modifications. The ACEC commented that the data collected should be comprehensive and address as many main and subsystems as possible.

The AASHTO, Caltrans, MassHighways, and the Washington State, Oregon, and Florida DOTs commented that the data collected should be similar to data collected under the NBIS. The AASHTO also commented that inventory data should include special elements such as ventilation, lighting, type of ceilings, type of design, structural elements, and conditions and appraisal ratings. The AASHTO recommended that core elements should be developed and applied. New Jersey DOT recommended that the NTIS should use the NBI as a starting point and add information specific to tunnels.

The ANPRM included a question regarding how often data should be collected and reported. The ASCE suggested that there should be an initial inventory entered after the NTIS is implemented and then updated at each inspection. The ACEC recommended that the data be collected and reported at a minimum of 5 years and as changes occur to tunnel condition, repairs completed, system replaced or updated. The AASHTO, MassHighways, and the Washington State and Florida DOTs commented that the data should be

collected in conjunction with inspection cycles and reported annually. Ohio DOT advocated for reporting inspection data every 2 years, but reporting inventory data (*e.g.*, tunnel location, geometrics) only once unless information changes. PB Americas proposed that the data be reported to the FHWA every 2 years.

In the ANPRM, the FHWA requested comments about whether data should be collected and reported to FHWA. In general, all responders expressed general support for data collection and reporting. Additionally, most commenters believed that the data should be reported to FHWA. Caltrans recommended that the data should be reported to FHWA if the intent is to determine funding needs. New Jersey State DOT also suggested that the data should not be reported to FHWA unless a Federal-aid program (similar to the Highway Bridge Program) is created to fund improvement projects for identified needs.

In the ANPRM, the FHWA asked whether tunnel identification numbers should be used. Most commenters responded that a system should be used to identify the tunnel.

The FHWA also asked what criteria should be used to assign an identification number. The ACEC advocated for criteria similar to the NBIS criteria. Caltrans suggested that the identification number should be similar to the NBI to simplify creating a numbering system. Washington State DOT commented the system should not allow duplicated identifiers between bridge and tunnel identification numbers. AASHTO recommended a system similar to the bridge inventory numbering system would be adequate.

Organization of Inspection Teams

The ANPRM included questions about how inspection teams should be organized, whether inspection teams should be established with differing levels of responsibility, and whether one person on the team should have overall responsibility for the program. In general, commenters recommended that the NTIS should provide guidance regarding inspection team organization, training, and certification. MassHighways, the Oregon and California DOTs, and AASHTO stated that while guidance within the NTIS on this matter is appropriate, tunnel owners should determine the composition and organization of the inspection teams to best address various tunnel types, complexities, construction, and related systems. Conversely, the ASCE commented that rather than a tunnel owner determining inspection team organization, the NTIS

should provide guidelines on the organization and composition of inspection teams per category of tunnel.

Most commenters advocated for the formation of multidisciplinary inspection teams to encompass the various systems encountered in complex tunnels, incorporating areas of expertise in structural, geotechnical, geological, mechanical, electrical, ventilation, and operational systems. The ASCE noted that teams should be developed by category of tunnel and should be comprised of a Team Leader and inspection members specializing in the aforementioned tunnel systems. Conversely, the NFPA noted that while inspection teams should include all needed specialized expertise for thorough tunnel inspection, team members would not need to have a specialization in any one area. PB Americas commented that the team should be, at a minimum, comprised of two inspectors and a data recorder to provide for expedited inspections, limited lane shutdowns, and team safety. The ACEC recommended that inspection teams include two inspectors—an engineer and a recorder, but added that additional team members may be required to expedite inspections of complex tunnels and to improve team safety. The ACEC also noted that for mechanical and electrical system inspections, inspectors typically should not be responsible for the maintenance of these functions within the tunnel. The Florida and New Jersey DOTs commented that separate teams should be organized for each tunnel system (*e.g.*, electrical, mechanical, structural), and should operate independently instead of part of a larger multidisciplinary team, thereby providing for variable inspection cycles per system. For example, maintenance items may be inspected on a weekly basis, whereas the structure may be inspected on a less frequent annual basis. Caltrans, the New York and Washington State DOTs, and the TBTA/MTA commented that tunnel inspection teams should be organized similarly to the bridge inspection teams, as described by the NBIS. Jacobs Associates recommended organizing inspection teams per the guidelines in the HRTTIM.

Most commenters favored training and certification requirements for tunnel inspectors. In general, commenters asserted that the NTIS should provide guidance on minimum training, certification and licensing of inspectors, but States should determine final certification. The Pennsylvania and Ohio DOTs and the NFPA commented that teams should be

comprised of qualified individuals certified through both training and demonstrated experience. Oregon DOT additionally noted that all team members should be professionally licensed engineers. The AASHTO commented that certification level guidelines similar to those in the NBIS be followed for Team Leaders and support staff, and that PE licensing requirements be limited to those individuals responsible for reviewing team reports. PB Americas and the ACEC noted that training and certification should also encompass Occupational Safety and Health Administration standards for confined space inspections. The NFPA commented that the more experienced personnel on the teams could serve as training officers for on-the-job training and team audits.

In general, commenters recommended that the NTIS provide guidance on the levels of responsibility involved in conducting tunnel inspections, but States should determine the final distribution of responsibility among inspection teams and program administrators. The TBTA/MTA, Jacobs Associates, Caltrans, and the New Jersey DOT commented that teams should have differing levels of responsibility with regard to system inspection, Team Leadership, and reporting. Whether teams are organized as multidisciplinary units or by system specialty, as previously discussed, commenters generally agreed that Team Leadership should be responsible for initiating and reporting tunnel inspections. The New Jersey DOT added that a Program Manager should be tasked with overall inspection program responsibility. The ASCE indicated that a PE should lead multidisciplinary teams and be responsible for reporting from all disciplines. Conversely, the ACEC commented that each team member should be responsible for their respective disciplines, rather than a Program Manager.

Although commenters overwhelmingly agreed that teams should include a person responsible for the inspection, comments varied as to what position this person should hold. The ASCE, Caltrans, and the Washington State DOT commented that a Chief Inspector or Program Manager, at a level higher than that of the inspection Team Leader, should have overall responsibility for the tunnel inspection. MassHighways and the Oregon and New Jersey DOTs noted that Program Manager responsibilities should be limited to program administration and oversight. The NFPA added that the person in charge of the

program should be superior to and separate from the inspectors to ensure independent program oversight and accountability. Several commenters asserted that Team Leaders, whether overseeing a multidisciplinary team or discipline-specific team, ultimately should be responsible for inspections. Jacobs Associates, MassHighways, and the Ohio and New Jersey DOTs indicated that the leader of each discipline, component, or system inspected should have responsibility for that aspect of the overall inspection. Ohio DOT added that members should sign off on their area of inspection. The AASHTO, ACEC, and the Florida DOT stated that the Team Leader should be a licensed PE, and the ACEC added that the Team Leader should have a minimum of 5 years experience and be certified by the State to perform and lead tunnel inspections.

Technical References

The FHWA also asked about what technical publications, if any, should be incorporated by reference into the NTIS. In response, commenters cited several publications for consideration as primary references for inclusion in the NTIS. Six State DOTs, and the ASCE and ACEC, recommended incorporating the HRTTIM. MassHighways, Oregon DOT, AASHTO, ASCE, and PB Americas recommended incorporating the "FHWA Road Tunnel Design Manual." Caltrans, AASHTO, ASCE, and NFPA recommended incorporating "NFPA 502—Standard for Road Tunnels, Bridges, and Other Limited Access Highways." Ohio and Pennsylvania DOTs, AASHTO, and ASCE recommended incorporating the AASHTO Manual for Condition Evaluation of Bridges.²

In addition to these publications, commenters representing several State DOTs, industry organizations, and commercial companies also cited the following references for possible incorporation within the NTIS:

- NCHRP Project 20–07, Task 261, Best Practices for Implementing Quality Control and Quality Assurance for Tunnel Inspection (currently under development);
- NHI Bridge Inspectors Reference Manual;
- 23 CFR 650, Subpart C, National Highway Bridge Inspection Standards;
- American National Standards Institute/American Welding Society (ANSI/AWS) D1.1 Structural Welding Code—Steel;

²The FHWA notes this manual has been superseded by the AASHTO Manual for Bridge Evaluation.

- ANSI/AWS D1.5 Bridge Welding Code;
- American Railway Engineering and Maintenance-of-Way Association (AREMA) Fatigue Standards;
- AREMA Manual for Railway Engineering, Chapter 9, Part 1, Subsections 1.2 and 1.5;
- 29 CFR, OSHA Standards;
- FHWA Inspection of Fracture Critical Bridge Members;
- FHWA Manual on Uniform Traffic Control Devices;
- AASHTO Movable Bridge Inspection, Evaluation and Maintenance Manual;
- AASHTO Manual for Condition Evaluation of Bridges; and
- NFPA 731 Standard for the Installation of Electronic Premises Systems.

The UTC recommended two publications from the International Symposium on Tunnel Safety and Security, Stockholm, Sweden, March 2008: (1) Full-Scale Fire Testing for Road Tunnel Applications—Evaluation of Acceptable Fire Protection Performance, Maarti Tuomisaari, Marioff Corporation Oy, Vantaa, Finland, and (2) Implementation of Water Mist Systems in Road Tunnels, Project Case Studies, Markku Vuorisalo, Marioff Corporation Oy, Vantaa, Finland. One individual also recommended contacting the New York Port Authority for information regarding tunnel inspection guidelines developed in the 1980s.

Quality Control/Quality Assurance (QC/QA)

Most commenters did not suggest any particular QC/QA procedures. Of those commenting on the issue, eight agreed with QC/QA requirements similar to the NBIS, while six stated that such requirements should be general and not arbitrary.

Cost of Inspections

In the ANPRM, the FHWA asked for information related to tunnel inspection costs. Several commenters had no comment or indicated no data was available. Of those commenting on cost of inspections, several suggested a cost per lane foot as opposed to linear foot of tunnel length as the most accurate way to itemize the actual inspection costs.

The TBTA/MTA commented that its recent inspection of the Queens-Midtown Tunnel cost \$631,500, which translates to approximately \$24.89 per linear foot of each roadway lane. Because this cost could change depending on the number of traffic lanes and tunnel tubes, TBTA/MTA

suggested that a unit such as cost per lane-foot would more accurately predict tunnel inspection costs. Washington State DOT reported a cost of \$5 per linear foot for civil and structural component inspections. PB Americas suggested that tunnel inspection costs for structural, mechanical electrical lighting, and traffic controls range between \$65 and \$75 per lane foot. PB Americas suggested that these costs can be 20 to 40 percent higher if the work window is less than 4 hours per shift. Additionally, PB Americas noted that costs associated with traffic diversions and single lane closures range from \$100 to \$150 per linear foot of tunnel per day or shift.

The FHWA requests that commenters provide additional information regarding estimated or actual costs associated with tunnel inspections, particularly the typical inspection costs per linear foot of tunnel. In addition, the FHWA asks for comments regarding the anticipated increased costs the proposed NTIS would impose on tunnel owners.

Research

In the ANPRM, the FHWA provided summary information on completed and ongoing research related to tunnel design, construction, rehabilitation, and inspection. The FHWA solicited feedback on other existing or completed tunnel research, and any ideas for additional needed research.

Numerous commenters indicated the need for additional tunnel-related research. The AASHTO and the Oregon and Florida DOTs listed as a research priority identifying hidden deficiencies with structural elements such as tunnel liners and portals, including non-destructive methods. Several commenters recommended as research priorities the needs identified in the research roadmap by the AASHTO Bridge Subcommittee's T-20 Technical Committee. The ACEC and PB Americas recommended FHWA develop a new, more detailed tunnel inspection manual addressing ventilation testing and mechanical and electrical inspection. They also recommended updates to the tunnel asset management database. PB Americas further suggested research to test the performance in fires of various materials used, or proposed for use in tunnels. The AASHTO commented that tunnel safety during construction, rehabilitation, inspection, and maintenance needs to be addressed through research. The AASHTO also requested research to develop guidance on improving vertical clearance in bored tunnels. Further, AASHTO indicated urban and rural highway tunnels have different issues of concern. One

consultant recommended that the FHWA continue to work with European and Asian highway and rail management agencies. One consultant commented that newer research is available from European associations like the World Road Association and the European Thematic Network on Fire in Tunnels on tunnel fire protection and fixed fire suppression. The NFPA provided a summary of the "International Road Tunnel Fire Detection" research project published by the Fire Protection Research Foundation.

Section-by-Section Discussion of the Proposals

The proposed NTIS are based, in part, on comments received in response to the ANPRM published on November 18, 2008. Giving due consideration to the comments received and summarized in the preceding section, this section presents the basis for the FHWA's proposed rulemaking. The FHWA proposes to amend 23 CFR Part 650 (Bridges, Structures, and Hydraulics), by adding Subpart E—National Tunnel Inspection Standards. The proposed NTIS would apply to all tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways. The NTIS would establish a tunnel definition, frequency of inspections, technical references, inventory database, and QC/QA requirements. The proposed rule also discusses procedures for follow-up on critical findings. Lastly, this action proposes to establish inventory and reporting requirements, including timeframes for submission of data by both the State and Federal agencies.

Proposed Section 650.501 Purpose

The majority of commenters on the ANPRM supported the establishment of NTIS. Section 650.501 would identify the NTIS purpose to establish the proper safety inspection and evaluation for tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways.

Proposed Section 650.503 Applicability

The FHWA proposes that the NTIS would apply to tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways.

The proposed NTIS would apply to inspection of life safety systems installed on a highway tunnel-like-structure space made by a group of bridges, or airtight structures. The NTIS

would not apply to culverts or other types of non-highway tunnels. The FHWA would encourage owners of tunnels not subject to the NTIS to inspect their tunnels according to the NTIS. However, FHWA does not have jurisdiction to require inspection of tunnels that are not linked to title 23 Federal funds.

Proposed Section 650.505 Definitions

Proposed section 650.505 would include several definitions related to tunnel inspection.

Because the NTIS would be modeled after the NBIS and in order to ensure consistency in definitions, the agency proposes that the terms "American Association of State Highway and Transportation Officials (AASHTO) Manual," "bridge inspection experience," "critical finding," "damage inspection," "hands-on inspection," and "operating rating" would have the same meaning as in 23 CFR 650.305.

The FHWA proposes to define a "complex tunnel" as one characterized by advanced or unique structural elements and functional systems because the inspection of these tunnels requires a multidisciplinary inspection team approach. For example, a tunnel with a suspended ceiling would be considered a complex tunnel requiring a multidisciplinary inspection, as suspended ceilings are structural elements that contribute to a functional system (ventilation plenum).

The FHWA proposes that the NTIS would include a number of definitions largely modeled after definitions used in the NBIS. For example, the proposed definitions of "professional engineer" and "routine permit load" would be substantially similar to the definitions for those terms in the NBIS. The FHWA also proposes to use the same definition for "tunnel inspection experience" as the NBIS definition for "bridge inspection experience," replacing the word "bridge" with the word "tunnel" as applicable. Similarly, the FHWA proposes that the terms "legal load," "quality assurance," "quality control," "routine inspection," "special inspection," and "team leader" would be modeled after the definitions in the NBIS, except that the word "tunnel" would replace the word "bridge" in each definition. The definitions of "in-depth inspection," "initial inspection," and "load rating" would largely mirror the definitions found in the NBIS, with changes made to account for the differences between bridges and tunnels. The FHWA notes that under the proposed definition of "load rating," for roadways carried within a tunnel, any internal structural support systems,

even multilevel, would be evaluated according to AASHTO load rating procedures. For roadways crossing over the tunnel, the tunnel's ability to support the route's vehicular live loads would also be calculated. Both of these capacities would be evaluated for tunnels, which is different from bridges where load carrying capacities are only calculated for vehicles carried on the roadway deck.

In order to maintain consistency with established terms, the FHWA proposes that a number of terms in the NTIS would have the same meaning as terms that appear in title 23 of the United States Code. For example, the term "Federal-aid highway" would have the same meaning as in 23 U.S.C. 101(a)(5), and the term "highway" would have the same meaning as in 23 U.S.C. 101(a)(11). The term "public road" would have the same meaning as in 23 U.S.C. 101(a)(27). The term "State transportation department" would have the same meaning as in 23 U.S.C. 101(a)(34).

The FHWA proposes a definition of "functional systems" that would include non-structural systems, such as electrical, mechanical, fire suppression, ventilation, lighting, communications, monitoring, drainage, traffic signals, emergency egress, refuge room spacing, carbon monoxide, or traffic safety components. The agency believes this definition would be broad enough to encompass any functional systems that might be present in tunnels.

The FHWA proposes that the NTIS would include a definition of "portal" to refer to the entrance and exit of a tunnel exposed to the environment, including bare rock, constructed tunnel entrance structures, and buildings. This definition would convey that portals exist on all tunnels, but may vary in structure and complexity.

The proposed definition of "Program Manager" would refer to the individual in charge of the program who has been assigned or delegated the duties and responsibilities for tunnel inspection, reporting, and inventory. Under this definition, the Program Manager would provide overall leadership and guidance to inspection Team Leaders. The agency believes that a Program Manager should not only have a strong background in the technical nature of tunnels, but a thorough understanding of the NTIS program requirements.

Regarding the definition of "tunnel," FHWA agrees with most of the commenters that the AASHTO tunnel definition, with some modification, should be used in the NTIS. Accordingly, the proposed definition of tunnel is a modified AASHTO

definition without establishing a minimum length under the proposed NTIS. In order to ensure that tunnels and bridges are only inspected under either the NTIS or the NBIS, the proposed definition modifies the AASHTO definition to clarify that a tunnel does not include a bridge which is inspected under the NBIS. The agency recognizes many structures exist where the distinction between tunnel or bridge could be difficult to determine. In cases where a tunnel or bridge may overlap, FHWA recommends that States determine whether the NTIS or NBIS is most appropriate for a particular structure. When a tunnel is comprised of several abutted, dissimilar structures, the NTIS would apply to the entire tunnel. Additionally, the proposed definition of "tunnel" specifies that a tunnel is a structure that requires special design considerations that may include lighting, ventilation, fire protection systems, and emergency egress capacity based on the owner's determination.

Proposed Section 650.507 Tunnel Inspection Organization

Section 650.507 would specify which tunnels must be inspected under the NTIS, inspection program responsibilities, organizational requirements and general deliverables of an inspection program, and program delegation requirements.

In general, ANPRM commenters suggested that tunnel owners should determine the organization and composition of tunnel inspection programs to best address various tunnel types, complexities, structures, and related systems. The ANPRM commenters also indicated that the NTIS should provide guidance on the levels and delegation of responsibility involved in conducting tunnel inspections, reporting findings, ensuring quality assurance, and maintaining tunnel inventories, but that States should determine the final distribution of responsibility among program administrators and inspection teams. The FHWA agrees that the NTIS should provide general guidance on the organization and composition of tunnel inspection programs, leaving the specifics of program administration and delegation to the States and Federal agencies involved.

In section 650.507(a), the FHWA proposes requiring that each State inspect or cause to be inspected all tunnels constructed or renovated with title 23 Federal funds located on public roads that are within the State's boundaries, except for tunnels owned by Federal agencies. Therefore, State

inspection responsibilities would be limited to tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways. The FHWA also proposes to exclude States from inspection responsibilities for tunnels owned by Federal agencies.

Proposed section 650.507(b) describes the tunnel inspection responsibilities of Federal agencies that own tunnels. The proposed rule would require Federal agencies to ensure inspection of all highway tunnels within their respective jurisdiction.

Under section 650.507(c), the FHWA proposes that where a tunnel is jointly owned, all bordering States and Federal agencies with ownership interests should determine through a joint agreement the inspection responsibilities of each State and Federal agency.

Proposed section 650.507(d) describes basic tunnel inspection program organization requirements. The proposed rule would require State transportation departments and Federal agencies to be organized with a unit or units that are responsible for setting statewide or Federal agency-wide tunnel inspection program policies and procedures, assuring regularly scheduled quality inspections are performed throughout the State or agency, and maintaining the State or Federal tunnel inventory. In order to ensure tunnel inspection program consistency and uniformity, the FHWA proposes to require that all of these activities be performed at a statewide or Federal agency-wide organizational level of the State DOT or the Federal agency. This section would not preclude, however, the specific tunnel inspection activities, as noted in section 650.507(d)(2), from being assigned to a qualified authority or consulting engineering firm.

The FHWA recognizes the broad range of tunnel structure complexity that exists along State and Federal highways, and therefore, proposes under section 650.507(d)(1) that, in addition to the development of general program policies and procedures, State and Federal agencies would prepare tunnel-specific policies and procedures guiding tunnel inspections.

Proposed section 650.507(d)(2) refers to a requirement for a State or Federal agency tunnel owner to establish load ratings for the tunnel. As presented, "load ratings" refers to allowable vehicular live loads on suspended or spanning roadways within the tunnel or roadways above the tunnel. Load ratings may be directly related to the structural capacity of the tunnel lining and

support system in cases where tunnels or overlying roadways bear on the tunnel structural elements. The tunnel structural system condition would be assessed during inspection which, in turn, may lead to an in-depth structural capacity appraisal of the lining and support system if conditions warrant.

Proposed section 650.507(e) would allow State and Federal agencies to delegate certain tunnel inspection functions, as generally described or referred to in sections 650.507(d)(1) and (d)(2), to qualified individuals; however, the overall program responsibility could not be delegated. This section is intended to ensure that State and Federal agencies choosing to delegate tunnel inspection activities do so under formal written agreement that clearly states the roles and responsibilities of all agencies and entities involved. As with other State-administered Federal-aid programs under title 23, United States Code, delegation of tunnel inspections, reports, load ratings and other requirements of the NTIS must be accompanied by appropriate State transportation department oversight.

Proposed section 650.507(f) would require that each State or Federal agency owning a tunnel requiring inspection under the NTIS have a tunnel inspection organization that includes a Program Manager meeting the qualifications proposed in 650.509(a). This requirement would also apply to organizational units that have been delegated program management functions by the overall agency Program Manager, such as local public agencies or qualified consulting engineering firms.

Proposed Section 650.509 Qualifications of Personnel

This section would outline the minimum qualifications for tunnel inspection team members, including qualification requirements for Program Managers, Team Leaders, and individuals responsible for load rating of tunnels in terms of professional registration, certification, experience, and education. Under the proposed rule, minimum qualifications for team members other than the Program Manager and the Team Leader would be established by each Program Manager in accordance with the nature and complexity of the tunnels in their inventory. Team members may include individuals with specialized professional registration, certification, experience, and education in areas such as structural, mechanical, electrical, geotechnical, ventilation, lighting, operations, or communications, as required depending on the nature and

complexity of the tunnel being inspected.

Commenters responding to the ANPRM generally expressed that the personnel responsible for the management, planning, and execution of tunnel inspections should be registered PEs with a minimum amount of applicable experience of 5 to 15 years. The FHWA believes that, for the tunnel inspection Program Manager, experience with inspection of transportation structures is as valuable as professional registration. Therefore, the proposed rule would require a tunnel inspection Program Manager to be either a registered PE, or have at least 10 years of tunnel inspection experience.

Three commenters to the ANPRM believed that a Team Leader should be a registered PE, and several commenters pointed to the FHWA tunnel inspection manual which recommends that the Team Leader be a PE. The FHWA agrees that a Team Leader should be a registered PE due to the range of systems complexity existing within the current inventory of tunnels.

Proposed section 650.509(c) would require that a person with overall responsibility for load rating tunnels be a registered PE. The agency notes that there are two situations under which load rating of tunnels could be necessary: (1) When a structure supporting traffic lanes within the tunnel is not directly supported by the ground and spans some unsupported distance, and (2) when traffic loads above the tunnel impose a live load on the tunnel lining. In either case, the individual charged with the overall responsibility for load rating the tunnels must be a registered PE because assessment of the adequacy of the tunnel lanes or lining to carry live traffic loads requires engineering calculations.

Commenters generally suggested that tunnel inspectors should attend a comprehensive training course with periodic refresher training, similar to what is required by the NBIS. The FHWA agrees the NTIS should require that tunnel inspection Program Managers and Team Leaders successfully complete a comprehensive tunnel inspection training course and tunnel inspection refresher training courses at regular intervals. The FHWA plans to develop such training courses consistent with industry recommendations and may incorporate training requirements into the NTIS in the future.

The ANPRM did not address the subject of tunnel inspector certification, and commenters responding to the ANPRM did not offer any suggestions

concerning inspector certification. The FHWA believes that for tunnel inspector certification, States and Federal agencies should have discretion whether and how to implement such a program. The FHWA may consider incorporating training requirements into the NTIS in the future. The training requirements could serve as an integral part of a State or Federal agency certification process. If tunnel owners follow the tunnel inspection qualification requirements proposed in this NPRM, the FHWA believes further certification would not be required.

Proposed Section 650.511 Inspection Frequency

In order to ensure that all tunnels are inspected soon after publication of the final rule, the FHWA proposes under section 650.511(a) that within 12 months of the effective date of the rule, tunnel owners must inspect each tunnel according to the inspection guidance provided in the HRTTIM.

This section also considers tunnel inspection frequencies for routine inspections, and for in-depth, damage, and special inspections. For routine inspections, most commenters thought that a maximum interval should be established, and preferred an interval of 24 months or less, with a lesser interval (greater frequency) to be determined by the tunnel owner based on risk and other factors. The FHWA concurs with this approach. Based on experience with existing tunnel inspection programs, the FHWA believes that intervals greater than 24 months would introduce too much risk, even for tunnels with no advanced or unique structural elements and systems in good condition, as there is significant likelihood that tunnel conditions can change during an interval greater than 24 months.

The FHWA believes there is considerable data and experience with tunnel inspections by many States and other agencies to support inspection frequency decisions unique to individual tunnels. Based on this experience, and considering the limited number of tunnels in the Nation's inventory and the wide variety of type and complexity of those tunnels, the agency proposes under section 650.511(b) to establish a maximum interval of 24 months for routine inspections, with more frequent inspections for certain tunnels and many functional systems. The FHWA agrees that these increased frequencies for certain structural elements and functional systems should be determined by the Program Manager because unique characteristics are best understood by the Program Manager and

tunnel owners and should be documented in the inspection procedures for each individual tunnel.

Recognizing that individual tunnel types and conditions vary widely, and that the contributing factors (*i.e.*, structural, geotechnical, geologic, hydraulic, mechanical, electrical) for each tunnel are best understood by the Program Manager and owner, FHWA proposes that the Program Manager would have discretion to establish criteria for more frequent inspection intervals. In establishing criteria for more frequent inspections, the rule proposes that the Program Manager conduct a risk analysis and consider factors such as age, traffic characteristics, geotechnical conditions, and known deficiencies. The Program Manager should consider conditions or factors that could jeopardize the safety of the tunnel. Certain structural elements or functional systems should be inspected and tested more frequently than a 24-month interval, even for systems in good condition. If a tunnel has suffered damage or has known deficiencies, more frequent inspections may also be necessary.

Regarding inspection frequencies for damage, in-depth, and special inspections, section 650.511(c) of the proposed rule would require that Program Managers establish criteria to determine the level and frequency of these inspections. Damage, in-depth, and special inspections could include non-destructive testing or other methods not used during routine inspections at an interval established by the Program Manager. In-depth inspections would be required for complex tunnels and for certain structural elements and functional systems when necessary to ascertain fully the condition of the element or system.

Proposed Section 650.513 Tunnel Inspection Procedures

Most State DOTs commenting on the ANPRM agreed that the HRTTIM should be used as the basis for inspection and rating of tunnel structural elements and functional systems. The FHWA agrees and proposes in section 650.513(a) that tunnel owners inspect tunnel structural elements and functional systems in accordance with the inspection guidance provided in the HRTTIM, which would be incorporated by reference into the NTIS. Caltrans noted that the HRTTIM lacked guidance relative to the inspection and rating of functional systems, including electrical, and mechanical components. The FHWA recognizes that some modifications and updating of the HRTTIM, such as developing

specifications for a rating system, will be necessary. The FHWA currently is working on revising the manual to incorporate many of the suggestions of the commenters to the ANPRM. The agency hopes to complete the revised manual prior to publication of the final rule for the NTIS. The FHWA solicits comments on needed revisions to the HRTTIM. Until the new manual is completed, the existing HRTTIM would provide general guidance for inspection requirements under the NTIS. In the event of any discrepancies between the HRTTIM and the final rule, the inspection requirements and procedures in the final rule would apply.

The FHWA proposes in section 650.513(b) that tunnel owners should provide at least one Team Leader, who meets the minimum qualifications stated in section 650.509, at the tunnel at all times during each initial, routine, and in-depth inspection.

Additionally, functional systems testing for inspection and reporting purposes should be distinguished from inspections for maintenance purposes. To that end, and to specify the levels of inspection required for various components, we propose in section 650.513(c) that Program Managers prepare and document tunnel-specific inspection procedures for each tunnel inspected and inventoried commensurate with tunnel complexity and identify tunnel structural elements and functional systems to be inspected and tested. The Program Manager also could stipulate unique inspector qualifications, specialties, certifications, and frequencies and equipment necessary in these written procedures.

A number of commenters agreed that functional systems, including electrical and mechanical components, should be inspected and rated as part of the requirements of the NTIS. The FHWA agrees and proposes in section 650.513(d) that Program Managers establish functional system testing requirements, including spot testing where appropriate, requirements for direct observation of critical system checks, and testing documentation.

The FHWA believes it is important to distinguish between different types of tunnels and define and highlight the unique needs of complex tunnels. This view is consistent with comments received. Therefore, for complex tunnels, section 650.513(e) proposes that tunnel owners identify specialized inspection procedures, and additional inspector training and experience required to inspect complex tunnels. The rule further proposes that tunnel owners inspect complex tunnels according to those procedures.

Additionally, AASHTO, Florida DOT, and the TBTA/MTA suggested that discipline-specific inspectors should be utilized to inspect components commensurate with the inspector training and experience. The FHWA agrees and proposes in section 650.513(f) that the NTIS require tunnel owners to conduct tunnel inspections with qualified staff not associated with the operation or maintenance of the tunnel structure or functional systems. The FHWA believes it is important that critical tunnel components receive independent inspections.

A tunnel may contain certain structural components that when subjected to deterioration could impact the structural capacity of those components, including structural framing systems for tunnels carrying two levels of vehicular traffic or carrying vehicular traffic on top of the tunnel. In consideration of this, the proposed NTIS would require under section 650.513(g) that tunnel owners rate each tunnel as to its safe vehicular load-carrying capacity in accordance with the AASHTO Manual for Bridge Evaluation. Additionally, tunnel owners would be required to post or restrict the highways in or over a tunnel in accordance with this AASHTO manual, unless otherwise specified in State law, when the maximum unrestricted legal loads or State routine permit loads exceed that allowed under the operating rating or equivalent rating factor.

As with the NBIS, the FHWA proposes in section 650.513(h) that the NTIS would require tunnel owners to prepare tunnel documentation (consistent with the HRTTIM) and maintain written reports on the results of tunnel inspections together with notations of any action taken to address the findings of such inspections. The proposed NTIS would require that tunnel owners maintain relevant maintenance and inspection data to allow assessment of current tunnel condition and record the findings and results of tunnel inspections. At a minimum, FHWA proposes that tunnel owners would maintain files and reports with data regarding basic tunnel information (*e.g.*, tunnel location, speed, inspections, repair and rehabilitation), tunnel and roadway geometrics, interior tunnel structural features, portal structure features, and tunnel systems information. The agency also proposes that tunnel data collected would include diagrams, photos, condition of each structural and functional system component, and notations of any action taken to address the findings of such inspections. The FHWA invites comments regarding what the tunnel

files and reports should include and what information tunnel owners should submit to the FHWA.

The FHWA plans to use a standard reporting form for submitting tunnel data to the agency and solicits public comments on the standard form posted in the docket. The FHWA also plans to develop a database for a national inventory of tunnels similar to the NBI. The standard reporting form would serve as the basis for the tunnel inventory, with the information collected on the form entered into the database. The FHWA expects to ask in the standard reporting form for an assessment of tunnel conditions.

Section 650.513(i) would require systematic QC/QA oversight of the inspection program, following procedures that maintain a high degree of accuracy and consistency in the inspection program. The QC/QA program would also include periodic field review of inspection teams and independent review of inspection reports and computations. The FHWA will consider including in the NTIS a requirement for periodic refresher training in the future.

Additionally, proposed section 650.513(j) would require tunnel owners to follow-up on critical findings according to established statewide or Federal agency-wide procedures. Critical findings should be addressed in a timely manner, with FHWA notified of any critical finding within 30 days and the actions taken to resolve or monitor the critical finding.

The FHWA plans to establish procedures for conducting reviews of State and Federal agency compliance with the NTIS. Accordingly, proposed section 650.513(k) would specify that States and Federal agencies provide information as required in cooperation with any FHWA review of State and Federal agency compliance with the NTIS.

Proposed Section 650.515 Inventory

The majority of commenters expressed support for the establishment of a national tunnel inventory database with data reported to the FHWA. The FHWA agrees that a NTI is necessary to ensure accurate records are kept on the condition of the national inventory of highway tunnels. Because tunnels could be more complex than bridges, and could have many other systems not included on bridges, the FHWA also proposes to create the tunnel inventory separate from the NBI.

For the purposes of establishing an initial inventory, section 650.515(a) would require States and Federal agencies with tunnels subject to the

NTIS to report basic information about each tunnel within 30 days of the effective date of the rule. The information requested in subsection (a) should not require an inspection but is intended to be gleaned from existing inspection records for each tunnel. States and Federal agencies would assign unique tunnel numbers following the approach currently used in the NBIS coding guide.

Section 650.515(b) would require States and Federal agencies with tunnels to make a preliminary assessment of tunnel condition and rate the structural and functional systems in each tunnel on a 0 to 9 scale and send the information to FHWA within 90 days of the effective date of this rule. The scale is described in the HRTTIM at page 4–12. The rating of the systems of each tunnel would be based upon the files of the most recent inspection of the tunnel. The FHWA needs this data for the national inventory so that there is an initial appraisal of the condition of the Nation's highway tunnels. If a system in a tunnel were rated 3 or less, the State or Federal agency would be required to file with the FHWA within 30 days of identification of the critical finding a plan to address the critical finding.

Proposed section 650.515(c) would require that upon performing an initial inspection as proposed under section 650.511(a), States and Federal agencies notify the FHWA of any updates to the information provided under sections 650.515(a) and (b).

After this initial effort to obtain data on the tunnels subject to the NTIS, the FHWA proposes in section 650.515(d) that each State or Federal agency owning a tunnel would prepare, maintain, and make available to FHWA upon request an inventory of all its tunnels subject to the NTIS reflecting the findings of the tunnel inspections.

Under proposed section 650.515(e), for all inspections, tunnel owners would enter the tunnel data into the State or Federal agency inventory within 90 days of the date of inspection. For modifications to existing tunnels that alter previously recorded data and for new tunnels, proposed section 650.515(f) would require tunnel owners to enter the data into the State or Federal agency inventory within 90 days after the completion of the work. For changes in traffic load restriction or closure status, proposed section 650.515(g) would require tunnel owners to enter the data into the State or Federal agency inventory within 90 days after the change in status of the structure.

Proposed Section 650.517 Reference Manuals

Commenters cited several tunnel resources. Those references included the HRTTIM; NFPA 502 Standard for Road Tunnels, Bridges, and other limited Access Highways; FHWA Technical Highway Tunnel Design Manual (the portion dealing with inspection); AASHTO Manual for Condition Evaluation of Bridges; and AASHTO Movable Bridge Inspection, Evaluation, and Maintenance Manual. The FHWA recognizes value can be gained from portions of these references for those involved in the inspection of tunnels. In addition, the FHWA recognizes the value to the tunnel inspection community of other references, including the Study of 70MW Fires in Representative Highway Tunnel Models. However, only one, the HRTTIM, is solely focused on the inspection of tunnels. The FHWA proposes that section 650.517 would incorporate the HRTTIM by reference.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed rule would constitute a significant regulatory action within the meaning of Executive Order 12866 and would be significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. This action would be considered significant because of widespread public interest in the safety of highway tunnels. It is also anticipated that the economic impact of this rulemaking could be substantial, although not economically significant within the meaning of Executive Order 12866.

Tunnel inspection costs can vary greatly from tunnel to tunnel. However, comments suggest that inspection costs

range from \$5 to \$75 per linear foot depending on the complexity of the tunnel. Although no comprehensive national inventory for tunnels currently exists, a preliminary tunnel survey conducted in 2003 suggests that there are approximately 350 highway tunnels in the Nation, comprising about 517,000 linear feet. Therefore, if each highway tunnel included four lanes, the FHWA estimates that the total cost associated with current tunnel inspections could range between \$10,340,000 and \$155,100,000 (or an average of between \$29,542 and \$443,142 per tunnel) every 24 months. Accordingly, the FHWA estimates the total annual inspection cost for tunnel owners could range between \$5,170,000 and \$77,550,000 (or an average of between \$14,771 and \$221,571 per tunnel). Most tunnels currently are inspected to some degree, and the estimates above do not account for current tunnel inspection expenditures. Therefore, the FHWA anticipates that the additional costs associated with implementing the requirements in this proposed rule would be much less than the upper range estimate of \$77.5 million. The FHWA solicits comments regarding current and anticipated inspection costs under this proposed rule, and whether such costs anticipated to be incurred are of a reasonable nature. The FHWA also requests comments on the number of tunnels in each State that are constructed or renovated with title 23 Federal funds and are located on public roads and tunnels on Federal-aid highways. Additionally, the FHWA requests comments regarding the estimated linear feet of each tunnel.

Although the NTIS could impose additional costs on tunnel owners, the FHWA anticipates that the potential benefits associated with this rulemaking would outweigh the resulting costs. Timely tunnel inspection is vital to uncovering safety problems and preventing catastrophic collapses like that occurring in the Central Artery Tunnel. The FHWA does not have data that would permit precise quantification of the benefits of the proposed rule, and seeks comments on what the benefits are from requiring national tunnel inspection standards. The agency is taking this action because it believes that any repairs or changes that take place because of problems identified in the inspections could lead to substantial economic savings. These benefits might not be a direct result of inspection standards, but indirect benefits from changes made to tunnels because of inspections. We seek public comment

on any other types of direct or indirect benefits of this rule.

Ensuring timely inspections of highway tunnels not only would enhance the safe passage of the traveling public, it would also contribute to the efficient movement of goods and people and to millions of dollars in fuel savings. For example, the Eisenhower/Johnson Memorial Tunnels, located west of Denver on I-70, facilitate the movement of people and goods from the eastern slope of the Rocky Mountains to the western slope. The Colorado Department of Transportation estimates that traveling through these tunnels, the public saves 9.1 miles by not having to travel over U.S. Highway 6, Loveland Pass. In the year 2000, approximately 28,000 vehicles traveled through the tunnels per day, which equates to 10.3 million vehicles for the year.³ Accordingly, we estimate that by traveling through the Eisenhower/Johnson Memorial Tunnels, the public saved approximately 90.7 million miles of travel in the year 2000 and millions of dollars in associated fuel costs. Traveling through these tunnels, goods and people reached their destinations more quickly, prevented congestion along the alternative route, and achieved savings in dollars and fuel along the way. If these tunnels were closed unnecessarily due to a collapse or other safety hazard, the economic effects would be considerable. Because many highway tunnels are located in mountainous areas without short or simple alternative routes, the FHWA expects similar indirect benefits to timely tunnel inspections would accrue throughout the Nation.

Additionally, the NTIS would protect investments in key infrastructure, as early detection of problems in tunnels could increase the longevity of these assets and create savings in maintenance and repair costs over time. Because tunnels are vital to the local, regional, and national economies, and to our national defense, it is imperative that these facilities are properly maintained and inspected.

The FHWA understands that the proposed NTIS regulations could increase present tunnel inspection costs to account for more frequent inspection of special elements and systems and for collection and reporting requirements. The FHWA solicits comments regarding the anticipated additional tunnel inspection costs that would be imposed by the proposed rule.

³ See <http://www.coloradodot.info/travel/eisenhower-tunnel/eisenhower-tunnel-interesting-facts.html>.

The proposed rule would not adversely affect, in a material way, any sector of the economy. In addition, the proposed rule would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) the FHWA has evaluated the effects of this proposed rule on small entities and anticipates that this action would not have a significant economic impact on a substantial number of small entities. Because the proposed regulations are primarily intended for States and Federal agencies, the FHWA has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. States and Federal agencies are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has preliminarily determined that this proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). The NTIS are needed to ensure safety for the users of our Nation's tunnels and to help protect Federal infrastructure investment. As discussed above, the FHWA finds that this regulatory action would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$141,300,000 or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector. Additionally, the definition of "Federal mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

The FHWA has analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132. The FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities would apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Any action that might be contemplated in subsequent phases of this proceeding will be analyzed for the purpose of the Paperwork Reduction Act for its impact to this current information collection. The FHWA will submit the proposed collections of information to OMB for review and approval at the time the NPRM is issued and, accordingly, seeks public comments.

The FHWA invites comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

The FHWA plans to collect data for the NTI related to basic tunnel information, tunnel and roadway geometrics, interior tunnel structural features, portal structural features, and preliminary assessment of tunnel condition on the form included in the

docket. The anticipated respondents include the 50 States, the District of Columbia, and Puerto Rico. The FHWA expects the frequency of collection would be the first year after the NTIS are established and every twenty-four months thereafter. The FHWA estimates that the estimated average burden per response would be approximately 54 hours per participant every twenty-four months. The estimated total annual burden hours would be 2,800 hours every twenty-four months.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have an effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This proposal would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposal under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This proposed rule does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000. The FHWA believes that this proposal would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that the proposed rule would not constitute a significant energy action under that order because, although it is considered a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: July 14, 2010.

Victor M. Mendez,
Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 650, by adding Subpart E, as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS**Subpart E—National Tunnel Inspection Standards**

Sec.	
650.501	Purpose.
650.503	Applicability.
650.505	Definitions.
650.507	Tunnel Inspection Organization.
650.509	Qualifications of personnel.
650.511	Inspection frequency.
650.513	Inspection procedures.
650.515	Inventory.
650.517	Reference Manual.

Authority: Title 23, United States Code, Section 315; 23 CFR 1.27; 49 CFR 1.48(b).

Subpart E—National Tunnel Inspection Standards**§ 650.501 Purpose.**

This subpart sets the national standards for the proper safety inspection and evaluation for tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways.

§ 650.503 Applicability.

The National Tunnel Inspection Standards (NTIS) in this subpart apply to all tunnels constructed or renovated with title 23 Federal funds that are located on public roads and tunnels on Federal-aid highways.

§ 650.505 Definitions.

The following terms used in this subpart are defined as follows:

American Association of State Highway and Transportation Officials (AASHTO) Manual for Bridge Evaluation. The term “AASHTO Manual for Bridge Evaluation” has the same meaning as in 23 CFR 650.305.

Bridge inspection experience. The term “bridge inspection experience” has the same meaning as in 23 CFR 650.305.

Complex tunnel. A tunnel characterized by advanced or unique structural elements or functional systems.

Critical finding. The term “critical finding” has the same meaning as in 23 CFR 650.305.

Damage inspection. The term “damage inspection” has the same meaning as in 23 CFR 650.305.

Federal-aid highway. The term “Federal-aid highway” has the same meaning as in 23 U.S.C. 101(a)(5).

Functional systems. Non-structural systems, such as electrical, mechanical, fire suppression, ventilation, lighting, communications, monitoring, drainage, traffic signals, emergency response (including egress, refuge room spacing, or carbon monoxide detection), or traffic safety components.

Hands-on inspection. The term “hands-on inspection” has the same meaning as in 23 CFR 650.305.

Highway. The term “highway” has the same meaning as in 23 U.S.C. 101(a)(11).

Highway and Rail Transit Tunnel Inspection Manual. The “Highway and Rail Transit Tunnel Inspection Manual,” 2005 edition, published by the Federal Highway Administration and the Federal Transit Administration.

In-depth inspection. A close-up inspection of one, several, or all tunnel structural elements or functional systems to identify any deficiencies not readily detectable using routine inspection procedures; hands-on inspection may be necessary at some locations. In-depth inspections may occur more or less frequently than routine inspections, as outlined in the tunnel-specific inspection procedures.

Initial inspection. The first inspection of a tunnel to provide all inventory and appraisal data and to determine the condition baseline of the structural elements and functional systems.

Legal load. The maximum legal load for each vehicle configuration permitted by law for the State in which the tunnel is located.

Load rating. The determination of the vehicular live load carrying capacity within or above the tunnel using structural plans and supplemented by information gathered from a field inspection.

Operating rating. The term “operating rating” has the same meaning as in 23 CFR 650.305.

Portal. The entrance and exit of the tunnel exposed to the environment; portals may include bare rock, constructed tunnel entrance structures, or buildings.

Professional engineer (PE). An individual, who has fulfilled education and experience requirements and passed rigorous exams that, under State licensure laws, permits them to offer engineering services directly to the public. Engineering licensure laws vary from State to State. In general, to become a PE, an individual must be a graduate of an engineering program accredited by the Accreditation Board for Engineering and Technology, pass the Fundamentals of Engineering exam, gain 4 years of experience working under a PE, and pass the Principles of Practice of Engineering exam.

Program manager. The individual in charge of the inspection program who has been assigned or delegated the duties and responsibilities for tunnel inspection, reporting, and inventory. The Program Manager provides overall leadership and guidance to inspection Team Leaders.

Public road. The term “public road” has the same meaning as in 23 U.S.C. 101(a)(27).

Quality assurance. The use of sampling and other measures to assure the adequacy of quality control procedures in order to verify or measure the quality level of the entire tunnel inspection and load rating program.

Quality control. Procedures that are intended to maintain the quality of a tunnel inspection and load rating at or above a specified level.

Routine inspection. A regularly scheduled comprehensive inspection encompassing all tunnel structural elements and functional systems and consisting of observations and measurements needed to determine the physical and functional condition of the tunnel, to identify any changes from initial or previously recorded conditions, and to ensure that tunnel components continue to satisfy present service requirements.

Routine permit load. A vehicular load that has a gross weight, axle weight, or

distance between axles not conforming with State laws for legally configured vehicles authorized for unlimited trips over an extended period of time to move alongside other heavy vehicles on a regular basis.

Special inspection. An inspection, scheduled at the discretion of the tunnel owner, used to monitor a particular known or suspected deficiency.

State transportation department. The term “State transportation department” has the same meaning as in 23 U.S.C. 101(a)(34).

Team leader. The on-site individual in charge of an inspection team responsible for planning, preparing, performing, and reporting on tunnel inspections.

Tunnel. An enclosed roadway for motor vehicle traffic with vehicle access limited to portals regardless of type of structure or method of construction. Tunnels do not include bridges or culverts inspected under the NBIS (23 CFR 650 Subpart C—National Bridge Inspection Standards). Tunnels are structures that require special design considerations that may include lighting, ventilation, fire protection systems, and emergency egress capacity based on the owner’s determination.

Tunnel inspection experience. Active participation in the performance of tunnel inspections in accordance with the National Tunnel Inspection Standards, in either a field inspection, supervisory, or management role. A combination of tunnel design, tunnel maintenance, tunnel construction, and tunnel inspection experience, with the predominant amount in tunnel inspection, is acceptable.

§ 650.507 Tunnel Inspection Organization.

(a) Each State transportation department must inspect, or cause to be inspected, all tunnels constructed or renovated with title 23 Federal funds located on public roads and tunnels on Federal-aid highways that are fully or partially located within the State’s boundaries, except for tunnels that are owned by Federal agencies.

(b) Each Federal agency must inspect, or cause to be inspected, all highway tunnels constructed or renovated with title 23 Federal funds located on public roads that are fully or partially located within the respective agency’s responsibility or jurisdiction.

(c) Where a tunnel is jointly-owned, all bordering States and Federal agencies with ownership interests should determine through a joint formal written agreement the inspection responsibilities of each State and Federal agency.

(d) Each State transportation department in a State that contains one or more tunnels subject to these regulations, or Federal agency with a tunnel under its jurisdiction, must include a tunnel inspection organization that is responsible for the following:

(1) Statewide or Federal agency-wide tunnel inspection policies and procedures (both general and tunnel-specific), quality control and quality assurance procedures, and preparation and maintenance of a tunnel inventory.

(2) Tunnel inspections, reports, load ratings, and other requirements of these standards.

(e) Functions identified in paragraphs (d)(1) and (d)(2) of this section may be delegated through a formal written agreement, but such delegation does not relieve the State transportation department or Federal agency of any of its responsibilities under this subpart.

(f) The State transportation department or Federal agency tunnel inspection organization must have a Program Manager with the qualifications listed in § 650.509(a), who has been delegated responsibility for paragraphs (d)(1) and (d)(2) of this section.

§ 650.509 Qualifications of personnel.

(a) A Program Manager must, at a minimum, be a registered PE, or have 10 years tunnel inspection experience.

(b) A Team Leader must, at a minimum, be a registered PE.

(c) The individual charged with the overall responsibility for load rating tunnels must be a registered PE.

§ 650.511 Inspection frequency.

Each State transportation department or Federal agency tunnel inspection organization must conduct or cause the following to be conducted for each tunnel under its responsibility or jurisdiction:

(a) *Initial inspection.* Within 12 months of the effective date of this rule, inspect each tunnel according to the inspection guidance provided in the Highway and Rail Transit Tunnel Inspection Manual (incorporated by reference, *see* § 650.517).

(b) *Routine inspections.* (1) Inspect each tunnel at regular intervals not to exceed twenty-four months to ensure tunnel structural elements and functional systems are performing as designed.

(2) For tunnels needing inspection more frequently than at twenty-four-month intervals, establish criteria to determine the level and frequency to which these tunnels are inspected based on a risk analysis approach that considers such factors as tunnel age,

traffic characteristics, geotechnical conditions, and known deficiencies.

(c) *Damage, in-depth, and special inspections.* The Program Manager shall establish criteria to determine the level and frequency of these inspections. Damage, in-depth, and special inspections may use non-destructive testing or other methods not used during routine inspections at an interval established by the Program Manager. In-depth inspections should be scheduled for complex tunnels and for certain structural elements and functional systems when necessary to fully ascertain the condition of the element or system.

§ 650.513 Inspection procedures.

Each State transportation department or Federal agency tunnel inspection organization, to carry out its inspection responsibilities, must perform or cause to be performed the following:

(a) Inspect tunnel structural elements and functional systems in accordance with the inspection guidance provided in the Highway and Rail Transit Tunnel Inspection Manual (incorporated by reference, *see* § 650.517).

(b) Provide at least one Team Leader, who meets the minimum qualifications stated in § 650.509, at the tunnel at all times during each initial, routine, and in-depth inspection.

(c) Prepare and document tunnel-specific inspection procedures for each tunnel inspected and inventoried, commensurate with tunnel complexity, identifying tunnel structural elements and functional systems to be inspected.

(d) Establish functional system testing requirements, requirements for direct observation of critical system checks, and testing documentation.

(e) For complex tunnels, identify specialized inspection procedures, and additional inspector training and experience required to inspect complex tunnels. Inspect complex tunnels according to the specialized inspection procedures.

(f) Conduct tunnel inspections with qualified staff not associated with the operation or maintenance of the tunnel structure or functional systems.

(g) Rate each tunnel as to its safe vehicular load-carrying capacity in accordance with the AASHTO Manual for Bridge Evaluation. Post or restrict the highways in or over the tunnel in accordance with this same manual unless otherwise specified in State law, when the maximum unrestricted legal loads or State routine permit loads exceed that allowed under the operating rating or equivalent rating factor.

(h) Prepare tunnel inspection documentation as described in the

Highway and Rail Transit Tunnel Inspection Manual (incorporated by reference, *see* § 650.517), and maintain written reports on the results of tunnel inspections together with notations of any action taken to address the findings of such inspections. Maintain relevant maintenance and inspection data to allow assessment of current tunnel condition. At a minimum, information collected must include data regarding basic tunnel information (*e.g.*, tunnel location, speed, inspections, repair, and rehabilitation), tunnel and roadway geometrics, interior tunnel structural features, portal structure features, and tunnel systems information. Tunnel data collected must also include diagrams, photos, condition of each structural and functional system component, and notations of any action taken to address the findings of such inspections.

(i) Assure systematic quality control and quality assurance procedures are used to maintain a high degree of accuracy and consistency in the inspection program. Include periodic field review of inspection teams and independent review of inspection reports and computations.

(j) Establish a statewide or Federal agency-wide procedure to assure that critical findings are addressed in a timely manner. Notify the FHWA within 30 days of any critical finding and the actions taken to resolve or monitor the critical finding.

(k) Provide information annually, or as required in cooperation with any FHWA review of State and Federal agency compliance with the NTIS.

§ 650.515 Inventory.

(a) *Preliminary inventory.* Each State or Federal agency must collect and submit the following inventory data information for all tunnels subject to the NTIS within 30 days of the effective date of this rule:

(1) *Basic tunnel information.* Tunnel name; tunnel number (based on the National Bridge Inspection Standards coding guide); owner; operator; tunnel location, including State, county, or political subdivision, route designation, Strategic Highway Network designation, portals milepost, portals latitude and longitude; year tunnel construction completed; traffic data, including posted speed, design speed, current average daily traffic, and percentage of truck traffic; and date of last inspection.

(2) *Tunnel and roadway geometrics.* Number of bores; total number of lanes; direction of traffic (*e.g.*, uni-directional, bi-directional, variable); portal-to-portal tunnel length; maximum open tunnel height within travelway; minimum

posted vertical clearance; minimum cross-sectional width; lane width(s); shoulder width(s); and pavement type.

(3) *Interior tunnel structural features.* Tunnel shape (e.g., circular, rectangular, horseshoe, oval); ground conditions (e.g., soft ground, soft rock, hard rock, mixed face); ceiling type (e.g., structural lining, integral box, suspended panel); finish lining type (e.g., tiles, metal panels, precast panels, masonry block, shotcrete or gunite, coating or paint); and primary tunnel support lining.

(4) *Portal structural features.* Portal types (e.g., cast-in place or precast concrete, stone masonry, bare rock); and portal shapes (e.g., circular, rectangular, horseshoe, oval).

(b) *Preliminary assessment of tunnel condition.* (1) Using data from the most recent inspection, each State or Federal agency must rate the structural and functional systems in its tunnels, where applicable, from 0 to 9 in accordance with the chart on page 4–12 of the Highway and Rail Transit Tunnel Inspection Manual and submit the data to FHWA within 90 days of the effective date of this rule.

(2) A system rated 3 or below is considered a critical finding. The State or Federal agency must file a follow-up plan with the FHWA within 30 days of identification of a critical finding and the actions taken to address all critical findings.

(c) *Updates to preliminary findings.* Upon performing an initial inspection of a tunnel under § 650.511(a), each State or Federal agency shall notify the FHWA of any updates to the information provided under subsections (a) and (b) of this section.

(d) *Tunnel inventory.* Each State or Federal agency must prepare, maintain, and make available to the FHWA upon request, an inventory of all tunnels subject to the NTIS reflecting the findings of the tunnel inspections.

(e) *Data entry for inspections.* For all inspections, enter the tunnel data into the State or Federal agency inventory within 90 days of the date of inspection.

(f) *Data entry for tunnel modifications and new tunnels.* For modifications to existing tunnels that alter previously recorded data and for new tunnels, enter the data into the State or Federal agency inventory within 90 days after the completion of the work.

(g) *Data entry for tunnel load restriction and closure changes.* For changes in traffic load restriction or closure status, enter the data into the State or Federal agency inventory within 90 days after the change in status of the tunnel.

§ 650.517 Reference Manual.

“The Federal Highway Administration and Federal Transit Administration Highway and Rail Transit Tunnel Inspection Manual,” 2005 edition, available in electronic format at <http://www.fhwa.dot.gov/bridge/tunnel/management/>, is incorporated by reference herein.

[FR Doc. 2010–17787 Filed 7–21–10; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40, 41, 44, 45, and 46

[Docket No. TTB–2010–0004; Notice No. 106]

RIN 1513–AB78

Standards for Pipe Tobacco and Roll-Your-Own Tobacco; Request for Public Comment

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Advance notice of proposed rulemaking; solicitation of comments.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau requests public comments on standards that have been proposed to distinguish between pipe tobacco and roll-your-own tobacco for Federal excise tax purposes based upon certain physical characteristics of the two products. We also request comments on any other physical characteristics that may be used for such purposes.

DATES: We must receive written comments on or before September 20, 2010.

ADDRESSES: You may send comments on this advance notice to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this advance notice as posted within Docket No. TTB–TTB–2010–0004 at “Regulations.gov,” the Federal e-rulemaking portal);
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this advance notice for specific instructions and requirements for submitting comments, and for

information on how to request a public hearing.

You may view copies of this advance notice, selected supporting materials, and any comments we receive about this proposal at <http://www.regulations.gov> within Docket No. TTB–2010–0004. A direct link to this docket is posted on the TTB Web site at <http://www.ttb.gov/tobacco/tobacco-rulemaking.shtml> under Notice No. 106. You also may view copies of this advance notice, any supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT:

Amy R. Greenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–453–2099).

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Chapter 52 of the Internal Revenue Code of 1986 (IRC) sets forth the Federal excise tax and related provisions that apply to tobacco products and processed tobacco manufactured in, or imported into, the United States. Section 5702(c) of the IRC (26 U.S.C. 5702(c)) defines the term “tobacco products” as “cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.” Each of these terms is also separately defined in section 5702.

Regulations implementing the provisions of chapter 52 of the IRC are contained in 27 CFR parts 40 (Manufacture of tobacco products, cigarette papers and tubes, and processed tobacco), 41 (Importation of tobacco products, cigarette papers and tubes, and processed tobacco), 44 (Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax), 45 (Removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States), and 46 (Miscellaneous regulations relating to tobacco products and cigarette papers and tubes). These regulations are administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Children’s Health Insurance Program Reauthorization Act of 2009

On February 4, 2009, the President signed into law the Children’s Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, 123 Stat. 8 (“the Act”).

Section 701 of the Act amended the IRC to increase the Federal excise tax rates on tobacco products and cigarette papers and tubes, effective as of April 1, 2009. The tax rates on pipe tobacco and roll-your-own tobacco, which had both previously been \$1.0969 per pound, were raised to \$2.8311 per pound for pipe tobacco and \$24.78 per pound for roll-your-own tobacco. See 26 U.S.C. 5701(f) and (g), respectively. On March 31, 2009, TTB published in the **Federal Register** (T.D. TTB-75, 74 FR 14479) a temporary rule to amend the TTB regulations to reflect the section 701 changes. In the same issue of the **Federal Register**, TTB also published a notice of proposed rulemaking (Notice No. 93, 74 FR 14506) inviting comments on the temporary regulations.

On June 22, 2009, TTB published a temporary rule in the **Federal Register** (T.D. TTB-78, 74 FR 29401) to implement certain additional changes made to the IRC by section 702 of the Act. In the same issue of the **Federal Register**, TTB also published a notice of proposed rulemaking (Notice No. 95, 74 FR 29433) inviting comments on the temporary regulations.

In an additional temporary rule, published in the **Federal Register** on September 24, 2009 (T.D. TTB-81, 74 FR 48650), TTB amended certain temporary provisions set forth in T.D. TTB-78 by extending the length of time packages of roll-your-own tobacco and pipe tobacco that did not comply with new regulatory requirements could still be used. This temporary rule also was published concurrent with a notice of proposed rulemaking in the same issue of the **Federal Register** (Notice No. 99, 74 FR 48687) soliciting comments on the revision.

Distinguishing Between Pipe Tobacco and Roll-Your-Own Tobacco in T.D. TTB-78

Temporary rule T.D. TTB-78 included new provisions regarding the expansion of the statutory definition of roll-your-own tobacco generally to include cigar wrapper and filler, and regarding the packaging and labeling of pipe tobacco and roll-your-own tobacco to better differentiate, on the basis of the packaging and labeling, between these two types of taxable products. In T.D. TTB-78, TTB noted that the tax rate increases adopted in section 701 of the Act resulted in a significant difference between the rate of tax imposed on roll-your-own tobacco (\$24.78 per pound) and the rate of tax imposed on pipe tobacco (\$2.8311 per pound). Prior to the amendments made by the Act, the two tax rates were the same.

The Bureau further noted that the existing TTB regulations contained no standards to differentiate between roll-your-own tobacco and pipe tobacco beyond a repeat of the statutory definitions. In T.D. TTB-78, we amended these definitions to incorporate the definitional changes contained in the Act. These definitional changes did not include any language which provides objective standards to readily distinguish between roll-your-own tobacco and pipe tobacco. Section 5702(o) of the IRC, as amended by the Act, defines the term "roll-your-own tobacco" as "any tobacco, which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or for use as wrappers thereof." The term "pipe tobacco" is defined at 26 U.S.C. 5702(n) as "any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe."

TTB recognizes that the similarity of roll-your-own tobacco and pipe tobacco and the much lower rate on pipe tobacco resulting from the tax rate changes made by the Act created an incentive for persons who roll their own cigarettes to use pipe tobacco. In T.D. TTB-78, the agency noted that there is now a heightened need for more regulatory detail to clarify the difference between the two products. Because both the definition of roll-your-own tobacco and the definition of pipe tobacco require consideration of the packaging and labeling of the product in order to determine the appropriate tax classification and because additional regulatory standards regarding the packaging and labeling were available, TTB amended the regulations to more clearly distinguish between the two products on those bases. With regard to the products' other defining characteristics, TTB stated that it was evaluating analytical methods and other standards that may lead to future rulemaking proposals.

Comments Received

As a result of our rulemaking actions, TTB received six written submissions from four industry members and one consumer organization suggesting specific standards that could be used to distinguish between roll-your-own tobacco and pipe tobacco. According to some of these commenters, such standards are urgently needed because, they allege, the new packaging and labeling regulations are not sufficient to

prevent the misrepresentation of roll-your-own tobacco as pipe tobacco.

A representative for Altadis USA, Inc., a manufacturer and importer of pipe tobacco, submitted the most detailed proposal regarding physical standards in comments to Notice No. 95, which were repeated in a separate letter to TTB's Administrator. Stating that it believes the new packaging requirements outlined in Notice No. 95 are only marginally helpful in dealing with the "misclassification problem," Altadis USA, Inc. proposes that TTB establish standards of physical characteristics for pipe tobacco. It asserts that examination of physical characteristics is necessary to determine whether the product, by virtue of its "appearance" and "type," is "suitable for use" as tobacco to be smoked in a pipe, as described in the statutory definition of pipe tobacco at 26 U.S.C. 5702(n), or as tobacco for making cigarettes or cigars, as described in the statutory definition of roll-your-own tobacco at 26 U.S.C. 5702(o). This commenter therefore proposes that processed tobacco in its finished form be classified as pipe tobacco only if it meets at least one of the following:

- At least 18% of its weight consists of reducing sugars;
- Moisture content exceeds 22% of its weight;
- Its cut tobacco exceeds 1/8 inch in width;
- At least 10% of its weight consists of Latakia, Perique, or Black Tobacco (USDA Type 37) or a combination thereof; or
- At least 20% of its weight consists of flavoring, casing, or other non-tobacco content.

According to the commenter, any processed tobacco product that does not meet any of these criteria cannot be legitimately classified as pipe tobacco and must be classified as roll-your-own tobacco.

TTB notes that this commenter also proposes that TTB take into consideration pre-existing or established brands for pipe tobacco and roll-your-own tobacco. The commenter states that prior to the introduction of the relevant tobacco tax legislation in Congress in January 2009, there were no "crossover brands", that is, "brands associated with both pipe tobacco and roll-your-own tobacco." The commenter therefore urged TTB to deem any processed tobacco regularly sold under a pre-existing brand name, trade name, or trademark predominantly associated with roll-your-own tobacco, prior to January 1, 2009, as roll-your-own tobacco. Similarly, any processed tobacco regularly sold under a pre-

existing brand name, trade name, or trademark predominantly associated with pipe tobacco prior to January 1, 2009, should be deemed pipe tobacco.

A representative of Top Tobacco L.P., a manufacturer of roll-your-own-tobacco, specifically addresses the above commenter's proposed standards for pipe tobacco in a letter to TTB's Administrator. Although the company states that it agrees with the general statement of facts in the submission, it disagrees with the proposed criterion regarding the width of the cut of the tobacco. This commenter states that it does not believe that the width factor can be a reliable indicator of whether or not a product is intended for consumption as roll-your-own tobacco or pipe tobacco because, according to the commenter, tobacco cut at $\frac{1}{8}$ of an inch can be rolled into cigarettes and, further, consumers can use basic kitchen or hardware appliances to grind wider cut tobacco into a size suitable for use as roll-your-own tobacco. The commenter goes on to assert that width standards proposed in Germany were not successful.

In response to Notice No. 95, the Pipe Tobacco Council, Inc. (PTC) submitted a comment proposing that pipe tobacco products sold as such prior to January 1, 2009, be exempt from the proposed labeling and packaging regulations. The PTC proposes that manufacturers with such products certify that the products were on the market prior to January 1, 2009, and that TTB create and maintain a database of such certifications. Manufacturers wishing to market any products as pipe tobacco that would be sold to consumers for the first time on or after January 1, 2009, would be required to submit a sample of the finished product to TTB along with a "valid reason why the product should be considered pipe tobacco." Such reasons could include the product's cut size, casing and flavoring rates, tobacco grades used, cut style, and moisture. Finally, PTC proposes that any brand name or trademark that was ever sold as either a roll-your-own tobacco product or cigarette brand produced and sold after January 1, 2009, should not be classified as pipe tobacco.

A representative of the National Tobacco Company LP (NTC), a manufacturer of both pipe tobacco and roll-your-own tobacco, in a comment to Notice No. 95, states that the constituent tobacco materials used in various tobacco products often overlap in terms of their type and appearance. Therefore, NTC believes that the type of tobacco and the appearance of the tobacco product are not always reliable guides to the product's suitable and intended use.

Nonetheless, the commenter does suggest a number of characteristics that could be used to identify pipe tobacco, such as the inclusion of substantial amounts of Cavendish, Latakia, or Perique tobacco, the appearance of a broad-leaf cut tobacco blend, high moisture content, dense packing, burn inhibitors, and block or flake cut. NTC states that the presence of menthol flavoring and the use of blending components such as expanded stem, expanded leaf tobacco, or reconstituted sheet tobacco could indicate that a tobacco product is intended for use as roll-your-own tobacco.

In a comment to Notice No. 99 (74 FR 48687), Extension of Package Use-Up Rule for Roll-Your-Own Tobacco and Pipe Tobacco, the consumer organization Campaign for Tobacco-Free Kids states that the proposed packaging regulations do not do enough to prevent the mislabeling of roll-your-own tobacco as pipe tobacco. It urges TTB to establish clear criteria to distinguish between those types of tobacco that may be labeled as pipe tobacco and those that may not. The group suggests that one possibility is to require that any loose tobacco consisting primarily of flue-cured or burley tobacco be labeled and taxed as roll-your-own tobacco.

TTB Response

We are aware that additional regulatory standards to distinguish between roll-your-own tobacco and pipe tobacco, based on physical characteristics, would be beneficial. It is our primary concern that any regulatory distinction drawn between these products be objective and enforceable. To that end, TTB continues to conduct research on the physical characteristics of the products that may be used to effectively distinguish between the two products for tax purposes. We also believe that soliciting comments from the public may assist us in developing objective, enforceable, and not easily subverted distinctions. Accordingly, in this document we are requesting comments on the proposals set forth above, and any additional comments, on the distinguishing physical characteristics of the two products.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether the physical standards discussed above under the heading "Comments Received" are appropriate and sufficient for distinguishing between pipe tobacco and roll-your-own tobacco. We also request comments on any additional

physical characteristics that could also be used to distinguish between these two tobacco products for tax classification purposes. Furthermore, we invite comments on any particular combination(s) of physical characteristics which would distinguish between pipe tobacco and roll-your-own tobacco. If a commenter can identify a specific list of differentiating physical characteristics, we invite the commenter to opine on what number of the physical characteristics should be present in order for the product to be classified as "pipe tobacco" (e.g., 2 of 5, 3 of 6). In addition, we request comments providing objective methods for analyzing whether or not a tobacco product meets the physical characteristics discussed in this notice or any additional physical characteristics suggested by the commenter. In particular, we invite commenters to provide objective methods for determining the percentage of Cavendish, Latakia, Perique, or Black Tobacco in a tobacco product, and for determining the percentage of casings and flavorings on a tobacco product.

Submitting Comments

You may submit comments on this advance notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to this advance notice in Docket No. TTB-2010-0004 on "Regulations.gov," the Federal e-rulemaking portal, at <http://www.regulations.gov>. A link to the docket is available under Notice No. 106 on the TTB Web site at <http://www.ttb.gov/tobacco/tobacco-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.

- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 106 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not

acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and the public may view, copies of this advance notice, selected supporting materials, and any electronic or mailed comments we receive about this proposal. A direct link to the Regulations.gov docket containing this advance notice and the posted comments received on it is available on the TTB Web site at <http://www.ttb.gov/tobacco/tobacco-rulemaking.shtml> under Notice No. 106. You may also reach the docket containing this advance notice and the posted comments received on it through the Regulations.gov search page at <http://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You and other members of the public may view copies of this advance notice, any related supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11 inch page. Contact our information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division drafted this advance notice.

Signed: April 28, 2010.

John J. Manfreda,

Administrator.

Approved: May 26, 2010.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2010-17957 Filed 7-21-10; 8:45 am]

BILLING CODE 4810-31-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4003 and 4903

Debt Collection

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Pension Benefit Guaranty Corporation's regulation on debt collection to conform to the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards and other legal requirements applicable to the collection of non-tax debts owed to PBGC. This proposed rule would add salary offset and administrative wage garnishment to the collection methods allowed under the current regulation and make other changes to strengthen PBGC's debt collection program.

DATES: Comments must be received by September 20, 2010.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- *E-mail:* reg.comments@pbgc.gov.
- *Fax:* 202-326-4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

Comments received, including personal information provided, will be posted to <http://www.pbgc.gov>. Copies of comments may also be obtained by writing to Disclosure Division, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-

free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

FOR FURTHER INFORMATION CONTACT: Margaret E. Drake, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4400 (extension 3228). (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4400 (extension 3228)).

SUPPLEMENTARY INFORMATION: This proposed rule will revise and replace the PBGC's debt collection regulations found at 29 CFR part 4903 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (April 26, 1996), the revised Federal Claims Collection Standards, 31 CFR chapter IX (parts 900 through 904), and other laws applicable to the collection of non-tax debt owed to the Government.

Background

In 1994, PBGC adopted a regulation on debt collection to provide procedures to implement administrative offset, as authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, *et seq.*), and in accordance with regulations issued by the Department of Justice and the General Accountability Office. In 1995, PBGC adopted a regulation on debt collection to provide procedures to implement tax refund offset, as required for participation in the Federal tax refund offset program authorized by 31 U.S.C. 3720A and in accordance with regulations issued by the Treasury Department. Together, these regulations comprise PBGC's current debt collection regulation (29 CFR part 4903) providing procedures for debt collection through administrative offset and tax refund offset. Administrative offset allows PBGC to request that debts owed to PBGC by a debtor (e.g., in connection with government contractual obligations) be offset by amounts another Federal agency may owe to the debtor. Likewise, other Federal agencies may request the collection of debts owed to them be offset by amounts PBGC may owe the debtor. Tax refund offset allows PBGC to request that debts owed to PBGC by a debtor be offset by amounts the Government may owe to the debtor. The Debt Collection Improvement Act of 1996 (DCIA) fundamentally changed the manner in which the Federal Government is required to manage the collection of its delinquent debts. Under DCIA, Congress directed that the management of

delinquent obligations is to be centralized at the Treasury Department in order to increase the efficiency of the Government's collection efforts.

Pursuant to 31 U.S.C. 3716, to utilize the administrative offset tools under DCIA, Federal agencies had to "adopt, without change, regulations on collecting by administrative offset promulgated by the Department of Justice, the Government Accountability Office, or the Department of the Treasury," or promulgate their own regulations consistent with the regulations issued by the Department of Justice, the General Accountability Office, or the Department of the Treasury. On November 20, 2000, the Department of Justice and the Department of the Treasury revised the FCCS. 65 FR 70390 (Nov. 20, 2000).

Overview of Proposed Regulatory Changes

This proposed regulation would revise the procedures for the collection of non-tax debts owed to PBGC through administrative offset and tax refund offset. It would adopt the FCCS and supplement it by prescribing procedures consistent with the FCCS, as necessary and appropriate for PBGC operations. The proposed regulation would also provide for the collection of debts via salary offset and the use of administrative wage garnishment. Salary offset is the collection of debt owed by a Federal employee by withholding up to 15 percent of the employee's disposable pay. The procedures for salary offset are governed by 5 U.S.C. 5514, and Office of Personnel Management (OPM) regulations (5 CFR part 550, subpart k). OPM regulations provide for salary offset through the Treasury Offset Program.¹ Administrative wage garnishment is the collection of a debt owed by a former Federal employee by ordering a non-Federal employer to withhold funds from a debtor's wages. The procedures for administrative wage garnishment are governed by 31 U.S.C. 3720D and 31 CFR 285.11.

As with the PBGC's current debt collection regulation, the proposed regulation would apply to collection of debts to PBGC by employers (*e.g.*, unpaid premium, penalty and interest under part 4007, information penalties under part 4071, and employer liability under part 4062) and to the recovery of benefit overpayments to participants in

cases where PBGC does not recoup the overpayment under part 4022 (*e.g.*, where a participant is not entitled to future annuity benefits as of the plan's termination date). The proposed regulation would also apply to debts owed to the United States by current and former PBGC employees.

The proposed regulation would not apply to the collection of tax debts, which is governed by the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and regulations, policies, and procedures issued by the Internal Revenue Service.

Under the proposed regulation, benefits paid by PBGC generally would not be offset, in accordance with the anti-alienation provisions under 29 U.S.C. 1056(d) and 26 U.S.C. 401(a)(13). However, benefits paid by PBGC could be offset under certain limited exceptions from those provisions (*e.g.*, in certain fiduciary breach situations).

Nothing in the proposed regulation would preclude the use of collection procedures not contained in the regulation. For example, PBGC would be able to collect unused travel advances through setoff of an employee's pay under 5 U.S.C. 5705. Moreover, certain PBGC efforts to obtain payment of debts arising out of activities under ERISA are authorized by and subject to requirements prescribed under other Federal statutes. Whether, and to what extent, such requirements apply to the collection of a debt by PBGC, PBGC's activities will be consistent with such requirements, as well as with any other applicable requirements (*see e.g.*, parts 4000, 4003, 4007, and 4062). PBGC would be able to use multiple collection methods at the same time to collect a debt, as permitted by law. Nothing in this regulation requires PBGC to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

PBGC maintains a system of records to collect debts owed to PBGC by various individuals, PBGC-13, Debt Collection. See 65 FR 25397 (May 1, 2000).

Subpart A—4903.1 to 4903.4

Subpart A of this proposed regulation addresses the general provisions applicable to the collection of non-tax debts owed to PBGC. Proposed § 4903.5 includes procedures for the collection of debts owed to PBGC, other than those subject to recoupment.

Under proposed § 4903.2, PBGC would not be required to duplicate notices or administrative proceedings provided by contract, this proposed regulation, or other laws or regulations.

PBGC would not be required to provide a debtor with two hearings on the same issue simply because PBGC used two different collection tools, each of which requires that the debtor be provided with a hearing. For example, if PBGC has provided a debtor with notice of unpaid premium under part 4007, it need not provide additional notice to the debtor before using this regulation to collect the debt owed to PBGC.

Proposed § 4903.4 states that PBGC's rules under part 4000 regarding permissible methods of filing with PBGC, determining dates of filing and computation of time apply for purposes of this regulation.

Subpart B—4903.5 to 4903.20

Subpart B of this proposed regulation describes the procedures to be followed by PBGC when collecting debts owed to it. Among other things, subpart B outlines the due process procedures PBGC would be required to follow when using offset (administrative, tax refund, and salary) to collect a debt owed to it, when garnishing a debtor's non-Federal wages, or before reporting a debt owed to it to a credit bureau. Specifically, PBGC would be required to provide debtors with notice of the amount and type of the debt, the intended collection action to be taken, how a debtor may pay the debt or make alternate payment arrangements, how a debtor could review documents related to the debt, and the consequences to the debtor if the debt is not repaid. Subpart B also describes how a debtor may request a hearing to contest the noticed debt.

Subpart B also explains the circumstances under which PBGC could waive interest, penalties, and administrative costs. Such waivers are permitted only to the extent permitted by law. For example, part 4007 of this chapter does not permit waivers of interest charges on late premium payments. PBGC may provide additional guidance on how interest, penalties, and administrative costs are assessed on particular types of debts.

Subpart B would update PBGC procedures to reflect changes required by DCIA. For example, DCIA centralized the use of offset by requiring agencies to refer debts delinquent for more than 180 days to the Financial Management Service (FMS) of the Treasury Department for offset. See 31 U.S.C. 3716(c)(6). FMS is required to offset payments to persons who owe delinquent debts to the Government. The proposed regulation would revise PBGC's regulations to comply with DCIA requirements for all types of offsets. This proposed regulation would also incorporate procedures for several

¹ PBGC has an internal directive which provides procedures to recover debts owed to PBGC from the current pay account of an employee, and to process requests received from another Federal agency from the current pay account of a PBGC employee to recover debts owed to the agency.

collection remedies authorized by DCIA, such as administrative wage garnishment.

Subpart C—4903.21 to 4903.22

Subpart C of this proposed regulation describes the procedures to be followed when a Federal agency, other than PBGC, wishes to use the offset process to collect a debt from a non-tax payment issued by PBGC as a payment agency. Subpart C governs the process for offsets that occur on a case-by-case basis to collect debts from payments made by PBGC to its employees, its vendors, and others whom PBGC is required or authorized to pay. While centralized offset through the Treasury Offset Program is the Government's primary offset collection tool, this proposed regulation provides the procedures to be used when centralized offset is not otherwise available or appropriate. An agency's use of the non-centralized administrative offset process shall not provide grounds to invalidate any offset on the basis that centralized offset was not used.

Compliance With Rulemaking Guidelines

Executive Order 12866

PBGC has determined, in consultation with the Office of Management and Budget, that this rule is not a "significant regulatory action" under Executive Order 12866.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed regulation would not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies, Pension insurance, Pensions).

29 CFR Part 4903

Claims.

For the reasons given above, PBGC proposes to amend 29 CFR parts 4003 and 4903 as follows:

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3)

§ 4003.32 [Amended]

2. Amend § 4003.32 by removing "§ 4903.33 of this chapter, by a date 60 days (or more) thereafter" and replacing it with "part 4903 of this chapter, by the date".

§ 4003.32 [Amended]

3. Amend § 4003.52 by removing "§ 4903.33 of this chapter, by a date 60 days (or more) thereafter" and replacing it with "part 4903 of this chapter, by the date".

4. Part 4903 is revised to read as follows:

PART 4903—DEBT COLLECTION

Subpart A—General Provisions

Sec.

- 4903.1 What definitions apply to this part?
 4903.2 What do these regulations cover?
 4903.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?
 4903.4 What rules apply for purposes of filing with PBGC, determining dates of filings, and computation of time?

Subpart B—Procedures To Collect Debts Owed to PBGC

- 4903.5 What notice will PBGC send to a debtor when collecting a debt owed to PBGC?
 4903.6 How will PBGC add interest, penalty charges, and administrative costs to a debt owed to PBGC?
 4903.7 When will PBGC allow a debtor to pay a debt owed to PBGC in installments instead of a lump sum?
 4903.8 When will PBGC compromise a debt owed to PBGC?
 4903.9 When will PBGC suspend or terminate debt collection on a debt owed to PBGC?
 4903.10 When will PBGC transfer a debt owed to PBGC to the Treasury Department's Financial Management Service for collection?
 4903.11 How will PBGC use administrative offset (offset of non-tax Federal payments) to collect a debt owed to PBGC?
 4903.12 How will PBGC use tax refund offset to collect a debt owed to PBGC?
 4903.13 How will PBGC offset a Federal employee's salary to collect a debt owed to PBGC?
 4903.14 How will PBGC use administrative wage garnishment to collect a debt owed to PBGC from a debtor's wages?
 4903.15 How will PBGC report to credit bureaus debts owed to PBGC?
 4903.16 How will PBGC refer to private collection agencies debts owed to PBGC?
 4903.17 When will PBGC refer to the Department of Justice debts owed to PBGC?
 4903.18 Will a debtor who owes a debt to PBGC or another Federal agency, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative

agreements, or other sources of Federal funds?

- 4903.19 How does a debtor request a special review based on a change in circumstances such as a catastrophic illness, divorce, death, or disability?
 4903.20 Will PBGC issue a refund if money is erroneously collected on a debt owed to PBGC?

Subpart C—Procedures for Offset of PBGC Payments To Collect Debts Owed to Other Federal Agencies

- 4903.21 How do other Federal agencies use the offset process to collect debts from payments issued by PBGC?
 4903.22 What does PBGC do upon receipt of a request to offset the salary of a PBGC employee to collect a debt owed by the employee to another Federal agency?

Authority: 5 U.S.C. 5514; 29 U.S.C. 1302(b); 31 U.S.C. 3701–3719, 3720A; 5 CFR part 550, subpart K; 31 CFR part 285; 31 CFR parts 900–904.

Subpart A—General Provisions

§ 4903.1 What definitions apply to this part?

The following terms are defined in § 4001.2 of this chapter: Code, PBGC, and Person. In addition, for purposes of this part:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a state government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term "administrative offset" can include, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms "centralized administrative offset" and "centralized offset" refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or Federal agency means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States government, including government-owned corporations, by a person. As used in this part, the term "debt" can include a debt owed to PBGC, but does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or Federal employee means a current employee of PBGC or other Federal agency, including a current member of the uniformed services, including the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, Commissioned Corps of the Public Health Service, the National Guard, and the reserve forces of the uniformed services.

FCCS means the Federal Claims Collection Standards, 31 CFR parts 900–904.

Financial Management Service (FMS) means the Treasury Department bureau that is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

Payment agency or Federal payment agency means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The payment agency may be the agency that employs the debtor. In some cases, PBGC may be both the creditor agency and payment agency.

Salary offset means a type of administrative offset to collect a debt under Section 5514 of Title 5 of the United States Code and 5 CFR part 550, subpart K by deduction(s) at one or more officially established pay intervals from the current pay account of an employee with or without his or her consent.

Tax debt means a debt arising under the Code.

Tax refund offset means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that

taxpayer to a Federal agency pursuant to Treasury regulations.

§ 4903.2 What do these regulations cover?

(a) *Scope.* This part provides procedures for the collection of debts owed to PBGC, other than those subject to recoupment (29 CFR 4022, subpart E). This part also provides procedures for collection of other debts owed to the United States when a request for offset of a payment, for which PBGC is the payment agency, is received by PBGC from another agency (for example, when a PBGC employee owes a student loan debt to the United States Department of Education).

(b) *Applicability.*

(1) This part applies to PBGC when collecting a debt owed to PBGC; to persons who owe debts to PBGC; to persons controlled by or controlling persons who owe debts to a Federal agency, and to Federal agencies requesting offset of a payment issued by PBGC as a payment agency (including salary payments to PBGC employees).

(2) This part does not apply to debts owed to PBGC being collected through recoupment under subpart E of part 4022 of this chapter. Benefits paid by PBGC generally will not be offset, subject to limited exceptions (*e.g.*, in certain fiduciary breach situations).

(3) This part does not apply to tax debts, to any debt based in whole or in part on conduct in violation of the antitrust laws, nor to any debt for which there is an indication of fraud or misrepresentation, as described in § 900.3 of the FCCS, unless the debt is returned by the Department of Justice to PBGC for handling.

(4) Nothing in this part precludes the use of other statutory or regulatory authority to collect or dispose of any debt. See, for example, 5 U.S.C. 5705, Advancements and Deductions, which authorizes PBGC to recover travel advances by offset of up to 100 percent of a Federal employee's accrued pay. See, also, 5 U.S.C. 4108, governing the collection of training expenses.

(5) To the extent that provisions of laws, other regulations, and PBGC enforcement policies differ from the provisions of this part, those provisions of law, other regulations, and PBGC enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and to debts arising under ERISA, rather than the provisions of this part.

(c) *Additional policies and procedures.* PBGC may, but is not required to, promulgate additional policies and procedures consistent with this part, the FCCS, and other applicable law, policies, and procedures.

(1) PBGC does not intend this regulation to prohibit PBGC from demanding the return of specific property or the payment of its value.

(2) The failure of PBGC to comply with any provision in this regulation will not serve as a defense to the existence of the debt.

(d) *Duplication not required.* Nothing in this part requires PBGC to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* PBGC and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available and appropriate collection remedies. To provide PBGC with flexibility in determining which remedies will be most efficient in collecting the particular debt, these remedies are not listed in any prescribed order.

§ 4903.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of FCCS. This part also supplements the FCCS by prescribing procedures consistent with FCCS, as necessary and appropriate for PBGC operations.

§ 4903.4 What rules apply for purposes of filing with PBGC, determining dates of filings, and computation of time?

(a) *How and where to file.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part. See § 4000.4 of this chapter for information on where to file.

(b) *Date of Filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with PBGC.

(c) *Computation of Time.* PBGC applies the rules of subpart D of part 4000 of this chapter to compute any time period under this part.

Subpart B—Procedures to Collect Debts Owed to PBGC

§ 4903.5 What notice will PBGC send to a debtor when collecting a debt owed to PBGC?

(a) *Notice requirements.* PBGC will collect debts owed to PBGC. PBGC will promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a debt owed to PBGC.

The notice(s) will be sent to the debtor at the most current address of the debtor in PBGC's records. Generally, before starting the collection actions described in §§ 4903.6 and 4903.10 through 4903.18 of this part, PBGC will send no more than two written notices to the debtor. The notice will explain why the debt is owed to PBGC, the amount of the debt, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review non-privileged documents related to the debt, how a debtor may dispute the debt, the collection remedies available to PBGC if the debtor refuses or otherwise fails to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) will explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (see § 4903.6 of this part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) PBGC's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to PBGC (see § 4903.7 of this part);

(5) The name, address, and telephone number of a contact person or office within PBGC;

(6) PBGC's intention to enforce collection by taking one or more of the following actions if the debtor fails to pay or otherwise resolve the debt:

(i) *Offset.* Offset the debtor's receipt of Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), Federal retirement (i.e., CSRS or FERS), vendor, travel reimbursements and advances, and other Federal payments (see §§ 4903.11 through 4903.13 of this part);

(ii) *Private collection agency.* Refer the debt to a private collection agency (see § 4903.16 of this part);

(iii) *Credit bureau reporting.* Report the debt to a credit bureau (see § 4903.15 of this part);

(iv) *Administrative wage garnishment.* Garnish the debtor's wages through administrative wage garnishment (see § 4903.14 of this part);

(v) *Litigation.* Whether PBGC will initiate litigation under 29 U.S.C. 1302 to collect the debt or refer the debt to

the Department of Justice to initiate litigation to collect the debt (see § 4903.17 of this part);

(vi) *Treasury Department's Financial Management Service.* Refer the debt to the Financial Management Service for collection (see § 4903.10 of this part);

(7) That debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (see § 4903.10 of this part);

(8) How the debtor may inspect and copy non-privileged records related to the debt;

(9) How the debtor may request a review of PBGC's determination that the debtor owes a debt to PBGC and present evidence that the debt is not delinquent or legally enforceable (see §§ 4903.11(c) and 4903.12(c) of this part);

(10) How a debtor who is an individual may request a hearing if PBGC intends to garnish the debtor's private sector (i.e., non-Federal) wages (see § 4903.14(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th business day following the date of the mailing of the notice, will stay the commencement of administrative wage garnishment, but not other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is an individual and a Federal employee subject to Federal salary offset may request a hearing (see § 4903.13(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th day following receipt of the notice, will stay the commencement of salary offset, but not other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That PBGC will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practicable date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or

evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716.

(12) How the debtor may request a waiver of the debt, if applicable. See, for example, § 4903.6 and § 4903.13(f) of this part.

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (see <http://www.irs.gov>);

(14) How the debtor may exercise other rights and remedies, if any, available to the debtor under statutory or regulatory authority under which the debt arose.

(15) That certain debtors and, if applicable, persons controlled by or controlling such debtors, may be ineligible for Federal Government loans, guaranties and insurance, grants, cooperative agreements or other Federal funds (see 28 U.S.C. 3201(e); 31 U.S.C. 3720B, 31 CFR 285.13, and § 4903.18(a) of this part); and

(16) That the debtor should advise PBGC of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* PBGC may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(16) of this section if PBGC, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS.* PBGC should respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. See 31 CFR part 901.

§ 4903.6 How will PBGC add interest, penalty charges, and administrative costs to a debt owed to PBGC?

(a) *Assessment and notice.* PBGC will assess interest, penalties and administrative costs on PBGC debts in accordance with the provisions of 31 U.S.C. 3717, 31 CFR 901.9 and other applicable requirements. Administrative

costs, including the costs of processing and handling a delinquent debt, will be determined by PBGC. PBGC will explain in the notice to the debtor how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or other legally binding agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law, regulation, or contract, PBGC will not charge interest if the amount due on the debt is paid within 30 days of the date from which the interest accrues. See 31 U.S.C. 3717(d). To the extent permitted by law, PBGC may waive interest, penalties, and administrative costs, or any portion thereof, in appropriate circumstances consistent with the FCCS.

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). PBGC may suspend accrual of any or all of these charges in appropriate circumstances consistent with the FCCS.

§ 4903.7 When will PBGC allow a debtor to pay a debt owed to PBGC in installments instead of a lump sum?

If a debtor is financially unable to pay the debt in a lump sum, PBGC may accept payment of a debt in regular installments, in accordance with the provisions of 31 CFR 901.8.

§ 4903.8 When will PBGC compromise a debt owed to PBGC?

If PBGC cannot collect the full amount of a debt owed to PBGC, PBGC may compromise the debt in accordance with the provisions of 31 CFR part 902.

§ 4903.9 When will PBGC suspend or terminate debt collection on a debt owed to PBGC?

If, after pursuing all appropriate means of collection, PBGC determines that a debt owed to PBGC is uncollectible, PBGC may suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903. Termination of debt collection activity by PBGC does not discharge the indebtedness.

§ 4903.10 When will PBGC transfer a debt owed to PBGC to the Treasury Department's Financial Management Service for collection?

(a) PBGC will transfer a debt owed to PBGC that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing." See

31 U.S.C. 3711(g) and 31 CFR 285.12. PBGC may transfer debts owed to PBGC that are delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred PBGC debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt owed to PBGC and the collection action to be taken. See 31 CFR 285.12(b) and 285.12(c)(2). Appropriate action can include, but is not limited to, contact with the debtor, referral of the debt owed to PBGC to the Treasury Offset Program, private collection agencies, or the Department of Justice; reporting of the debt to credit bureaus, and/or administrative wage garnishment.

(b) At least 60 days prior to transferring a debt owed to PBGC to the Financial Management Service, PBGC will send notice to the debtor as required by § 4903.5 of this part. PBGC will certify to the Financial Management Service that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, PBGC will certify its compliance with all applicable due process and other requirements as described in this part and other Federal laws. See 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by administrative and tax refund offset. See 31 CFR 285.12(g). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 4903.11 How will PBGC use administrative offset (offset of non-tax Federal payments) to collect a debt owed to PBGC?

(a) *Centralized administrative offset through the Treasury Offset Program.*

(1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by the offset of Federal payments. See § 4903.10(c) of this part. If not already transferred to the Financial Management Service under § 4903.10 of this part, PBGC will refer debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. See 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). PBGC may refer to the Treasury Offset Program for offset any debt owed to PBGC that has been delinquent for 180 days or less.

(2) At least 60 days prior to referring a debt owed to PBGC to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC will certify to the Financial Management Service, that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection by offset. In addition, PBGC will certify its compliance with the requirements in this part.

(b) *Non-centralized administrative offset for debts owed to PBGC.*

(1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, PBGC may collect past-due, legally enforceable debts owed to PBGC through non-centralized administrative offset. See 31 CFR 901.3(c). In these cases, PBGC may offset a payment internally or make an offset request directly to a Federal payment agency.

(2) At least 30 days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. When referring a debt owed to PBGC for offset under this paragraph (b), PBGC will certify that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection by offset. In addition, PBGC will certify its compliance with these regulations concerning administrative offset. See 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 4903.5 of this part will explain to the debtor how to request an administrative review of PBGC's determination that the debtor owes a debt to PBGC and how to present

evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt owed to PBGC, the debtor may seek a review of the terms of repayment. In most cases, PBGC will provide administrative review based upon the written record, including documentation provided by the debtor. PBGC may provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt owed to PBGC, and PBGC determines that the question of the indebtedness cannot be resolved by review of the documentary evidence. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing. PBGC will carefully document all significant matters discussed at the hearing. PBGC may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), PBGC may offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 4903.5 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. PBGC will give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§ 4903.12 How will PBGC use tax refund offset to collect a debt owed to PBGC?

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by the offset of tax refunds and other Federal payments. See § 4903.10(c) of this part. If not already transferred to the Financial Management Service under § 4903.10 of this part, PBGC will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax refund offset. See 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR § 285.2.

(b) *Notice.* At least 60 days prior to referring a debt owed to the Treasury Offset Program, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC will certify to the Financial Management Service's Treasury Offset Program that the debt is past due and legally enforceable in the amount submitted, and that the PBGC has made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, PBGC will certify its compliance with all applicable due

process and other requirements described in this part and other Federal laws. See 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in § 4903.5 of this part will provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in § 4903.11(c) of this part. PBGC may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§ 4903.13 How will PBGC offset a Federal employee's salary to collect a debt owed to PBGC?

(a) *Federal salary offset.*

(1) Salary offset is used to collect debts owed to the United States or PBGC by Federal employees. If a Federal employee owes PBGC a debt, PBGC may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than PBGC may collect debt from the salary of a PBGC employee, see §§ 4903.21 and 4903.22, subpart C, of this part.

(2) Nothing in this part requires PBGC to collect a debt in accordance with the provisions of this section if Federal law allows other means to collect. See, for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) PBGC may use the administrative wage garnishment procedure described in § 4903.14 of this part to collect from an individual's non-Federal wages a debt owed to PBGC.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 4903.10(a) of this part, PBGC will refer debts owed to PBGC to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, PBGC will attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1108 and 550.1109.

(c) *Non-centralized salary offset for debts owed to PBGC.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, PBGC may collect delinquent debts owed to PBGC through non-centralized salary offset. See 5 CFR 550.1109. In these cases, PBGC may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent

debt owed to PBGC by a Federal employee. Thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. When referring a debt owed to PBGC for offset, PBGC will certify to the payment agency that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, PBGC will certify that all due process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.*

PBGC is not required to provide prior notice to an employee when the following adjustments are made by PBGC to a PBGC employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and the amount of the adjustment and the point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Administrative review—(1) Request for administrative review.* A Federal employee who has received a notice that his or her debt will be collected by means of salary offset may request administrative review concerning the existence or amount of the debt owed to PBGC. The Federal employee also may request administrative review concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for administrative review in writing to the office designated in the notice described in § 4903.5. See § 4903.5(a)(11). The request must be received by the

designated office on or before the 15th day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. See 31 CFR 901.3(a)(7).

(2) *Failure to submit timely request for administrative review.* If the employee fails to submit a request for administrative review within the time period described in paragraph (e)(1) of this section, salary offset may be initiated. However, PBGC may accept a late request for administrative review if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Reviewing official.* PBGC must obtain the services of a reviewing official who is not under the supervision or control of the Director of the PBGC. PBGC may enter into interagency support agreements with other agencies to provide reviewing officials.

(4) *Notice of administrative review.* After the employee requests administrative review, the designated reviewing official will inform the employee of the form of the review to be provided. For oral hearings, the notice will set forth the date, time and location of the hearing. For determinations based on review of written records, the notice will notify the employee of the date by which he or she should submit written arguments to the designated reviewing official. The reviewing official will give the employee reasonable time to submit documentation in support of the employee's position. The reviewing official will schedule a new hearing date if requested by both parties. The reviewing official will give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The reviewing official will conduct an oral hearing if the official determines that the matter cannot be resolved by review of documentary evidence alone. The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the reviewing official, including but not limited to:

(i) Informal conferences (in person or electronically) with the reviewing official, in which the employee and

agency representative will be given a reasonable opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the reviewing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Determination based on review of written record.* If the reviewing official determines that an oral hearing is not necessary, the official will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position. See 31 CFR 901.3(a)(7).

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for administrative review, the employee will have waived the right to administrative review, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the debt owed to PBGC as described in the notice of intent to offset. If PBGC's representative fails to appear at an oral hearing, the reviewing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* PBGC will have the initial burden to prove the existence and amount of the debt owed to PBGC. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no such debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The reviewing official will maintain a summary record of any hearing provided by this Part. Witnesses will testify under oath or affirmation in oral hearings. See 31 CFR 901.3(a)(7).

(10) *Date of decision.* The reviewing official will issue a written opinion stating the official's decision, based upon documentary evidence and information developed during the administrative review, as soon as practicable after the review, but not later than 60 days after the date on which the request for review was received by PBGC. If the employee (or the parties jointly) requests a delay in the

proceedings, the deadline for the decision may be postponed by the number of days by which the review was postponed. When a decision is not timely rendered, PBGC will waive interest and penalties applied to the debt owed to PBGC for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision will include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt owed to PBGC;

(ii) The reviewing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The reviewing official's decision will be final.

(f) *Waiver not precluded.* Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 32 U.S.C. 716, or other statutory authority. PBGC may grant such waivers when it would be against equity and good conscience or not in the United States' best interest to collect such debts, in accordance with those authorities, 5 CFR 550.1102(b)(2).

(g) *Salary offset process—(1) Determination of disposable pay.* PBGC will implement salary offset when requested to do so by PBGC, as described in paragraph (c) of this section, or another agency, as described in § 4903.21 of this part. If the debtor is not employed by PBGC, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions will begin within three official pay periods following receipt of the creditor agency's request for offset or after a decision has been issued following a request for a hearing.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, subject to the requirements of 15 U.S.C. 1673, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in a lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater

amount, or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt owed to PBGC.

(h) *Payment agency's responsibilities.*

(1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which PBGC has requested salary offset, the payment agency must certify the total amount of its collection and notify PBGC and the employee of the amounts collected. If the payment agency knows that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt to PBGC, the amount of the debt, and that PBGC has complied with the provisions of this section. PBGC must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, PBGC may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, PBGC will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) When an employee transfers to another agency, PBGC should resume collection with the employee's new payment agency in order to continue salary offset.

§ 4903.14 How will PBGC use administrative wage garnishment to collect a debt owed to PBGC from a debtor's wages?

(a) PBGC is authorized to collect debts owed to PBGC from an individual debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR § 285.11 concerning administrative wage

garnishment, including the hearing procedures described in 31 CFR 285.11(f). PBGC may use administrative wage garnishment to collect a delinquent debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see § 4903.7 of this part). Thirty (30) days prior to initiating an administrative wage garnishment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part, including the requirements of § 4903.5(a)(10) of this part. For debts referred to the Financial Management Service under § 4903.10 of this part, PBGC may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 4903.5(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. PBGC will determine whether the matter requires an oral hearing or if a determination based upon review of the written record is sufficient. PBGC will provide the debtor with a reasonable opportunity for an oral hearing when it determines that the issues in dispute cannot be resolved by a review of the documentary evidence. See 31 CFR 285.11(f)(1)–(4). Even if a debtor's hearing request is not timely, PBGC may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which PBGC collects debts owed to PBGC from the salaries of Federal employees (see § 4903.13 of this part).

§ 4903.15 How will PBGC report debts owed to PBGC to credit bureaus?

PBGC will report delinquent debts owed to PBGC to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables." At least 60 days prior to reporting a delinquent debt to a consumer reporting agency, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC may authorize the Financial Management Service to report to credit bureaus those delinquent debts owed to the PBGC that have been transferred to

the Financial Management Service under § 4903.10 of this part.

§ 4903.16 How will PBGC refer debts owed to PBGC to private collection agencies?

PBGC will transfer delinquent debts owed to PBGC to the Financial Management Service to obtain debt collection services provided by private collection agencies. See § 4903.10 of this part.

§ 4903.17 When will PBGC refer debts owed to PBGC to the Department of Justice?

PBGC may initiate litigation pursuant to 29 U.S.C. 1302 with delinquent debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. Alternatively, PBGC may refer debts owed to PBGC having a principal balance over \$100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. See §§ 4903.8 and 4903.9 of this part; 31 CFR 902.1, 903.1, and part 904. PBGC may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent debts that have been transferred to the Financial Management Service under § 4903.10 of this part.

§ 4903.18 Will a debtor who owes a debt to PBGC or another Federal agency, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds?

(a) Delinquent debtors are ineligible for and barred from obtaining Federal loans or loan insurance or guaranties. As required by 31 U.S.C. 3720B and 31 CFR 901.6, PBGC will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. PBGC may issue standards under which it may determine that persons controlled by or controlling such delinquent debtors are similarly ineligible in accordance with 31 CFR 285.13(c)(2). This prohibition does not apply to disaster loans. PBGC may extend credit after the delinquency has been resolved. See 31 CFR 285.13.

(b) This section does not apply to loans provided to multi-employer pension plans pursuant to 29 U.S.C. 1431, 29 CFR 4261.1 and 4281.47.

(c) A debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to

receive grants, loans or funds directly or indirectly from the United States until the judgment is paid in full or otherwise satisfied. This prohibition does not apply to funds to which the debtor is entitled as beneficiary. PBGC may promulgate regulations to allow for waivers of this ineligibility. See 28 U.S.C. 3201(e).

§ 4903.19 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes a debt to PBGC may, at any time, request a special review by PBGC of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (e.g., costs incurred for food, housing, clothing, transportation, and medical care), the debtor must submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;
- (5) Expenses for food, housing, clothing, and transportation;
- (6) Medical expenses;
- (7) Exceptional expenses, if any; and
- (8) Any additional materials and information that PBGC may request relating to ability or inability to pay the amount(s) currently required.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor must submit an alternative proposed payment schedule and a statement to PBGC, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. PBGC will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. PBGC will notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, PBGC will notify the appropriate Federal agency or other persons about the new terms.

§ 4903.20 Will PBGC issue a refund if money is erroneously collected on a debt?

PBGC will promptly refund to a debtor any amount collected on a debt owed to PBGC when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law.

Subpart C—Procedures for Offset of PBGC Payments To Collect Debts Owed to Other Federal Agencies

§ 4903.21 How do other Federal agencies use the offset process to collect debts from payments issued by PBGC?

(a) *Offset of PBGC payments to collect debts owed to other Federal agencies.*

(1) In most cases, Federal agencies submit debts to the Treasury Offset Program to collect delinquent debts from payments issued by PBGC and other Federal agencies, a process known as “centralized offset.” When centralized offset is not available or appropriate, any Federal agency may ask PBGC (when acting as a “payment agency”) to collect a debt owed to such agency by offsetting funds payable to a debtor by PBGC, including salary payments issued to PBGC employees. This section and § 4903.21 of this subpart C apply when a Federal agency asks PBGC to offset a payment issued by PBGC to a person who owes a debt to the United States.

(2) This subpart C does not apply to debts owed to PBGC. See §§ 4903.11 through 4903.13 of this part for offset procedures applicable to debts owed to PBGC.

(3) This subpart C does not apply to the collection of non-PBGC debts through tax refund offset. See 31 CFR § 285.2 for tax refund offset procedures.

(4) Benefits paid by PBGC generally will not be offset, subject to limited exceptions (e.g., in certain fiduciary breach situations).

(b) *Administrative offset (including salary offset); certification.* PBGC will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency’s regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section must be sent to PBGC, ATTN: Chief Financial Officer, 1200 K Street, NW., Washington, DC 20005.

(d) *Incomplete certification.* PBGC will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by PBGC.

(e) *Review.* PBGC is not authorized to review the merits of the creditor agency’s determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When PBGC will not comply with offset request.* PBGC will comply with the offset request of another agency unless PBGC determines, in consultation with that agency, that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, PBGC may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to PBGC.* For purposes of this section, debts owed to PBGC generally take precedence over debts owed to other agencies. PBGC may determine whether to pay debts owed to other agencies before paying a debt owed to PBGC. PBGC will determine the order in which the debts will be collected based on the best interests of the United States.

§ 4903.22 What does PBGC do upon receipt of a request to offset the salary of a PBGC employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to a PBGC employee.* When PBGC receives proper certification of a debt owed by one of its employees, PBGC will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions. PBGC will begin deductions from the employee’s pay at the next officially established pay interval.

(b) *Amount of deductions from a PBGC employee’s salary.* The amount deducted under § 4903.21(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15 percent of the debtor’s disposable pay so long as that amount does not exceed limitations imposed by 15 U.S.C. 1673. Deductions will continue until PBGC knows that the debt is paid in full or until otherwise

instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. See § 4903.13(g) (salary offset process).

(c) *When the debtor is no longer employed by PBGC*—(1) *Offset of final and subsequent payments.* If a PBGC employee retires or resigns or if his or her employment ends before collection of the debt is complete, PBGC will continue to offset, under 31 U.S.C. 3716, up to 100 percent of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by PBGC. See 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from PBGC before the debt is paid in full, PBGC will certify to the creditor agency the total amount of its collection. If PBGC knows that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, PBGC will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency*—(1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, PBGC will notify the creditor agency and will certify the total amount of its collection on the debt. PBGC will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* PBGC will provide a hearing official upon the creditor agency's request with respect to

a PBGC employee. See 5 CFR 550.1107(a).

Issued in Washington, DC, July 19, 2010.

Vincent K. Snowbarger,
Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2010-18008 Filed 7-21-10; 8:45 am]

BILLING CODE 7709-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2010-0310, FRL-9178-6]

Approval and Promulgation of Implementation Plans; New Jersey; 8-hour Ozone Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request by New Jersey to revise the State Implementation Plan (SIP) for ozone involving the control of volatile organic compounds (VOCs). The proposed SIP revision consists of two new rules, "Subchapter 26, Prevention of Air Pollution From Adhesives, Sealants, Adhesive Primers and Sealant Primers," and "Subchapter 34, TBAC Emissions Reporting," (TBAC means tertiary butyl acetate or t-butyl acetate) and revisions to "Subchapter 23, Prevention of Air Pollution From Architectural Coatings," "Subchapter 24, Prevention of Air Pollution From Consumer Products," and "Subchapter 25, Control and Prohibition of Air Pollution by Vehicular Fuels," of the New Jersey Administrative Codes. The intended effect of this action is to approve control strategies that will result in VOC emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: Comments must be received on or before August 23, 2010.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-R02-OAR-2010-0310, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

- *E-mail:* Werner.Raymond@epa.gov

- *Fax:* 212-637-3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch,

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2010-0310. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York,

New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

The following table of contents describes the format of this rulemaking:

- I. What was included in New Jersey's submittal?
- II. What is EPA's evaluation of "Subchapter 24, Prevention of Air Pollution From Consumer Products?"
- III. What is EPA's evaluation of "Subchapter 26, Prevention of Air Pollution From Adhesives, Sealants, Adhesive Primers and Sealant Primers?"
- IV. What is EPA's evaluation of "Subchapter 34, TBAC Emissions Reporting?"
- V. What other rules are affected by the VOC definition change and EPA's evaluation?
- VI. What action is EPA proposing?
- VII. Statutory and Executive Order Reviews

For detailed information on New Jersey's proposed SIP revision and EPA's evaluation see the Technical Support Document (TSD), prepared in support of today's action. The TSD can be viewed at <http://www.regulations.gov>.

I. What was included in New Jersey's submittal?

On April 9, 2009, Mark N. Mauriello, Commissioner, New Jersey Department of Environmental Protection (NJDEP), submitted to EPA a revision to the New Jersey State Implementation Plan (SIP) that included:

- “Subchapter 24, Prevention of Air Pollution From Consumer Products,”
- “Subchapter 26, Prevention of Air Pollution From Adhesives, Sealants, Adhesive Primers and Sealant Primers,”
- “Subchapter 34, TBAC Emissions Reporting,” and
- Amending the definition of VOC throughout Title 7, Chapter 27 of the New Jersey Administrative Codes (N.J.A.C.) and Chapter 27A, and Chapter 27B.

The State adopted these rules on October 30, 2008 and published the adoption in the New Jersey Register on December 1, 2008 (40 New Jersey Register 6769). These rules became operative on December 29, 2008. Also published in the New Jersey Register was a summary of the comments received, the State response to the

comments and any changes to the proposed rule resulting from the comments. This SIP revision will provide statewide volatile organic compound (VOC) emission reductions that New Jersey used in the SIP to address reasonable further progress goals and for attaining the 1997 8-hour ozone national ambient air quality standard.

This proposed SIP revision completes the commitment New Jersey made as part of its RACT analysis and 8-hour Ozone Attainment Demonstration that EPA conditionally approved. See 74 FR 22837 (May 15, 2009). If EPA approves this proposed SIP revision, the RACT analysis will be fully approved in its entirety and EPA will replace the conditionally approved RACT in the SIP with a full approval.

II. What is EPA's evaluation of "Subchapter 24, Prevention of Air Pollution From Consumer Products?"

A. Was Subchapter 24 previously approved by EPA?

The most recent approval of Subchapter 24 occurred on January 25, 2006 (71 FR 4045). EPA had previously approved Subchapter 24 provisions for accepting innovative products exemptions (IPEs), alternative compliance plans (ACPs), and variances that have been approved by the California Air Resources Board (CARB) or other states with adopted consumer product regulations based on the Ozone Transport Commission (OTC) "Model Rule for Consumer Products." These provisions were fully discussed in previous rulemakings. As part of a previous SIP revision, New Jersey committed to forwarding all innovative product exemptions, alternative compliance plans and variances that the State accepts to EPA Region 2, in order for EPA to be able to determine what the compliance requirements are for all sources regulated by the New Jersey SIP. There have been no changes to these provisions in the current rulemaking and EPA's previous findings still stand.

B. How was "Subchapter 24, Prevention of Air Pollution From Consumer Products" revised?

1. Chemically Formulated Consumer Products

New Jersey revised Subchapter 24's provisions consistent with the OTC's 2007 model rules that were in turn based on the 2005 CARB rules. The revisions to Subchapter 24 add eleven new categories of consumer products not previously regulated and revise one existing category. Other revisions adopted by New Jersey include adding/

clarifying definitions, requiring notifications for products sold toward the end of a sell-through period, prohibiting solid air fresheners or toilet/urinal care products from containing para-dichlorobenzene (a toxic air contaminant/hazardous air pollutant). In addition, any contact adhesive, electronic cleaner, footwear or leather care product, general purpose degreaser, adhesive remover, electrical cleaner, graffiti remover or automotive consumer product manufactured on and after January 1, 2009 is prohibited from containing chlorinated toxic air contaminants. Products manufactured before this date that do not meet the new standards can be sold until December 31, 2011 provided the product or packaging displays the date on which the product was manufactured.

All requirements apply statewide. Subchapter 24 requires that, on or after January 1, 2009, no person shall sell, supply, offer for sale, or manufacture consumer products that contain VOCs in excess of the VOC content limits specified by New Jersey for those products sold in New Jersey. Subchapter 24 includes specific exemptions, as well as registration and product labeling requirements, recordkeeping and reporting requirements, and test methods and procedures. Consumer products that are sold in New Jersey for shipment and use outside of the State of New Jersey are exempt from the VOC content limits. This exemption reflects the intent to regulate only the manufacture and distribution of consumer products that actually emit VOCs into New Jersey's air and not to interfere in the transportation of goods that are destined for use outside of the State.

2. Portable Fuel Containers

Subchapter 24 regulates portable fuel containers and/or spouts. New Jersey revised Subchapter 24's provisions consistent with the OTC's 2007 model rule that was in turn based on the 2006 CARB regulation. The revised rule requires that portable fuel containers and/or spouts must now be certified for use and sale by the manufacturer through CARB or the EPA as meeting performance standards or specifically exempted by either CARB or EPA. The revised rule also applies to containers labeled for kerosene use. Other revisions incorporated into Subchapter 24 include: modifying the existing spout regulations in order to improve spillage control; elimination of the fuel flow rate and fill level performance standards; elimination of the automatic shutoff performance standard; and new portable

fuel container testing procedures to streamline testing. Portable fuel containers or spouts or both portable fuel containers and spouts, that do not meet the new specifications, manufactured before January 28, 2009 may continue to be sold until December 29, 2009 provided it is labeled or designated for use solely with kerosene and the date of manufacture or a date-code representing the date of manufacture is clearly displayed on the product. Subchapter 24 includes administrative requirements, such as labeling, recordkeeping, and reporting requirements.

C. What is EPA's evaluation?

The revisions to Subchapter 24 expand the number of consumer product categories that are regulated and revised and improved the portable fuel container requirements consistent with the OTC Model rules and CARB rules. These changes will result in additional VOC emission reductions.

EPA has evaluated New Jersey's revisions to Subchapter 24 for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions to Subchapter 24 meet the section 110 SIP revision requirements of the Act. EPA is proposing to approve this rule.

III. What is EPA's evaluation of "Subchapter 26, Prevention of Air Pollution From Adhesives, Sealants, Adhesive Primers and Sealant Primers?"

A. Background

The OTC States developed a Model Rule entitled "OTC Model Rule For Adhesives and Sealants" dated 2006 which was based on the 1998 CARB reasonably available control technology determination. This RACT determination applied to both the manufacture and use of adhesives, sealants, adhesive primers or sealant primers, in both industrial/manufacturing facilities and in the field. California air districts used this determination to develop regulations for this category. The EPA addressed this source category with a Control Techniques Guideline (CTG) document for Miscellaneous Industrial Adhesives dated September 2008. This CTG was developed in response to the Section 183(e) requirement for EPA to study and regulate consumer and commercial products included in EPA's Report to Congress, "Study of Volatile Organic Compound Emissions from Consumer and Commercial Products—Comprehensive Emissions Inventory." The section 183(e) miscellaneous

industrial adhesives category was limited to adhesives and adhesive primers used in industrial/manufacturing operations and did not include products applied in the field. Therefore, the OTC Model Rule and state efforts in developing individual regulations preceded EPA's CTG for this source category and were broader in applicability.

B. What Does Subchapter 26 Require?

Subchapter 26 is a new rule based on the OTC model rule that in turn was based on the CARB model rule. Subchapter 26 addresses adhesive, sealants, adhesive primers and sealant primers that are sold in larger containers and used primarily in commercial/industrial applications, but includes residential applications of these products, such as carpet and flooring installations, roofing installations, etc. Small container household adhesives are regulated by "Subchapter 24, Prevention of Air Pollution from Consumer Products."

Subchapter 26 is applicable to those who sell, supply, offer for sale or manufacture for sale, in New Jersey, any adhesives, sealants, adhesive primer or sealant primer, for use in New Jersey. It is also applicable to any person who uses or applies any adhesive, sealant, adhesive primer or sealant primer for compensation within New Jersey. This rule will not apply to homeowners who may be using these products for home repair and renovations. The VOC limits apply to those products manufactured for sale and use in New Jersey on and after January 1, 2009 and allows for the unlimited sell-through and use of non-compliant products manufactured before January 1, 2009 provided they contain a date or date code when they were manufactured. These limits are identical to those in the OTC and CARB model rules. The limits also apply to all products manufactured after January 1, 2009 in New Jersey for sale and use in New Jersey.

As an alternative to the VOC limits established in Table 1 of Subchapter 26, operators of stationary sources that use or apply adhesives, sealants, or adhesive or sealant primers have the option of using add-on pollution control equipment rather than complying with the Table 1 limits. Requirements applying to air pollution control equipment include: an overall capture and control efficiency of at least 85 percent, by weight; the continuous monitoring of combustion temperature, inlet and exhaust gas temperatures and control device efficiency, depending upon the type of add-on controls used;

and the maintenance of operation records to demonstrate compliance.

Subchapter 26 contains requirements for work practices, surface preparation and cleanup solvent composition. Subchapter 26 also includes specific exemptions, as well as registration and product labeling requirements, recordkeeping requirements, and test methods and compliance procedures.

C. What is EPA's evaluation?

Subchapter 26 contains the required elements for a federally enforceable rule: emission limitations, compliance procedures and test methods, compliance dates and record keeping provisions.

In comparison to the CTG, Subchapter 26 is applicable to all stationary sources including those applications that occur outside of the factory setting, that is, applied in the field. In addition there are provisions that apply to the selling, supplying, offering for sale or manufacture for sale in New Jersey of adhesives, sealants, adhesive primers and sealant primers along with container labeling requirements and product registrations. The VOC content restrictions for these products apply to both their manufacture and application. Stationary sources also have the option of using add-on control equipment that achieves 85 percent control. Subchapter 26 also regulates the VOC content/vapor pressure of surface-preparation and clean-up solvents for which the CTG did not make recommendations for other than including work practices.

EPA recommends that when the states evaluate RACT, as required by section 182(b) when implementing a revised 8-hour ozone standard,¹ that they review the VOC content limits for wood adhesives and evaluate the benefit of requiring improved methods for applying coatings regulated by Subchapter 26.

Overall, Subchapter 26: (1) Regulates the same adhesives and adhesive primers as the CTG with the addition of regulating sealants and sealant primers, (2) applies to additional stationary sources, and (3) provides for similar exemptions as the CTG recommends.

EPA has evaluated New Jersey's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that Subchapter 26 is as effective in regulating this source category as the CTG and proposes to

¹ See 75 FR 2938 (January 19, 2010). In this proposed rule, based upon reconsideration of the primary and secondary ozone standards, EPA proposed to set different primary and secondary standards than those promulgated in March 2008 to provide requisite protection of public health and welfare, respectively.

approve it as part of the SIP and as meeting the requirement to adopt a RACT rule for the Miscellaneous Industrial Adhesives CTG category.

IV. What is EPA's evaluation of "Subchapter 34, TBAC Emissions Reporting?"

A. What does EPA require?

The EPA revised the definition of VOC to exclude tertiary butyl acetate or t-butyl acetate (TBAC) from VOC emissions limitations or VOC content requirements, but requires that TBAC be considered a VOC for purposes of recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements. See 69 FR 69298 (November 29, 2004). While TBAC is now considered "negligibly reactive," EPA is concerned that should TBAC usage substantially increase it may contribute significantly to ozone formation even with its lower reactivity. For this reason it is necessary to track and account for TBAC emissions.

B. What does Subchapter 34 require?

New Jersey proposed and adopted a new rule, Subchapter 34, to meet these requirements along with a revised definition of VOC that is consistent with EPA's definition in 40 CFR 51.100(s). It requires manufacturers located in New Jersey who manufacture TBAC or a product containing TBAC, or manufacturers who produce a product containing TBAC that is sold in New Jersey, to report the estimated amount of actual emissions in pounds per ozone-season day and pounds per year that is emitted in New Jersey. The rule also contains methods for calculating the amount of TBAC and recordkeeping requirements.

C. What is EPA's evaluation?

Generally the rule satisfies EPA requirements and guidance with one exception. The rule requires the reporting of "pounds per ozone-season day," but only contains a definition for "ozone season." In the "Background" section of the proposed rulemaking (39 New Jersey Register 4492, November 5, 2007), New Jersey states that in developing the TBAC rule, it based its requirements on the Department of Environment Protection's other air pollution control rules with similar reporting requirements, such as the Subchapter 21 "Emission Statements" rule. EPA suggests that the next time Subchapter 34 is revised, that the definition for "ozone-season" be clarified to refer to peak ozone season as used in Subchapter 21. In the meantime, should there be any confusion with the

term ozone-season, users should use the definition in Subchapter 21 "Emission Statements" and as used specifically in Subchapter 21.5(f). With this clarification, Subchapter 34 addresses all EPA requirements necessary to account for TBAC emissions. EPA is proposing to approve this rule.

V. What other rules are affected by the VOC definition change and EPA's evaluation?

A. What other rules include the VOC definition change?

The term VOC is used in several other New Jersey regulations:

"Subchapter 8, Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit);"
 "Subchapter 16, Control and Prohibition of Air Pollution by Volatile Organic Compounds;"
 "Subchapter 17, Control and Prohibition of Air Pollution By Toxic Substances;"
 "Subchapter 18, Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rule);"
 "Subchapter 19, Control and Prohibition of Air Pollution From Oxides of Nitrogen;"
 "Subchapter 21, Emission Statements;"
 "Subchapter 22, Operating Permits;"
 "Subchapter 23, Prevention of Air Pollution From Architectural Coatings;" and
 "Subchapter 25, Control and Prohibition of Air Pollution by Vehicular Fuels."

These rules have been amended to include the revised definition of VOC that addresses the TBAC requirements.

B. What is EPA's evaluation?

EPA has evaluated New Jersey's revised VOC definition for consistency with the Act, EPA regulations, and EPA policy. The revised definition of VOC as used in the above rules is consistent with EPA's definition in 40 CFR 51.100(s).

At this time EPA is only proposing to approve as part of the SIP "Subchapter 23, Prevention of Air Pollution From Architectural Coatings," and "Subchapter 25, Control and Prohibition of Air Pollution by Vehicular Fuels." Subchapters 16, 19, and 21 were proposed for approval as part of the SIP on April 23, 2010 (78 FR 21197). Subchapter 22 is not part of the SIP. EPA will act on the other rules in a separate **Federal Register** at a later date.

VI. What action is EPA proposing?

These new and revised rules will strengthen the SIP by providing additional VOC emission reductions

and fulfilling commitments New Jersey made in its 8-hour Ozone Attainment Demonstration SIP (1997 standard) to adopt these rules. EPA is proposing to approve "Subchapter 23, Prevention of Air Pollution From Architectural Coatings," "Subchapter 24, Prevention of Air Pollution From Consumer Products," "Subchapter 25, Control and Prohibition of Air Pollution by Vehicular Fuels," "Subchapter 26, Prevention of Air Pollution From Adhesives, Sealants, Adhesive Primers and Sealant Primers," and "Subchapter 34, TBAC Emissions Reporting," of title 7, chapter 27 of the New Jersey Administrative Codes. While the changes made to the VOC definition in the other rules included in this SIP revision are also acceptable, EPA will act on those rules in separate **Federal Register** at a later date.

EPA is also proposing to fully approve New Jersey's RACT analysis as New Jersey has fulfilled its commitment to adopt the identified RACT rules, the last of which are being proposed for approval in this action. These revisions meet the requirements of the Act and EPA's regulations, and are consistent with EPA's guidance and policy. EPA is taking this action pursuant to section 110 and part D of the Act and EPA's regulations.

VII. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- *Does* not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- *Is* not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- *Is* not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- *Is* not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- *Does* not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 12, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010-17949 Filed 7-21-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA-HQ-OAR-2002-0058; EPA-HQ-OAR-2006-0790; EPA-HQ-OAR-2003-0119; FRL-9178-2]

RIN 2060-AG69, RIN 2060-AM44, RIN 2060-AO12

National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers; Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: On April 29, 2010, the EPA Administrator signed proposed emission standards for the following source categories: Industrial, Commercial, and Institutional Boilers and Process Heaters located at major sources; Industrial, Commercial, and Institutional Boilers located at area sources; and Commercial and Industrial Solid Waste Incineration Units. These proposed rule documents were published on June 4, 2010. In this action, EPA is extending the comment period for these three related proposed rules until August 23, 2010. This extension will provide additional time for public participation.

DATES: *Comments.* This document extends the comment periods for 3 proposed rule documents published on June 4, 2010. Comments on FR Doc 2010-10827 (75 FR 32006); FR Doc 2010-10832 (75 FR 31896); and FR Doc 2010-10821 (75 FR 31938) must be received on or before August 23, 2010.

ADDRESSES: Submit your comments, identified by one of the following Docket ID Nos., EPA-HQ-OAR-2002-0058 (Industrial, Commercial, and Institutional Boilers and Process Heaters located at major sources), EPA-HQ-OAR-2006-0790 (Industrial, Commercial, and Institutional Boilers located at area sources), or EPA-HQ-OAR-2003-0119 (Commercial and Industrial Solid Waste Incineration Units), by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- E-mail: a-and-r-docket@epa.gov.
- Fax: (202) 566-9744.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include as the second line of the address the name of the proposal that you are commenting on and the Docket ID No. Please include a total of two copies.
 - *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Please include as the second line of the address the name of the proposal that you are commenting on and the Docket ID No. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to one of the following Docket ID Nos.: EPA-HQ-OAR-2002-0058, EPA-HQ-OAR-2006-0790, or EPA-HQ-OAR-2003-0119. EPA's policy is that all comments received will be included in the public docket without change and may be made available Online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://>

www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed rules should be addressed to one of the following contacts:

For major source boilers and process heaters: Mr. Brian Shrager, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Energy Strategies Group (D243-01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-7689; fax number: (919) 541-5450; e-mail address: shrager.brian@epa.gov.

For area source boilers: Ms. Mary Johnson, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Energy Strategies Group (D243-01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-5025; fax number: (919) 541-5450; e-mail address: johnson.mary@epa.gov.

For commercial and industrial solid waste incineration units: Ms. Charlene Spells, Natural Resources and Commerce Group, Sector Policies and Programs Division (E143-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5255; fax number: (919) 541-3470; e-mail address: spells.charlene@epa.gov or Ms. Toni Jones, Natural Resources and Commerce Group, Sector Policies and Programs Division (E143-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0316; fax number: (919) 541-3470; e-mail address: jones.toni@epa.gov.

SUPPLEMENTARY INFORMATION: In today's action, EPA is providing additional time to submit public comment on the following proposed rules: Emissions standards for industrial, commercial, and institutional boilers and process heaters located at major sources (the major source boilers rule); emissions standards for industrial, commercial, and institutional boilers located at area sources (the area source boilers rule); and emissions standards for commercial and industrial solid waste incineration units (the CISWI rule). In the notices of proposed rulemaking for these rules, EPA established a deadline of July 19, 2010, for submission of public comments. On June 9, 2010, EPA extended the public comment period to August 3, 2010. 75 FR 32682. Today, EPA is further extending the deadline for providing comments on these proposed rules to August 23, 2010.

EPA also notes that certain additional materials relating to the maximum achievable control technology (MACT) floors have been added to the dockets

for the major and area source boilers proposed rules and the CISWI proposed rule since the date of publication of the proposed rules. At the time of publication of the proposed rules, the docket contained Adobe Acrobat® versions of the spreadsheets used in the MACT floor calculations, as well as associated memoranda describing in detail EPA's calculation of the MACT floor for each proposed set of emissions standards. Since the publication date, EPA has added to the docket the same spreadsheets in Excel format.

How can I get copies of the proposed rules and other related information?

The proposed rules were published on June 4, 2010, and can be accessed at the following Web site: <http://www.epa.gov/airquality/combustion>. EPA has established the public dockets for the proposed rulemakings under docket ID Nos. EPA-HQ-OAR-2002-0058, EPA-HQ-OAR-2006-0790, and EPA-HQ-OAR-2003-0119, and a copy of the proposed rules is available in the dockets. Information on how to access the docket is presented above in the **ADDRESSES** section.

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 16, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010-17966 Filed 7-21-10; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 75, No. 140

Thursday, July 22, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 19, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax to (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Office of the Assistant Secretary for Civil Rights

Title: Independent Assessment of the Delivery of Technical and Financial Assistance.

OMB Control Number: 0503-NEW.

Summary of Collection: In April 2009, the Honorable Thomas J. Vilsack, Secretary of the United States Department of Agriculture, ordered that there be an independent external analysis of program delivery in USDA's Farm Service Agency, Natural Resources Conservation Service, Rural Development and Risk Management field offices. The analysis will provide specific recommendations and methodologies to ensure that programs are delivered equitably and that access is afforded to all constituents, with particular emphasis on socially disadvantaged farmers, ranchers, and other constituents. The legal authorities to collect this information can be found in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Public Law 110-246, 122 Stats. 1651 and the 2002 Farm Bill, Section 10707 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), Public Law 107-171.

Need and Use of the Information: USDA Plans to conduct focus group discussions as part of an evaluation of the effectiveness of the agencies' programs in reaching diverse populations in a non-discriminatory manner. The objective of conducting focus groups will be to obtain customer views, opinions, and experiences on how effectively USDA is equitably and fairly providing technical and financial assistance to all customers and potential customers, particularly socially disadvantaged ones. The assessment will identify barriers to equal and fair access for all customers regardless of race, gender and other protected categories. This information will provide USDA with direct input from USDA customers regarding their attitudes, understandings, and experiences with the four USDA Agencies and the programs and services they provide.

Description of Respondents: Individuals or households.

Number of Respondents: 2,250.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 1,102.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010-17946 Filed 7-21-10; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Intent To Prepare an Environmental Impact Statement for the Logan Northern Canal Reconstruction Project, Cache County, UT

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4321-4370d (NEPA), as implemented by the Council of Environmental Quality regulations (40 CFR parts 1500-1508), the Natural Resources Conservation Service (NRCS) announces its intent to prepare a draft Environmental Impact Statement (EIS) for the Logan Northern Canal Reconstruction project.

The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed action and possible alternatives, and to invite public participation in the EIS process (including providing comments on the scope of the DEIS, to announce that public scoping meetings will be conducted, and to identify cooperating agency contacts).

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, types of issues that should be addressed, associated research that should be considered, and the methodologies to be used in impact evaluations should be sent to NRCS on or before August 31, 2010, at the address below. See the **ADDRESSES** section below for the address to submit written comments. A public scoping meeting to accept comments on the scope of the EIS will be held on Wednesday, August 11, 2010, from 5:30 p.m. to 7:30 p.m. at the Bridgerland Applied Technology

College, 1301 North 600 West, Logan, Utah. Formal presentations will be given at about 5:30 p.m. and 6:30 p.m.

The building used for the scoping meeting is accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Ms. Alana Spendlove, HDR Engineering, (801) 743-7829 or Alana.Spendlove@HDRInc.com.

Scoping materials and the Alternatives Analysis will be available at the meetings and are available on the NRCS Utah Web site (<http://www.ut.nrcs.usda.gov/>). Hard copies of the scoping materials may also be obtained from Ms. Alana Spendlove, HDR Engineering, (801) 743-7829 or Alana.Spendlove@HDRInc.com. An interagency scoping meeting will be held on August 11, 2010, at the NRCS Utah office, 125 South State Street, Room 4402, Salt Lake City, Utah. Representatives of Native American tribal governments and of federal, State, regional and local agencies that may have an interest in any aspect of the project will be invited to be cooperating agencies, as appropriate.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent to Mr. Bronson Smart, State Conservation Engineer, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, Utah 84138-1100, or via e-mail at bronson.smart@ut.usda.gov. The locations of the public scoping meetings are given above under **DATES**. Comments should be submitted by August 31, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Bronson Smart, State Conservation Engineer, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, Utah 84138-1100, or via e-mail at bronson.smart@ut.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Logan and Northern Canal (LN Canal) and the Logan, Hyde Park and Smithfield (LHPS) Canal has provided the citizens of Cache County with irrigation water since the 1890s. During the spring of 2009 a slope failure occurred along a hill side in south Logan, Cache County, UT. As a result of the slope failure, a section of the LN Canal broke away, thus disabling the water distribution capabilities of the canal. Because the canal is part of an important water delivery system, several permitted shareholders have been

adversely affected through nondelivery of irrigation water.

NRCS intends to prepare an Environmental Impact Statement (EIS) for proposed repair and/or modifications to the canal system, which occurs in an unincorporated area of Cache County and the communities of Logan, North Logan and Hyde Park, Utah. NRCS is assisting Cache County through the Emergency Watershed Protection (EWP) Program (Code of Federal Regulations, Title 7: Agriculture, Part 624—Emergency Watershed Protection). The EIS will be prepared consistent with Title 390, The National Emergency Watershed Protection Program Manual.

The proposed action is needed to reestablish support delivery of irrigation water to canal system shareholders. The purpose of the project is to restore the water conveyance condition of the canal. The EIS will be prepared in accordance with the requirements of NEPA, its implementing regulations at 40 CFR part 1500-1508, and NRCS regulations that implement NEPA at 7 CFR part 650. The EIS process will evaluate alternatives recommended for further study as a result of previous planning-level studies completed by NRCS and any additional (new) alternatives identified during scoping.

Scoping Process

NRCS invites all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, alternatives proposed to date, new alternatives that should be considered, specific areas of study that might be needed, and evaluation methods to be used.

Background information including the project purpose and need and alternatives developed to date will be available at the public and agency scoping meetings. Summaries of this information will also be available on the NRCS Web site at <http://www.ut.nrcs.usda.gov/>. Hard copies of supporting documentation are also available from Ms. Alana Spendlove, HDR Engineering, (801) 743-7829 or Alana.Spendlove@HDRInc.com.

Once the scope of the EIS is confirmed upon the close of scoping, NRCS will begin preparation of the EIS. A summary of comments received during the scoping process will be available on the NRCS Web site.

Project Study Area and Environmental Setting

The proposed action area is located in Cache County, Utah. The study area

includes areas that are unincorporated and portions of the incorporated cities of Logan, North Logan, and Hyde Park and focuses on the LN Canal and the LHPS Canal. Both canals originate at the Logan River and generally run parallel to each in a northerly direction. The canal system that will be studied has been divided into four reaches, each having a unique environmental setting and characteristics varying in length. These four reaches are described below.

Reach 1 begins at the Point of diversion from Logan River and is about 1.5 miles long. This reach travels through a canyon environment and ends just before entering the area surrounded by the Logan Golf and Country Club. This reach represents the canal system through the canyon to the beginning of the general urban landscape.

Reach 2 is along the eastern side of the project study area in the city of North Logan and is less than a mile long. It extends from the Logan Golf and Country Club to Hyde Park, where irrigation water is temporarily being bypassed through the city of Logan stormwater system to the LHPS Canal. This reach travels through an area that supports urban and suburban development.

Reach 3 extends from Lundstrom Park in Hyde Park to 3100 North, which is at the northern edge of the study area. This area is characterized by urban and suburban development.

Reach 4 is the section of the LN Canal that extends from 400 North to 3100 North in Logan and North Logan. This reach generally travels through urban and suburban developments.

Alternatives

NRCS has developed four preliminary alternatives for the project. These alternatives are as follows:

- Alternative 1: Divert LN Canal water into the existing LHPS Canal alignment, from Logan River to the mouth of the canyon where it would be taken parallel along Highway 89 (US 89) and to a structure at 400 North and 600 East and placed back into the existing LN Canal.

- Alternative 2: Divert LN Canal water into the existing LHPS Canal alignment, from Logan River to Lundstrom Park, where it would be taken under city streets to 1400 North and approximately 900 East and placed back into the existing LN Canal.

- Alternative 3: Use the existing LN Canal's point of diversion from Logan River, place the water in a conveyance pipeline under Canyon Road to 600 East, then North to the intersection of 400 North and 600 East, and placed back into the existing LN Canal.

• Alternative 4: Divert LN Canal water into the existing LHPS Canal alignment, from Logan River to approximately 3100 North where it would be taken under the city street to 1200 East and placed back into the existing LN Canal, with service to 1400 North.

NRCS will consider any viable alternatives brought forward from initial scoping if such alternatives are substantially different from the four described above. NRCS will also study a No-Action alternative.

Cooperating Agencies

Because the project area includes land administered by the USDA Forest Service and because that agency might need to issue a special use permit for activity associated with one or more of the alternatives, the USDA Forest Service will participate in the Logan Northern Canal Reconstruction EIS process as a cooperating agency. Because one or more of the project alternatives could affect waters of the United States as defined by the Clean Water Act, the U.S. Army Corps of Engineers will also act as a cooperating agency.

Dated: July 16, 2010.

Todd Nielson,

Acting State Conservationist.

[FR Doc. 2010-17956 Filed 7-21-10; 8:45 am]

BILLING CODE 3410-16-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Colorado Advisory Committee to the Commission will convene at 10 a.m. on Monday, August 16, 2010. The purpose of the meeting is for the committee to participate in orientation and ethics training; discuss recent Commission and regional activities, discuss current civil rights issues in the state and plan future activities. The Committee will also be briefed by the director of a city anti-discrimination agency and a representative of the Denver American Indian Commission on civil rights issues in the state.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by September 16, 2010. The address is Rocky Mountain

Regional Office, 1961 Stout Street, Suite 240, Denver, CO 80294. Comments may be e-mailed to ebohor@usccr.gov.

Records generated by this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Rocky Mountain Regional Office at the above e-mail or street address.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 19, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010-17890 Filed 7-21-10; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATES: *Date and Time:* Friday, July 30, 2010; 11:30 a.m. e.d.t.

Place: Via Teleconference. Public Dial In: 1-800-597-7623, Conference ID # 89174163.

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda.

II. Program Planning.

- New Black Panther Party Enforcement Project.
- Consideration of Discovery Plan and Project Outline for Report on Sex Discrimination in Liberal Arts College Admissions.
- Timeline for Commissioner Statements and Rebuttals to HBCU and STEM Reports.
- Consideration of Vacancies on the Election Assistance Commission Board of Advisors.

III. Management and Operations.

- Submission of FY 2012 Budget Estimate to the Office of Management and Budget.

IV. Approval of March 12, April 16, May 14, May 28, June 11, June 25, and July 16 Meeting Minutes.

V. Adjourn.

FOR FURTHER INFORMATION CONTACT:

Contact Person for Further Information: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376-8591. TDD: (202) 376-8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at (202) 376-8105. TDD: (202) 376-8116.

Dated: July 20, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010-18132 Filed 7-20-10; 4:15 pm]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Topographic and Bathymetric Data Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 20, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris Ellis at NOAA Coastal Services Center, (843) 740-1195 or Chris.Ellis@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This survey will be used by the National Oceanic and Atmospheric's (NOAA's) Coastal Services Center to obtain information from our customers on the location of topographic and

bathymetric data that are publicly available. The information about the data will be used to construct a Topographic and Bathymetric Data Inventory, an index of the best-available elevation data sets by region. Twenty-one pieces of information about each dataset will be collected to give an accurate picture of data quality and give users of the Topographic and Bathymetric Data Inventory access to each dataset. The end goal of this collection is to provide a comprehensive, publicly available, topographic and bathymetric data, Web resource.

II. Method of Collection

Initial contact with local agencies will be made by telephone to ensure adequate routing of the survey instrument. Information may be submitted via an online survey or by fax/mail or by telephone.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Federal government, State, local, or Tribal government.

Estimated Number of Respondents: 700.

Estimated Time per Response: Initial telephone screening 5 minutes, survey, 10 minutes.

Estimated Total Annual Burden Hours: 117.

Estimated Total Annual Recordkeeping/Reporting Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 16, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010-17842 Filed 7-21-10; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Drivers' Awareness of and Response to Significant Weather Events and the Correlation of Weather to Road Impacts

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 20, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kevin Barjenbruch, (801) 524-5113 or kevin.barjenbruch@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a regular submission (new collection of information).

This project is a joint effort of the University of Utah (U of U), NOAA's National Weather Service (NWS), the Utah Department of Transportation (UDOT), and NorthWest WeatherNet (NWN) to investigate and understand the relationship between meteorological phenomena and road conditions, as well as public understanding and response to available forecast information. The events which impact the Salt Lake City

metro area during the winter of 2010-2011 will be examined.

Through the administration of a targeted survey, important details will be gathered regarding: (a) The information that drivers possessed prior to and during a storm, including knowledge of observed and forecast weather conditions; (b) sources of weather and road information; (c) any modification of travel and/or commute plans, based on event information; (d) anticipation and perception of storm impacts and severity; and (e) perception and behavioral response to messages conveyed by the NWS and UDOT, along with their satisfaction of information provided. Analyses of the information gathered will focus on driver knowledge, perceptions, and decisionmaking.

Ultimately, the results of this survey will provide insight on how the Weather Enterprise may more effectively communicate hazard information to the public in a manner which leads to improved response (*i.e.*, change travel times, modes, *etc.*). With a sufficient level of behavior change, it should be possible to improve safety and reduce the costs associated with weather-related congestion and associated delays. Additionally, the project will shed light upon the interrelationship between meteorological phenomena, road conditions, and their combined impact on travel.

II. Method of Collection

PEGUS Research, a professional firm, will gather responses via random digit dialing, with survey participants providing responses via landline or cell phone communication.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new collection of information).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost to Public: None.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden

(including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 16, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010-17846 Filed 7-21-10; 8:45 am]

BILLING CODE 3510-KE-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-963]

Certain Potassium Phosphate Salts From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (ITC), the Department is issuing a countervailing duty order on certain potassium phosphate salts (phosphate salts) from the People's Republic of China (PRC).

DATES: *Effective Date:* July 22, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4261.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on June 1, 2010, the Department published its final determination in the countervailing duty investigation of phosphate salts from the PRC. *See Certain Potassium Phosphate Salts From the People's Republic of China: Final Affirmative Countervailing Duty*

Determination and Termination of Critical Circumstances Inquiry, 75 FR 30375 (June 1, 2010).

On July 15, 2010, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC. *See Certain Potassium Phosphate Salts From the People's Republic of China*, USITC Publication 4171, Investigation Nos. 701-TA-473 and 731-TA-1173 (Final) (July 2010). Pursuant to section 706(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

Scope of the Order

The phosphate salts covered by this order include anhydrous Dipotassium Phosphate (DKP) and Tetrapotassium Pyrophosphate (TKPP), whether anhydrous or in solution (collectively "phosphate salts").

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula $K_4P_2O_7$. The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P_2O_5 content. TKPP is classified under heading 2835.39.1000, Harmonized Tariff Schedule of the United States (HTSUS).

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K_2HPO_4 . The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P_2O_5 content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this order include the foregoing phosphate salts in all grades, whether food grade or technical grade. The product covered by this order includes anhydrous DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of TKPP, whether crushed, granule, powder, fines or solution.

For purposes of the order, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

Amendment to the Final Determination

Pursuant to the ITC's final determination, the scope of this investigation, and of this order, has changed. As noted above, the ITC

reached a negative determination regarding Monopotassium Phosphate (MKP), a type of salt that was included within the scope of the investigation by the Department and in our final determination. As a result of this negative determination by the ITC, no order can be issued on imports of MKP from the PRC. Therefore, the scope language cited above has been amended from the Department's final determination to remove references to MKP. The rates established by the Department in the final determination were based on adverse facts available findings, none of which were specific to MKP. Thus, there have been no revisions to our final determination rates, or to any other aspect of our final determination, outside of the revised scope definition.

Countervailing Duty Order

On July 15, 2010, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured as a result of subsidized imports of phosphate salts from the PRC. In its determination, the ITC found three domestic like products (DKP, TKPP, and MKP) covering the scope of subject merchandise subject to the investigation. The ITC made affirmative determinations with respect to DKP and TKPP, and a negative determination with respect to MKP. Since the ITC made different affirmative injury determinations for domestic like products, the Department must instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on entries of DKP and TKPP separately from MKP.

MKP

Because the ITC made a negative determination of material injury with respect to MKP, the Department will direct CBP to terminate the suspension of liquidation for entries of MKP from the PRC entered, or withdrawn from warehouse, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated countervailing duties with respect to these entries.

DKP and TKPP

Because the ITC determined that imports of DKP and TKPP from the PRC are materially injuring a U.S. industry, all unliquidated entries of such potassium phosphate salts from the PRC, entered or withdrawn from warehouse, are subject to the assessment of countervailing duties.

In accordance with section 706(a) of the Act, the Department will direct CBP

to assess, upon further instruction by the Department, countervailing duties on all unliquidated relevant entries of potassium phosphate salts from the PRC entered, or withdrawn from warehouse, for consumption on or after March 8, 2010, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register**, and before July 6, 2010, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. *See Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty*

Determination with Final Antidumping Duty Determination, 75 FR 10466 (March 8, 2010). Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of potassium phosphate salts made on or after July 6, 2010, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not liable for the assessment of countervailing duties, due to the Department's discontinuation, effective July 6, 2010, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation

for DKP and TKPP from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Producer/exporter	Subsidy rate
Lianyungang Mupro Import Export Co Ltd	109.11 percent <i>ad valorem</i> .
Mianyang Aostar Phosphate Chemical Industry Co. Ltd	109.11 percent <i>ad valorem</i> .
Shifang Anda Chemicals Co. Ltd	109.11 percent <i>ad valorem</i> .
All-Others	109.11 percent <i>ad valorem</i> .

This notice constitutes the countervailing duty order with respect to phosphate salts from the PRC pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

This notice is issued and published in accordance with sections 705(c)(2), 706(a) and 777(i)(1) of the Act, and 19 CFR 351.211.

Dated: July 19, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-18093 Filed 7-21-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-962]

Certain Potassium Phosphate Salts From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the "Department") and the International Trade Commission ("ITC"), the Department is issuing an

antidumping duty order on certain potassium phosphate salts from the People's Republic of China ("PRC").

DATES: *Effective Date:* July 22, 2010.

FOR FURTHER INFORMATION CONTACT: Kathleen Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-7906.

SUPPLEMENTARY INFORMATION

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, ("Act"), the Department published the final determination of sales at less than fair value ("LTFV") in the antidumping investigation of certain potassium phosphate salts from the PRC. *See Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377 (June 1, 2010) (*Final Determination*). On July 15, 2010, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry. *See Certain Potassium Phosphate Salts from the People's Republic of China*, USITC Publication 4171, Investigation Nos. 701-TA-473 and 731-TA-1173 (Final) (July 2010). Pursuant to section 736(a) of the Act, the Department is issuing the antidumping duty order on certain

potassium phosphate salts from the PRC.

Scope of the Order

The phosphate salts covered by this order include anhydrous Dipotassium Phosphate ("DKP") and Tetrapotassium Pyrophosphate ("TKPP"), whether anhydrous or in solution (collectively "phosphate salts").

TKPP, also known as normal potassium pyrophosphate, Diphosphoric acid or Tetrapotassium salt, is a potassium salt with the formula K₄P₂O₇. The CAS registry number for TKPP is 7320-34-5. TKPP is typically 18.7% phosphorus and 47.3% potassium. It is generally greater than or equal to 43.0% P₂O₅ content. TKPP is classified under heading 2835.39.1000, Harmonized Tariff Schedule of the United States ("HTSUS").

DKP, also known as Dipotassium salt, Dipotassium hydrogen orthophosphate or Potassium phosphate, dibasic, has a chemical formula of K₂HPO₄. The CAS registry number for DKP is 7758-11-4. DKP is typically 17.8% phosphorus, 44.8% potassium and 40% P₂O₅ content. DKP is classified under heading 2835.24.0000, HTSUS.

The products covered by this order include the foregoing phosphate salts in all grades, whether food grade or technical grade. The products covered by this order includes anhydrous DKP without regard to the physical form, whether crushed, granule, powder or fines. Also covered are all forms of TKPP, whether crushed, granule, powder, fines or solution.

For purposes of the order, the narrative description is dispositive, not the tariff heading, American Chemical Society, CAS registry number or CAS name, or the specific percentage chemical composition identified above.

Amendment to the Final Determination

In the *Final Determination* we determined that several companies qualified for a separate rate. See *Final Determination*, 75 FR at 30378. In the preliminary determination, we stated that the antidumping duty margin for companies receiving a separate rate would be based on an average of the rates submitted in the Petition. See *Certain Potassium Phosphate Salts From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value* 75 FR 12508 (March 16, 2010) (*Preliminary Determination*). For the *Preliminary Determination*, the Department calculated the average margin for the separate rate companies based on the margins in the petition for TKPP, DKP and anhydrous monopotassium phosphate ("MKP"). However, as explained below, because the ITC made a negative determination of material injury with respect to MKP, the Department is basing its calculation of the separate rate margin on the petition margins for TKPP and DKP only. Therefore, the separate rate margin has been amended to 62.23 percent. The PRC-wide rate of 95.4 percent was based on the highest margin alleged in the petition. Because the highest petition margin of 95.4 percent was for DKP, the

PRC-wide rate has not changed. The revised dumping margins are listed in the chart below.

Antidumping Duty Order

Antidumping Duty Order

On July 15, 2010, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation. In its determination, the ITC found three domestic like products (DKP, TKPP, and MKP), covering the scope of subject merchandise subject to the investigation. The ITC made affirmative determinations with respect to DKP and TKPP, and a negative determination with respect to MKP. Since the ITC made different affirmative injury determinations for domestic like products, the Department must instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of DKP and TKPP separately from MKP.

MKP

Because the ITC made a negative determination of material injury with respect to MKP, the Department will direct CBP to terminate the suspension of liquidation for entries of MKP from the PRC entered, or withdrawn from warehouse, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

DKP and TKPP

Because the ITC determined that imports of DKP and TKPP from the PRC are materially injuring a U.S. industry, all unliquidated entries of such potassium phosphate salts from the PRC, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of certain potassium phosphate salts from the PRC. These antidumping duties will be assessed on unliquidated entries of DKP and TKPP from the PRC entered, or withdrawn from the warehouse, for consumption on or after March 16, 2010, the date on which the Department published its *Preliminary Determination*.

Effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as listed below. See section 736(a)(3) of the Act. The "PRC-wide" rate applies to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

Exporter	Supplier	Weighted-average margin
Snow-Apple Group Limited	Chengdu Long Tai Biotechnology Co., Ltd	62.23
Tianjin Chengyi International Trading (Tianjin) Co., Limited	Zhenjiang Dantu Guangming Auxiliary Material Factory	62.23
Tianjin Chengyi International Trading (Tianjin) Co., Limited	Sichuan Shifang Hongsheng Chemicals Co., Ltd	62.23
Wenda Co., Ltd	Thermphos (China) Food Additive Co., Ltd	62.23
Yunnan Newswift Company Ltd	Guangxi Yizhou Yisheng Fine Chemicals Co., Ltd	62.23
Yunnan Newswift Company Ltd	Mainzhu Hanwang Mineral Salt Chemical Co., Ltd	62.23
Yunnan Newswift Company Ltd	Sichuan Shengfeng Phosphate Chemical Co., Ltd	62.23
PRC-Wide ¹ .....	.....	95.40

This notice constitutes the antidumping duty order with respect to certain potassium phosphate salts from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act and 19 CFR 351.210(c) and 351.211.

Dated: July 19, 2010.
Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.
 [FR Doc. 2010-18098 Filed 7-21-10; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XX29

Endangered and Threatened Species; Initiation of a 5-year Review of the Baiji/Chinese River Dolphin/Yangtze River Dolphin

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

¹ The PRC-wide rate includes Sichuan Blue Sword Import and Export Co., Ltd., and SD BNI (LYG) Co., Ltd.

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: NMFS announces a 5-year review of the Baiji/Chinese River Dolphin/Yangtze River Dolphin (*Lipotes vexillifer*) under the Endangered Species Act of 1973, as amended (ESA). A 5-year review is a periodic process conducted to ensure that the listing classification of a species is accurate and it is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on the Baiji/Chinese River Dolphin/Yangtze River Dolphin that has become available. Based on the results of this 5-year review, we will make the requisite finding under the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than September 20, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit comments, identified by [0648–XX29], by either of the following methods:

Mail: Angela Somma, National Marine Fisheries Service, Office of Protected Resources, Endangered Species Division, 1325 East West Highway, Silver Spring, MD 20910

Fax: 301–713–4060, attention: Angela Somma

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>, by selecting “submit a comment” and ID# 0648–XX29. Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, available for public inspection in their entirety. Information received in response to this notice and review will be available for public inspection (by appointment, during normal business hours) at the above address.

FOR FURTHER INFORMATION CONTACT: Larissa Plants (301) 713–1401, larissa.plants@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA, a list of endangered and threatened wildlife and plant species (list) must be maintained. The list is published at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the list (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) the species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in federal classification would require a separate rulemaking process. The regulations (50 CFR 424.21) require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Baiji/Chinese River Dolphin/Yangtze River Dolphin (*Lipotes vexillifer*) currently listed as endangered.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the Baiji/Chinese River Dolphin/Yangtze River Dolphin (*Lipotes vexillifer*).

Five-year reviews consider the best scientific and commercial data and all new information that has become available since the listing determination

or most recent status review. Categories of requested information include the following: (A) species biology, including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including, but not limited to, amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) status and trends of threats; and (E) other new information, data, or corrections, including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list, and improved analytical methods.

If you wish to provide information for this 5-year review, you may submit your information and materials to Angela Somma (see **ADDRESSES**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 15, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–17832 Filed 7–21–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People’s Republic of China: Initiation of Anti-Circumvention Inquiry

AGENCY: Import Administration, International Trade Administration, Commerce.

SUMMARY: In response to requests from the M&B Metal Products Co., Inc. (“Petitioner”), the Department of Commerce (“Department”) is initiating an anti-circumvention inquiry to determine whether certain imports of steel wire garment hangers from the Socialist Republic of Vietnam (“Vietnam”) are circumventing the antidumping duty order on steel wire garment hangers (“hangers”) from the People’s Republic of China (“PRC”). See *Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People’s Republic of China*, 73 FR 58111 (October 6, 2008) (“*Hangers Order*”).

DATES: *Effective Date:* July 22, 2010.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:**Background**

On May 5, 2010, pursuant to section 781(b) of the Tariff Act of 1930, as amended (“Act”), and 19 CFR 351.225(h), Petitioner submitted requests for the Department to initiate and conduct an anti-circumvention inquiry of two Vietnamese companies to determine whether hangers composed of low-grade steel wire, which are allegedly products of the PRC exported from Vietnam, are circumventing the *Hangers Order*.

In its two requests, Petitioner alleges that PRC manufacturers of subject merchandise have been circumventing the *Hangers Order* by using two Vietnamese companies to export their hangers. Specifically, in its requests, Petitioner claims that Angang Clothes Rack Manufacture Co., Ltd. (“Angang”) is circumventing the *Hangers Order* with the help of its alleged affiliate, PRC-based Shaoxing Gangyuan Metal Manufactured Co., Ltd. (“Gangyuan”) and that Quyky Yanglei International Co., Ltd. (“Quyky”) is circumventing the *Hangers Order* with the help of its alleged affiliates, PRC-based Shanghai Ruishan Metal Products Co., Ltd. and Zhejiang Taizhou Hongda Metal Products Co., Ltd. (collectively, “Ruishan-Taizhou”). Petitioner further alleges that Gangyuan and Ruishan-Taizhou are supplying pre-formed hangers to Angang and Quyky, respectively, for completion or assembly into merchandise of the same class or kind as the merchandise covered by the *Hangers Order* and that this constitutes circumvention.

On May 20, 2010, the Department sent a supplemental questionnaire to Petitioner regarding the requests to initiate the anti-circumvention inquiry. On May 25, 2010, Petitioner provided a response to the Department’s supplemental questionnaire. On May 25, 2010, Department met with the foreign market researcher (“FMR”) to discuss certain information contained in the anti-circumvention inquiry requests. See “Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior Analyst, Office 9; Meeting with Foreign Market Researcher,” dated June 1, 2010. Neither Quyky nor Angang submitted comments regarding Petitioner’s circumvention allegations. Neither Gangyuan nor Ruishan-Taizhou submitted comments regarding Petitioner’s allegations that they are involved in the circumvention of the *Hangers Order*.

On June 14, 2010, the Department extended the deadline to initiate an

anti-circumvention inquiry by 30 days, pursuant to 19 CFR 351.302(b).¹

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule (“HTSUS”) subheadings 7326.20.0020 and 7323.99.9060.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Initiation of Anti-Circumvention Proceeding

Section 781(b)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anti-circumvention inquiries, under section 781(b)(1) of the Act, the Department will also evaluate whether: (1) The process of assembly or completion in the other foreign country is minor or insignificant; (2) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (3) action is appropriate to prevent evasion of such an order or finding. As discussed below, Petitioner presented evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

Petitioner states that the *Hangers Order* covers hangers produced from steel wire, which are often referred to as shirt, suit, strut, and/or caped hangers, imported under HTSUS 7326.20.0020, and are commonly used in the dry

cleaning industry. Petitioner argues that since the merchandise being imported into the United States from Vietnam, under HTSUS 7326.20.0020, is physically identical to subject merchandise from the PRC entering the United States, pursuant to section 781(b)(1)(A)(i) of the Act, these hangers are of the same class or kind as those subject to the *Hangers Order*. Petitioner provided *Zepol ImportIQ* reports for Angang and Quyky exports showing bills of lading for merchandise identical to that which is subject to the *Hangers Order*. See Petitioner’s Anti-Circumvention Inquiry Request for Quyky, dated May 5, 2010, at 7 and Exhibits 2, 3, and 9 (“Quyky Request”); see also Petitioner’s Anti-Circumvention Inquiry Request for Angang, dated May 5, 2010, at 7 and Exhibits 2 and 6 (“Angang Request”).

B. Completion of Merchandise in a Foreign Country

Petitioner states that the hangers subject to its anti-circumvention inquiry requests are made from semi-finished steel wire hangers produced in the PRC, then exported to and completed in Vietnam for re-export to the United States. Petitioner argues that the semi-finished hangers are imported by Vietnamese companies² for end-stage processing, which consists of unskilled laborers manually affixing paper capes and paper tubes with glue to the semi-finished, PRC-produced hangers. Petitioner contends that the completed merchandise is then exported to the United States as Vietnamese-origin. Petitioner also notes that the paper capes and tubes are also likely to be PRC-origin and imported into Vietnam for the end-stage processing. Therefore, Petitioner concludes that, pursuant to section 781(b)(1)(B)(ii) of the Act, Quyky’s and Angang’s hangers are merchandise completed in another foreign country (Vietnam) from merchandise that is produced in a country (the PRC) already subject to an antidumping duty order which includes hangers produced from steel wire in its scope. See Quyky Request, at 7; see also Petitioner’s Angang Request for, at 8.

C. Minor or Insignificant Process

Petitioner argues that for the purposes of section 781(b)(1)(C) of the Act, the process of manually affixing paper capes and tubes with glue to semi-finished hangers in Vietnam is “minor or insignificant” as defined by the Act. According to Petitioner, the addition of

² As noted above, Petitioner’s allegation of anti-circumvention is focused on two Vietnamese companies: Quyky and Angang.

¹ See Letter to Petitioner dated June 14, 2010.

capas and tubes to formed shirt or strut hangers is an operation that completes the merchandise. However, Petitioner argues that the most fundamental aspect of the production process—the forming/shaping of drawn steel wire into a hanger—occurs in the PRC with heavy and complex machinery. Citing to the factor of production consumption ratios reported by Gangyuan, one of the individually investigated PRC exporters in the underlying less-than-fair-value (“LTFV”) investigation, Petitioner contends that the steel input used in producing the hangers themselves is “by far the most significant in terms of consumption * * *” and that, “* * * there can be no question that the production process utilized to form the hangers accounts for the vast majority of the total value of the final product.” See Quiky Request at 10; see also Angang Request, at Exhibit 5.

Petitioner further states that only manual, unskilled labor is required to affix paper capas, tubes and struts to already formed hangers, without the need for equipment or machinery. Petitioner cites to the International Trade Commission’s (“ITC”) final report, where the ITC stated that “operations such as the addition of capas and struts and painting the wire are executed by machine in the United States while they may be performed manually in China.” See *Steel Wire Garment Hangers from China, Investigation No. 731-TA-1123 (Final)*, USITC Pub. 4034 (September 2008), at I-9 (“ITC Report”). Based on information obtained by Petitioner, paper capas, tubes, and struts are manually affixed to formed hangers in Vietnam. See Quiky Request at 10 and Exhibit 5; see also Angang Request at 11 and Exhibit 3. Petitioner argues that data and statements from the LTFV and ITC investigations support its statements that Vietnamese operations involving the attachment of paper capas, tubes, and struts with glue are “minor or insignificant” processes.

Petitioner argues that an analysis of the relevant statutory factors of section 781(b)(2) of the Act further supports its conclusion that the Vietnamese processing is “minor or insignificant.” These factors include: (1) Level of investment in the foreign country; (2) level of research and development in the foreign country; (3) nature of the production process in the foreign country; (4) extent of production facilities in the foreign country; and (5) whether the value of the processing in the foreign country represents a small proportion of the value of the merchandise imported into the United States. Petitioner’s analysis of these

factors, including citations as appropriate, is as follows.

(1) Level of Investment

Petitioner claims that information procured from Angang (and alleged PRC affiliate, Gangyuan) indicates that little investment has been or is being made in Vietnam. Further, Petitioner also claims that information procured from Quiky (and alleged PRC affiliates, Ruishan-Taizhou) indicates that little investment has been, or is being, made in Vietnam. Petitioner argues that the business model described by Angang and Quiky indicates that they only serve as hanger completion operations, are export platforms for hangers, and are not integrated production operations. Petitioner further contends that the extent of any investment in Vietnam would be the materials required to complete the hangers before exportation to the United States, such as table and chairs for the workers, glue to affix the paper capas, tubes, and struts, and packing materials. Petitioner cites to the FMR’s report for detailed descriptions of the low level of investment at Angang and Quiky. Because the FMR’s report is business proprietary information, its specific content cannot be discussed here. See Quiky Request at Exhibit 5; see also Angang Request at Exhibit 3.

(2) Level of Research and Development

Petitioner states that, similar to the level of investment, because Angang’s and Quiky’s operations involve manual labor and required little or no machinery or equipment, no research and development are required to set up and operate a company to assemble or complete hangers in Vietnam from Chinese components. See Quiky Request at 10 and Exhibit 5; see also Angang Request at 11 and Exhibit 3.

(3) Nature of the Production Process

Petitioner argues that the nature of the production process for hangers completed or assembled by Quiky and Angang is based on unskilled manual labor with little machinery or equipment required. Petitioner states that paper capas, tubes, and struts are manually attached with glue to pre-formed hangers that had been imported from partner producers in the PRC. Petitioner notes that once the paper capas and tubes have been affixed to the pre-formed hangers, the completed hangers are packaged into cartons for export to the United States. See Quiky Request at 10 and Exhibit 5; see also Angang Request at 11 and Exhibit 3. Petitioner adds that the most significant operation in the manufacture of hangers is not the addition of paper capas and

tubes but rather the steel wire rod drawing process and hanger forming process. See, e.g., Angang Request at footnote 23.

(4) Extent of Production in Vietnam

As stated above, Petitioner contends that the extent of production in Vietnam is the simple addition of paper capas and tubes to pre-formed, PRC-produced hangers that were imported by Quiky and Angang. Petitioner states that this process requires nothing more than tables and chairs for the unskilled laborers, glue, and packing materials for exportation.

(5) Value of Vietnam Processing Compared to Hangers Imported Into the United States

Petitioner argues that the Vietnamese assembly of pre-formed hangers adds little value to the final product exported to the United States. Petitioner argues that the value of the final product is, most significantly, the steel input. Petitioner cites to Gangyuan’s responses in the underlying investigation, where it stated that “wire rod is the most significant input in the production of wire hangers.” See Angang’s Request at 10–11 and footnote 23. Petitioner further cites to Gangyuan’s material input consumption figures for the production of subject merchandise, noting that the steel input used to produce subject merchandise was, by far, the most significant input in the production process. *Id.*, at 12. Petitioner further argues that even the paper inputs, such as capas, tubes, and struts used by Angang and Quiky in Vietnam are also supplied by the PRC, thus, the value of the manufacture of the pre-formed hangers and the paper attachments originate in the PRC. As stated above, Petitioner argues that the completion activities in Vietnam add very little to the hangers that are exported to the United States because the steel hanger was drawn from wire rod and formed in the PRC.

D. Value of Merchandise Produced in PRC

Petitioner argues that the evidence, as noted *supra*, in its anti-circumvention requests clearly supports its position that the value of the pre-formed hangers produced in the PRC, and then sent to Angang and Quiky, represents a significant portion of the total value of the merchandise exported to the United States, as measured by the consumption figures reported by Gangyuan in the underlying investigation and included with Petitioner’s anti-circumvention inquiry requests.

E. Factors To Consider in Determining Whether Action Is Necessary

Petitioner argues that the additional factors contained in section 781(b)(3) of the Act must also be considered in the Department's decision whether to issue a finding of circumvention regarding Vietnamese importation of semi-finished hangers.

Pattern of Trade

Petitioner states that section 781(b)(3) of the Act directs the Department to take into account patterns of trade when making a decision whether to include merchandise assembled or completed in Vietnam within the scope of the *Hangers Order*. Petitioner argues that in July 2007, when Petitioner filed its antidumping petition, Vietnam was not a source of any exports of hangers to the United States. Petitioner bases these claims on an analysis of publicly available information from the ITC's Dataweb of U.S. import data. *See* Quiky Request at 13 and Exhibit 9; *see also* Angang Request at 14 and Exhibit 6. Petitioner claims that, upon the publication of the preliminary determination in the underlying investigation, Vietnamese exports of hangers to the United States increased dramatically. *See* Quiky Request at Exhibit 10; *see also* Angang Request at Exhibit 7. Based on shipment data obtained from Zepol ImportIQ, a database of manifest data similar to PIERS, Petitioner contends that two months after the *Hangers Order* was issued (October 2008), Angang began to export hangers to the United States. *See* Angang Request at 14 and Exhibit 2. Further, based on Zepol ImportIQ, Petitioner contends that, in September 2008, one month before the *Hangers Order* was issued, Quiky began to ship hangers to the United States from Vietnam. *See* Quiky Request at Exhibit 2 and 3. Petitioner notes that, based on information provided by the FMR, Quiky has been shipping 25 containers per month to the United States from Vietnam, whereas, the Zepol ImportIQ data has only accounted for up to nine containers shipped monthly, suggesting that the Zepol ImportIQ data has been understated. *Id.* at 13. Petitioner argues that these patterns of trade are consistent with an assembly operation in Vietnam established by PRC producers who are no longer able to supply hangers directly to the United States due to the antidumping duty order in place.

Affiliation

Petitioner states that section 781(b)(3) of the Act directs the Department to take

into account whether the manufacturer or exporter of the merchandise is affiliated with the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States when making decisions on anti-circumvention rulings. With respect to Quiky, Petitioner argues that Quiky has acknowledged that it has a "partner" factory in the PRC, namely Ruishan. Petitioner also notes that, based on publicly available information Ruishan is affiliated with another PRC producer of hangers, Taizhou. *See* Quiky Request at 14 and Exhibit 1. Petitioner contends that, based on proprietary information, Quiky has admitted that it imports its hanger components from the PRC, and, through minor assembly operations in Vietnam, Quiky and Ruishan-Taizhou are actively circumventing the *Hangers Order*. According to Petitioner, the acknowledgement of affiliation and the timing of the exports from Vietnam to the United States support a conclusion that Quiky's assembly of PRC-produced hanger components in Vietnam is circumventing the antidumping duty order.

With respect to Angang, Petitioner argues that Angang admits it receives all of its hanger component parts from the PRC and that Angang and Gangyuan are affiliated. *See* Angang Request at 9 and 15. Petitioner argues that the combined affiliation with Gangyuan, who as a PRC exporter is subject to the *Hangers Order*, and the timing of Angang's initial shipments to the United States suggests a clear intention to shift completion of merchandise subject to the *Hangers Order* from the PRC to Vietnam.

Subsequent Import Volume

Petitioner states that section 781(b)(3) of the Act directs the Department to take into account whether imports into the foreign country of the merchandise have increased after the initiation of the investigation which resulted in the issuance of such an order or finding when making a decision on anti-circumvention rulings. Petitioner claims it cannot access data concerning trade flows of hangers or hanger components between the PRC and Vietnam because the HTSUS classification for subject merchandise or the components of hangers are contained within larger basket categories that cannot track the trade of the subject merchandise, or components of the subject merchandise, to the degree achieved for imports into the United States. However, Petitioner notes that, while import data of the hangers HTSUS classification between the PRC and Vietnam does not exist,

U.S. import data does show that Vietnam was not a source of hangers to the United States until six months after the petition for investigation was filed. *See* Angang Request at 16 and Exhibit 6. Petitioner also argues that Angang's initial shipments starting in late 2008 support the conclusion that Vietnam had not, until recently, been a source of hanger shipments to the United States. *Id.* at 2.

Analysis

Based on our analysis of Petitioner's anti-circumvention inquiry requests and our May 25, 2010, meeting with the FMR, the Department determines that Petitioner has satisfied the criteria under section 781(b)(2) of the Act to warrant an initiation of a formal anti-circumvention inquiry. In accordance with 19 CFR 351.225(e), if the Department finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the application and the descriptions of the merchandise, the Department will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry, including an anti-circumvention inquiry. In addition, in accordance with 19 CFR 351.225(f)(1)(ii), a notice of the initiation of an anti-circumvention inquiry issued under paragraph (e) of this section will include a description of the product that is the subject of the anti-circumvention inquiry—hangers manufactured from steel that contain the characteristics as provided in the scope of the *Hangers Order*, and an explanation of the reasons for the Department's decision to initiate an anti-circumvention inquiry, as provided below.

With regard to whether the merchandise from Vietnam is of the same class or kind as the merchandise produced in the PRC, Petitioner has presented information to the Department indicating that, pursuant to sections 781(b)(1)(A), the merchandise being exported from Vietnam by Angang and Quiky may be of the same class or kind as hangers produced in the PRC and which are subject to the *Hangers Order*. Consequently, the Department finds that Petitioner provided sufficient information in its requests regarding the class or kind of merchandise to warrant initiation of an anti-circumvention inquiry.

With regard to completion or assembly of merchandise in a foreign country, pursuant to section 781(b)(1)(B), Petitioner has also presented information to the Department indicating that the hangers

exported from Vietnam to the United States are being processed by Angang and Quyky in Vietnam from pre-formed hangers and paper components allegedly provided by these companies' suppliers in the PRC. We find that the information presented by Petitioner regarding this criterion supports its requests to initiate an anti-circumvention inquiry.

The Department believes that Petitioner sufficiently addressed the factors described by section 781(b)(2) of the Act regarding whether the processing of pre-formed hangers in Vietnam is minor or insignificant. Specifically, in support of its argument, Petitioner relied on information from the LTFV investigation, the ITC report, and information in the FMR's report. Thus, we find that the information presented by Petitioner supports its requests to initiate an anti-circumvention inquiry. In particular, we find that Petitioner's submissions suggest that: (1) Little investment has been made by either Angang or Quyky company in their respective production of hangers in Vietnam; (2) Angang's and Quyky's Chinese affiliates have fully integrated production facilities in the PRC and, therefore, that research and development presumably takes place in the PRC rather than Vietnam; (3) the gluing of capes to shirt hangers or attaching tubes to strut hangers in Vietnam does not alter the fundamental characteristics of the hanger, nor whether it is subject to the scope of the *Hangers Order*; (4) Angang's and Quyky's facilities have a lower investment level by those companies than that required by the typical capital-intensive nature of the wire-drawing and hanger-forming processes; and (5) assembling paper components to pre-formed hangers adds little value to the merchandise imported to the United States. Our analysis will focus on Angang's and Quyky's assembly operations in Vietnam and, in the context of this proceeding, we will closely examine the manner in which these companies' processing materials are obtained, whether those materials are considered subject to the scope of the *Hangers Order*, and the extent of processing in Vietnam, as well as the manner in which production and sales relationships are conducted with the alleged PRC affiliates.

With respect to the value of the merchandise produced in the PRC, pursuant to section 781(b)(1)(D) of the Act, Petitioner relied on its information and arguments in the "minor or insignificant process" portion of its anti-circumvention requests to indicate that the value of the steel wire may be

significant relative to the total value of a finished hanger with paper accoutrements exported to the United States. We find that the information adequately meets the requirements of this factor, as discussed above, for the purposes of initiating an anti-circumvention inquiry.

Finally, Petitioner argues that, pursuant to section 781(b)(3) of the Act, the Department should also consider the pattern of trade, affiliation, and subsequent import volumes as factors in determining whether to initiate the anti-circumvention inquiry. The U.S. import data submitted by Petitioner suggests that imports of steel wire garment hangers from Vietnam have been rising significantly since the issuance of the *Hangers Order* in 2008, whereas in years prior to 2008, there were no such imports from Vietnam into the United States.

Accordingly, based on Petitioner's submissions, we have determined that we have a sufficient basis to initiate a formal anti-circumvention inquiry concerning the *Hangers Order*, pursuant to section 781(b) of the Act. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

These anti-circumvention inquiries cover Angang and Quyky only. If, within sufficient time, the Department receives a formal request from an interested party regarding potential circumvention of the *Hangers Order* by other Vietnamese companies, we will consider conducting additional inquiries concurrently.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation. This notice is published in accordance with section 777(i)(1) of the Act.

Dated: July 16, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-18000 Filed 7-21-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XX67

Marine Mammals; File Nos. 15498 and 15500

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that the Chicago Zoological Society - Brookfield Zoo, 3300 Golf Road, Brookfield, IL 60513, and the Georgia Aquarium, 225 Baker Street, NW., Atlanta, GA 30313 have been issued permits to import Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376;

File No. 15498: Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281-9328; fax (978) 281-9394; and

File No. 15500: Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301) 713-2289.

SUPPLEMENTARY INFORMATION: On May 3, 2010, notice was published in the **Federal Register** (75 FR 23242) that requests for public display permits to import bottlenose dolphins had been submitted by the above-named organizations. File No. 15498 requested the importation of one male and one female captive born bottlenose dolphin from Dolphin Quest Bermuda, Hamilton, Bermuda, to the Brookfield Zoo, Brookfield, IL. File No. 15500 requested the importation of two male captive born bottlenose dolphins from Dolphin Experience, Ltd., Freeport, Grand Bahama Island, The Bahamas, and three female captive born bottlenose dolphins from Dolphin Quest Bermuda, Hamilton, Bermuda, to the Georgia Aquarium, Atlanta, Georgia. 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.*), and

the regulations governing the taking and importing of marine mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: July 15, 2010.

P. Michael Payne,

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

[FR Doc. 2010-17830 Filed 7-21-10; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC). The members will discuss issues outlined in the following agenda.

DATES: The meeting is scheduled for Thursday, August 5, 2010, from 1 p.m. to 4 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held via a teleconference call.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Caliva, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. (Phone: 202-482-8245; Fax: 202-482-5665; e-mail: Frank.Caliva@trade.gov).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable United States regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil

nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the August 5, 2010, CINTAC meeting is as follows:

Public Session

1. Opening remarks by Chairman.
2. Discussion of Subcommittee final reports on treaties and regulation; civil nuclear technology; domestic competitiveness; government advocacy; and talent and workforce development.
3. Public comment period.

Members of the public wishing to attend the meeting via teleconference must notify Mr. Frank Caliva at the contact information below by 5 p.m. EDT on Tuesday, August 3, 2010, in order to receive the dial-in instructions for the teleconference. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Caliva and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5 p.m. EDT on Tuesday, August 3, 2010. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration (ITA) may conduct a lottery to determine the speakers.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EDT on Tuesday, August 3, 2010, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: July 16, 2010.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2010-17919 Filed 7-21-10; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1694]

Reorganization of Foreign-Trade Zone 121 Under Alternative Site Framework Capital District, New York

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Capital District Regional Planning Commission, grantee of Foreign-Trade Zone 121, submitted an application to the Board (FTZ Docket 47-2009, filed 11-3-2009 and amended 5-5-2010) for authority to reorganize under the ASF with a service area of the New York counties of Albany, Columbia, Greene, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Warren, and Washington, in and adjacent to the Albany Customs and Border Protection port of entry, FTZ 121's existing Sites 1, 2 and 3, and new Sites 5 and 6 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 58002-58003, 11-10-09 and 75 FR 26198, 5-11-10) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 121 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate

authority for Sites 1, 2, 3 and 6 if not activated by June 30, 2015, and to a seven-year ASF sunset provision that would terminate authority for magnet Site 5 if not activated by June 30, 2017.

Signed at Washington, DC, July 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2010-17971 Filed 7-21-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1697]

Reorganization of Foreign-Trade Zone 54 Under Alternative Site Framework; Clinton County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09) as an option for the establishment or reorganization of general-purpose zones;

Whereas, Clinton County, grantee of Foreign-Trade Zone 54, submitted an application to the Board (FTZ Docket 31-2009, filed 7/31/2009) for authority to reorganize under the ASF with a service area of Clinton County, in and adjacent to the Champlain, New York Customs and Border Protection port of entry, and FTZ 54's existing Sites 1, 2, 3, 4 and 5 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 39298, 8/6/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 54 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the

overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1, 2, 3 and 5 if not activated by July 31, 2015.

Signed at Washington, DC, this 8th day of July, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board. Attest:

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2010-17998 Filed 7-21-10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XX25

Small Takes of Marine Mammals Incidental to Specified Activities; Exploratorium Relocation Project in San Francisco, CA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a complete and adequate application from the Exploratorium for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving during the Exploratorium's relocation project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing to issue an IHA to the Exploratorium to incidentally harass, by Level B harassment only, four species of marine mammals during the specified activity within a specific geographic area and is requesting comments on its proposal.

DATES: Comments and information must be received no later than August 23, 2010.

ADDRESSES: Comments on the application and this proposal should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is 0648-XX25@noaa.gov. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail,

including all attachments, must not exceed a 10-megabyte file size.

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

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca or Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713-2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can

apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

A. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On April 28, 2010, NMFS received an application from the Exploratorium, a nature, science, art and technology museum, requesting an IHA for the take, by Level B harassment, of small numbers of Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to relocation of the Exploratorium museum. Upon receipt of additional information, NMFS determined the application complete and adequate on June 1, 2010.

The Exploratorium proposes to relocate from the Palace of Fine Arts to Piers 15 and 17, along San Francisco's waterfront. The relocation project would include the installation, repair, and removal of piles at Pier 15, removal of wharf decking between Piers 15 and 17, and expansion of the southern portion of Pier 15. The Exploratorium proposes to install up to 69 new steel piles and repair and remove existing piles by hydraulic or hand-held cutting tools. Because pile driving has the potential to result in marine mammal harassment, NMFS is proposing to issue an IHA for take incidental to this specified activity.

Description of the Specified Activity

The Exploratorium proposes to relocate from 3601 Lyon Street to Piers 15 and 17, along the Embarcadero of San Francisco's waterfront. The relocation project is scheduled to commence as early as September 2010 and construction would continue throughout a 26-month period. However, of the activities associated with the relocation, only pile driving

has the potential to result in marine mammal take and this activity is expected to be complete by the spring of 2011.

To make room for the new Exploratorium, a maximum of 69 various sized steel piles (thirty 72-inch, twenty six 24-inch, and thirteen 20-inch diameter piles) would be installed around Piers 15 and 17 using a vibratory hammer (Table 1). Between two and five steel piles (average of three piles) would be installed daily, depending on their size and the amount of time necessary to install them. Each pile would take approximately 30 minutes to install followed by at least one hour break, the minimum amount of time needed to reset the hammer and next pile. In total, the Exploratorium anticipates conducting 28 hours of pile driving, with 15 hours spent on 72-inch piles, five hours spent on 20-inch piles, and eight hours spent on 24-inch piles. All piles would be installed with an ICE 14122 (or similar) vibratory hammer; however, it may be necessary to seat a pile using an impact hammer. Based on the ground sediments and the depth of pile driving needed, the use of an impact hammer is not anticipated for the smaller 20-inch and 24-inch piles but may be needed for the large diameter 72-inch piles. Should an impact hammer be necessary, the Exploratorium would use a steam or diesel-powered hammer delivering between 80,000 and 110,000 ft-lbs per blow. For 20, 24, and 72-inch piles, the amount of strikes per pile would be limited to 120, 25, and 5, respectively. Sound attenuation devices (e.g., wood block, bubble curtain) would be used during any impact hammering. In addition, impact hammering would not occur between June 1 and November 30 to prevent injury to listed salmonids.

In addition to pile driving, the Exploratorium would repair or remove existing piles (Table 1) and remove existing wharf decking. Existing concrete piles would be removed by cutting them with a hydraulic shear. The shear operates like a knife gate, with hydraulic rams pushing a shear plate through the piling. The cutting shear would be suspended from a crane on deck. In-water noise from this work would be negligible. Pile repair would include installing a fiberglass shell around damaged pile and filling the shell with concrete. The work would be completed by divers using hand tools and does not involve loud noise. Furthermore, there are no marine mammal haul out sites at Piers 15 and 17 and deck height in the area is at elevations generally too high to facilitate marine mammal haul out. Deck removal

and expansion would occur outside of habitat for marine mammals. Therefore, removal and expansion of the existing pier decking would not likely result in harassment of marine mammals. Finally, there would be two to ten barges or floats at any given time in the water to support construction activities; however, these would be concentrated in the direct vicinity of Piers 15/17. Because pile repair, pile removal, and use of barges do not release loud sounds into the environment, marine mammal harassment from these activities not anticipated.

TABLE 1. SUMMARY OF PILE ACTIVITIES DURING THE EXPLORATORIUM RELOCATION ACTIVITY

Activity	Maximum Number of Piles	Location
Installation of new piles	69 steel piles (30 72-inch diameter steel piles, 26 24-inch steel piles, and 13 20-inch steel piles)	Marginal Wharf; South Apron
Repair of existing piles	1026	Pier 15; Valley Infill Area; Marginal Wharf; North Apron
Extension of existing piles	120	Valley Infill Area
Removal of existing piles—cut at mudline	837	Marginal Wharf; Valley Removal Area; South Apron; Pier 15
Removal of existing piles—cut above mean lower low water (MLLW)	306	Valley Removal Area; Marginal Wharf

During the San Francisco Oakland Bay Bridge Project (SFOBB), the California Department of Transportation (Caltrans), measured vibratory driving sound levels from various pile types, sizes, and locations around San Francisco Bay (Caltrans, 2007). Because no pile driving noise data specific to the Exploratorium project exists, NMFS has determined that hydroacoustic data from the Caltrans SFOBB project are appropriate to use to estimate sound levels from the specified activity. For

background, sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables.

Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are "re: 20 μ Pa" and "re: 1 μ Pa," respectively.

In 2007, Caltrans released a report summarizing typical and maximum sound pressure levels (SPLs) measured during vibratory pile driving in San Francisco Bay (Table 2). In summary, Caltrans measured sound pressure levels (SPLs) 5 m from the hammer were below 180 dB root mean square (rms) values. Most of the energy during vibratory pile driving was below 600 Hz. NMFS notes that the vibratory hammers Caltrans used to install the 72-inch pile were the King Kong and Super Kong Driver (Model 600). The hammer the Exploratorium proposes to use is 40% of the energy of the King Kong hammer; therefore, source levels would be lower for the relocation project as hammer noise levels are proportional to blow energy. Vibratory pile driving measurements taken by Caltrans approximately 11–13 kilometers (km) northeast of the Exploratorium in similar depth water indicate that peak sound pressures drop off at a rate of about 7 dB per doubling of distance. For comparison, spherical spreading (20 log R) is characterized by a drop-off rate of 6 dB per doubling of distance. Therefore, it is anticipated that noise from pile driving will dissipate very quickly around the Exploratorium.

TABLE 2. MEASURED SOUND PRESSURE LEVELS DURING VIBRATORY PILE DRIVING IN SAN FRANCISCO BAY (CALTRANS, 2007).

Pile Type/ Size	Relative Water Depth	SPL at 10 m (RMS)
72-inch steel pile	5 meters	Average = 170 dB Loudest = 180 dB

TABLE 2. MEASURED SOUND PRESSURE LEVELS DURING VIBRATORY PILE DRIVING IN SAN FRANCISCO BAY (CALTRANS, 2007).—Continued

Pile Type/ Size	Relative Water Depth	SPL at 10 m (RMS)
34-inch steel pile	5 meters	Average = 170 dB Loudest = 175 dB
24-inch steel pile	5 meters	Average = 160 dB Loudest = 165 dB
12-inch steel pile	5 meters	Average = 155 dB

Caltrans also conducted hydroacoustic surveys within San Francisco Bay during impact pile driving of similar size piles proposed for use by the Exploratorium (Table 3). Bubble curtains can provide between 5–20 dB reduction in source level; however, this is highly directional and a function of current and device effectiveness (Caltrans, 2009). Therefore, distances to the Level A and Level B harassment isopleths are based on estimated unattenuated source levels. These distances are likely an overestimate of sound levels produced by pile driving using a bubble curtain or wood cap.

TABLE 3. MEASURED UNATTENUATED SOUND PRESSURE LEVELS IN THE NEAR FIELD (10 M) DURING IMPACT PILE DRIVING IN SAN FRANCISCO BAY (CALTRANS, 2009).

Pile Type/ Size	Relative Water Depth	SPL at 10 m (RMS)
96-inch steel pile	10 meters	205 dB
60-inch steel pile	<5 meters	195 dB
36-inch steel pile	<5 meters	190 dB
24-inch steel pile	5 meters	190 dB
14-inch steel pile	15 meters	184 dB

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with confirmed occurrences in San Francisco Bay are the Pacific harbor seal, California sea lion, harbor porpoise, gray whale, humpback whale (*Megaptera novaeangliae*), and sea otter (*Enhydra*

lutris). However, humpback whales are considered extremely rare in San Francisco Bay and are highly unlikely to be present in the project vicinity during pile driving. Sea otters are managed by the U.S. Fish and Wildlife Service. Therefore, these two species are not considered further in this proposed IHA notice.

Pacific Harbor Seals

Pacific harbor seals are found in the coastal and estuarine waters off Baja, California, north to British Columbia, west through the Gulf of Alaska, and in the Bering Sea. The most recent harbor seal counts estimate the California stock of Pacific harbor seals at 34,233 individuals. The population appears to be stabilizing at what may be their carrying capacity and human-caused mortality is declining (NMFS, 2005). The California stock of Pacific harbor seals is not listed under the Endangered Species Act (ESA) nor considered strategic under the MMPA.

In California, approximately 400–500 harbor seal haul out sites are widely distributed along the mainland and offshore islands, including intertidal sandbars, rocky shores, and beaches. The north side of Yerba Buena Island is the closest haul out area to the relocation project, approximately 3 km from Piers 15 and 17. Although harbor seals use this haul out year-round, Yerba Buena Island is not considered a pupping site. In California breeding occurs from March to May, and pupping between April and May depending on local populations. Harbor seals around the new Exploratorium site would likely be transiting to and from their closest haul out (Yerba Buena Island) or opportunistically foraging. Herring spawning events could result in harbor seals congregating and approaching the action area sporadically in an unpredictable manner (pers. comm., M. DeAngelis to M. Magliocca).

Pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.*, 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and in the water, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, the lower limit remains at 75 Hz but the highest audible frequencies are only around 30 kHz (Southall *et al.*, 2007).

California Sea Lions

California sea lions are found throughout the Eastern North Pacific Ocean in shallow coastal and estuarine waters, ranging from Central Mexico to British Columbia, Canada. Their primary breeding range extends from Central Mexico to the Channel Islands in Southern California. The abundance of the U.S. stock is estimated to be 238,000 sea lions (NMFS, 2007). This stock is approaching carrying capacity and is reaching "optimum sustainable population" limits, as defined by the MMPA. California sea lions are not listed under the ESA nor considered strategic under the MMPA.

Sandy beaches are preferred habitat for haul out sites, but marina docks, jetties, and buoys are often used in California for resting, breeding, and molting. In San Francisco Bay, sea lions haul out on floating docks (e.g., Pier 39 around Fishermen's Wharf) and on buoys throughout the Bay. Breeding season begins in May and lasts until August, with most pups born by July. While onshore, California sea lions often form groups of several hundred animals. No sea lion haulouts are located around the Exploratorium. However, sea lions observed within this area may be transiting to and from nearby piers or opportunistically foraging.

Harbor Porpoises

Harbor porpoises have a wide and discontinuous range that includes the North Atlantic and North Pacific. In the Eastern North Pacific, harbor porpoises are found in coastal and inland waters from Point Conception, California to Alaska. Harbor porpoises in U.S. waters are divided into 10 stocks, based on genetics, movement patterns, and management. Any harbor porpoises encountered during the Exploratorium relocation would likely be part of the San Francisco-Russian River stock which has an estimated abundance of 9,189 animals. Abundance of the San Francisco-Russian River stock appeared to be stable or declining between 1988 and 1991 and has steadily increased since 1993, although this increase is not statistically significant. Harbor porpoises are not commonly sighted in San Francisco Bay, but have been observed traveling in small pods of two to three animals on occasion (pers. comm., M. DeAngelis to M. Magliocca). They may occur in the action area during a time when they could be affected by pile driving activities; however, their presence in the vicinity is rare. Harbor porpoises in California

are not listed under the ESA nor considered strategic under the MMPA.

Cetaceans are divided into three functional hearing groups: low-frequency, mid-frequency, and high frequency. Harbor porpoises are considered high-frequency cetaceans and their estimated auditory bandwidth (lower to upper frequency hearing cut-off) ranges from 200 Hz to 180 kHz.

Gray Whales

Gray whales are large mysticetes, or baleen whales, found mainly in shallow coastal waters of the North Pacific Ocean. Two isolated geographic distributions of gray whales exist: the Eastern North Pacific stock and the Western North Pacific stock. The Eastern North Pacific stock migrates as far south as Baja, California for breeding and calving in the winter and as far north as the Bering and Chukchi Seas for summer feeding. During migration, gray whales will occasionally enter rivers and bays, including San Francisco Bay, along the coast, but in very low numbers. They could potentially be in the action area during pile driving activities. The most recent 2008 stock assessment report estimated the Eastern North Pacific stock to be approximately 18,813 individuals with an increasing population trend over the past several decades. Gray whales were delisted from the ESA in 1994 and are not considered strategic under the MMPA.

Gray whales, like other baleen whales, are in the low-frequency hearing group. There are no empirical data on gray whale hearing; however, Wartzok and Ketten (1999) suggest that mysticete hearing is most sensitive at the same frequencies at which they vocalize. Underwater sounds produced by gray whales range from 20 Hz to 20 kHz (Richardson et al., 1995).

Potential Effects on Marine Mammals

Pile driving at the Exploratorium's new location may temporarily impact marine mammal behavior within the action area due to elevated in-water noise levels. No pinnipeds on haulouts would be affected as the closest haulout is approximately 3 kms away; therefore, in-air noise is not a concern. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (e.g., snapping shrimp, whale songs) are ubiquitous throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection.

Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels (RLs) will depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson et al., 1995). Type and significance of marine mammal reactions to noise are likely to depend on a variety of factors including, but not limited to, the behavioral state (e.g., feeding, traveling, etc.) of the animal at the time it receives the stimulus, frequency of the sound, distance from the source, and the level of the sound relative to ambient conditions (Southall et al., 2007).

Hearing Impairment

Temporary or permanent hearing impairment is possible when marine mammals are exposed to very loud sounds. Hearing impairment is measured in two forms: temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (i.e., 40 dB of TTS). Due to proposed mitigation measures and source levels, NMFS does not expect that marine mammals would be exposed to levels that could elicit PTS; therefore, it will not be discussed further.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to, in cases of strong TTS, days. For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall et al. (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur. Southall et al. (2007) summarizes underwater

pinniped data from Kastak et al. (2005), indicating that a tested harbor seal showed a TTS of around 6 dB when exposed to a nonpulse noise at SPL 152 dB re: 1 μ Pa for 25 minutes. In contrast, a tested sea lion exhibited TTS-onset at 174 dB re: 1 μ Pa under the same conditions as the harbor seal. Data from a single study on underwater pulses found no signs of TTS-onset in sea lions at exposures up to 183 dB re: 1 μ Pa (peak-to-peak) (Finneran et al., 2003). There is no information on species-specific TTS for harbor porpoises or gray whales.

There are limited data available on the effects of non-pulse noise (e.g., vibratory pile driving) on pinnipeds in-water; however, field and captive studies to date collectively suggest that pinnipeds do not strongly react to exposures between 90–140 dB re: 1 microPa; no data exist from exposures at higher levels. Jacobs and Terhune (2002) observed wild harbor seal reactions to high frequency acoustic harassment devices (ADH) around nine sites. Seals came within 44 m of the active ADH and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB. In a captive study (Kastelein, 2006), a group of seals were collectively subjected to data collection and communication network (ACME) non-pulse sounds at 8–16 kHz. Exposures between 80–107 dB did not induce strong behavioral responses; however, a single observation at 100–110 dB indicated an avoidance response at this level. The group returned to baseline conditions shortly following exposure. Southall et al. (2007) notes contextual differences between these two studies noting that the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging subjects may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items. While most of the pile driving will be vibratory, a small portion of piles may be driven using an impact hammer (pulse noise) and sound attenuation devices, resulting in anticipated hydroacoustic levels between 164 and 179 dB RMS. Southall et al. (2007) reviewed relevant data from studies involving pinnipeds exposed to pulse noise and concluded that exposures to 150 to 180 dB (approximate source level range for vibratory pile driving) generally have limited potential to induce avoidance behavior.

Vibratory pile driving emits low frequency broadband noise, all of which may be detectable by marine mammals within the action area. However, lower

frequency hearing animals such as pinnipeds and gray whales are likely to be able to hear the sound better and farther away than the harbor porpoise, who has a hearing range of 200 Hz–180 kHz (Southall et al., 2007), as most of the energy during vibratory pile is expected to be below 600 Hz (Caltrans 2007). No known data exists for sound levels resulting from the type of vibratory hammer and pile sizes that would be used at the Exploratorium; however, measured sound levels for the “King Kong” vibratory hammer used in Richmond, California ranged between 163 and 180 dB RMS (Illingworth and Rodkin, 2007). Sound levels at the Exploratorium are expected to be substantially lower because the vibratory hammer being used is approximately 40 percent of the energetic capacity of the “King Kong” hammer and will not be used at full capacity. In addition, San Francisco Bay is highly industrialized and masking of the pile driver by other vessels and anthropogenic noise within the action area may, especially in the nearby shipping channel, may also make construction sounds difficult to hear at greater distances. Underwater ambient noise levels along the San Francisco waterfront may be around 133 dB RMS, based on measurements from the nearby Oakland Outer Harbor (Caltrans, 2009). Seals would likely also exhibit tolerance or habituation (as described in Richardson et al., 1999) due to the amount of anthropogenic use within the action area and San Francisco Bay as a whole.

Pacific harbor seal and California sea lion pupping season is outside of the temporal pile driving schedule; therefore, no impacts to reproduction are anticipated. It is expected that marine mammals exposed to pile driving noise would be using the adjacent waters around the Exploratorium’s project site for foraging or as a daily migration route between foraging grounds and haul out locations. Harbor porpoises also may use the adjacent waters for foraging and may pass through the area during pile driving. Gray whales are not expected to forage in the activity area, but may display behavioral changes in response to noise if they enter San Francisco Bay and transit or linger around the action area during their annual migration.

Any impacts to marine mammal behavior are expected to be temporary. First, animals may avoid the area around the hammer; thereby reducing exposure. Second, pile driving does not occur continuously throughout the day. As described above, the vibratory hammer only operates for about 30

minutes followed by at least a one hour break. Two to five pilings are anticipated to be driven per day, resulting in a total of 1–2.5 hours of pile driving within any given 24 hour period. Limiting pile driving to less than three hours per day would allow for minimal disruption of foraging or dispersal throughout the habitat. Any disturbance to marine mammals is likely to be in the form of temporary avoidance or alteration of opportunistic foraging behavior near the pile driving location. In addition, because pile driving is anticipated to be accomplished using only a vibratory hammer, marine mammal injury or mortality is not anticipated. If an impact hammer is used, a protected species observers (PSO) would be on watch to implement pile driver shut down, a mitigation measure designed to prevent animals from being exposed to injurious level sounds. For these reasons, any changes to marine mammal behavior are expected to be temporary and result in a negligible impact to affected species and stocks.

Anticipated Effects on Habitat

On May 28, 2010, the NMFS Southwest Regional Office concluded section 7 and Essential Fish Habitat (EFH) consultation, under the ESA and Magnuson Stevens Fishery Conservation and Management Act (MSFCMA), respectively, with the U.S. Army Corps of Engineers (Corps) on issuance of a Corps permit to the Exploratorium. In summary, NMFS Southwest Regional Office found that the proposed construction activities may affect ESA-listed fish by generating increased levels of turbidity and sound; however, these impacts are expected to be minor, localized, and short term. As such, NMFS Southwest Regional Office concurred with the Corps determination that impacts from the Exploratorium’s project would not result in adverse impacts to ESA-listed fish or their critical habitat. NMFS Southwest Regional Office also determined that the proposed project would adversely affect EFH for various federally-managed species within the Pacific Groundfish, Coastal Pelagic, and Pacific Salmonid Fishery Management Plans; however, they also determined that the proposed action contains adequate measures to avoid, minimize, mitigate, or otherwise offset the adverse effects to EFH.

Marine mammals and fish may occupy the same habitat. Pile driving noise would result in degradation of in-water habitat; however, this impact would be short term and localized. Installation of new piles would be permanent; however, overall site

conditions are anticipated to be substantively unchanged from existing conditions for marine mammals following project implementation. Therefore, following results of consultation under the ESA and MSFCMA, NMFS has preliminarily determined impacts to marine mammal habitat are negligible.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The Exploratorium has proposed the following mitigation measures to help ensure the least practicable adverse impact on marine mammals:

Limited Use of an Impact Hammer

All piles would be installed using a vibratory pile driver unless sufficient depth cannot be reached, at which point an impact hammer may be used. In the event that an impact hammer is necessary, a bubble curtain, wood block, or both would be used as an attenuation device to reduce hydroacoustic sound levels to avoid the potential for injury. With the use of these devices, hydroacoustic source levels are anticipated to be between 164 and 179 dB RMS during impact hammering.

Establishment of a Safety Zone

During all in-water impact pile driving, the Exploratorium would establish a preliminary marine mammal safety zone of 500 m around each pile before pile driving commences. No safety zone for vibratory pile driving is necessary as source levels will not exceed the Level A harassment threshold.

Pile Driving Shut Down and Delay Procedures

If a PSO observes a marine mammal within or approaching the safety zone prior to start of impact pile driving, the PSO would notify the Resident Engineer (or other authorized individual) who would then be required to delay pile driving until the marine mammal has moved outside of the safety zone or if the animal has not been resighted within 15 minutes. If a marine mammal is sighted within or on a path toward the safety zone during pile driving, pile driving should cease until that animal

has cleared and is on a path away from the safety zone or 15 minutes has lapsed since the last sighting. In addition, if a marine mammal not authorized to be taken under the IHA (e.g., humpback whale) is observed within the Level B harassment zone (1900 m), pile driving would be delayed until that animal has cleared and is on a path away from the safety zone or 15 minutes has lapsed since the last sighting.

Soft-start Procedures

A "soft-start" technique would be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before the pile hammer reaches full energy. For vibratory pile driving, the soft-start procedure requires contractors to initiate noise from the vibratory hammer for 15 seconds at 40–60% reduced energy followed by a 1-minute waiting period. The procedure would be repeated two additional times before full energy may be achieved. For impact hammering, contractors would be required to provide an initial set of three strikes from the impact hammer at 40% energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. The soft-start procedure would be conducted prior to driving each pile if vibratory hammering ceases for more than 30 minutes.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The Exploratorium must designate at least one biologically-trained, on-site individual, approved in advance by NMFS, to monitor the area for marine mammals 30 minutes before, during, and 30 minutes after all impact pile driving activities and call for shut down if any marine mammal is observed within or approaching the designated Level A harassment zone (preliminary set at 500 m). In addition, at least one NMFS-approved PSO would conduct behavioral monitoring in and around the Exploratorium at least two days per week between March 1 and November 30 to estimate take and evaluate the behavioral impacts pile driving has on marine mammals out to the Level B harassment isopleth (1,900 m). Should a non-authorized marine mammal (i.e. humpback whale) be observed at any time in this zone, the aforementioned shut down and delay procedures would be followed.

As set forth in the Exploratorium's application to the Corps, monitoring for herring spawning events would be conducted on a daily basis between December 1 and February 28. This PSO would also monitor for marine mammals within and around the Level B harassment area. In addition to stationing a PSO to monitor for herring, the Exploratorium would cease pile driving for two weeks should a herring spawning event occur (a measure designed to reduce impacts to fish). Pinniped presence during such events can be sporadic and unpredictable; therefore, the requirements set forth under ESA and EFH consultation also minimize and allow for monitoring of impacts to marine mammals.

PSOs would be provided with the equipment necessary to effectively monitor for marine mammals (e.g., high-quality binoculars, compass, and range-finder) in order to determine if animals have entered into the harassment isopleths and to record species, behaviors, and responses to pile driving. PSOs would be required to submit a

report to NMFS within 120 days of expiration of the IHA or completion of pile driving, whichever comes first. The report would include data from marine mammal sightings (e.g., species, group size, behavior), any observed reactions to construction, distance to operating pile hammer, and construction activities occurring at time of sighting.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Based on the Exploratorium's application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of marine mammals who are within the action area. Marine mammals may avoid the area or halt any behaviors (e.g., foraging) at time of exposure. Due to the short duration of pile driving per day (1- 2.5 hours), animals are not anticipated to be exposed multiple times per day.

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury of marine mammals (e.g., PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB rms or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall et al., 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (e.g., impact pile driving) and 120dB rms for non-pulse noise (e.g., vibratory pile driving), but below the aforementioned thresholds. These levels are also considered precautionary.

Based on empirical measurements taken by Caltrans (which are presented in the Description of Specified Activities section above), estimated distances to NMFS current threshold sound levels from pile driving during the Exploratorium's relocation project are presented in Table 4. These estimates are based on the worst case scenario of driving the 72- inch steel

piles but would be carried over for all pile driving. Note that despite short distances to the Level A harassment isopleth, the Exploratorium has proposed to implement a preliminary 500-m marine mammal safety zone until empirical pile driving measurements can be made and distances to this threshold isopleth can be verified.

TABLE 4: MODELED UNDERWATER DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLD LEVELS.

	Level A (190/180 dB)	Level B harassment (160 dB)	Level B harassment (120 dB)
Impact hammering	20 m (w/o sound attenuation device)	100 m	n/a
Vibratory hammering	n/a	n/a	1900 m

The estimated number of marine mammals potential taken was based on marine mammal monitoring reports prepared by Caltrans during similar activities in San Francisco Bay and on discussions with the NMFS Southwest Regional Office. Caltrans' SFOBB marine mammal monitoring reports were used to estimate the number of pinnipeds near the Exploratorium project area as the SFOBB site and Exploratorium are relatively close to each other and are similar in bathymetric features (e.g., water depth, substrate). However, monitoring conducted for the SFOBB project has been in close proximity to a haul out area, while the Exploratorium project is in an area of high commercial boat activity with no haul out sites. Therefore, the Caltrans data likely overestimates marine mammal abundance for the Exploratorium project area. Based on consultation with the NMFS Southwest Regional Office and review of Caltrans monitoring reports for pile driving activities in San Francisco Bay, the Exploratorium requested a total take of two Pacific harbor seals, one California sea lion, and one gray whale per day of pile driving. Upon further consultation with NMFS Southwest Regional Office, NMFS is proposing to include harbor porpoise as a species potentially taken by pile driving, due to the recorded, albeit infrequent, sightings of harbor porpoises within San Francisco Bay.

The Exploratorium estimates an average of three piles would be driven in a single day. Given 69 piles in total, pile driving would occur for 19 days over the life of the project. Therefore, NMFS is proposing to authorize annual take, by Level B harassment only, of 38 Pacific harbor seals, 19 California sea lions incidental to the Exploratorium's pile driving activities. Due to the infrequent, but potential presence of harbor porpoise and gray whales in the area, NMFS is also proposing to authorize the take of 28 harbor porpoise and five gray whales, annually, based on consultation with the NMFS Southwest Regional Office, NMFS. These numbers indicate the maximum number of animals expected to occur within the Level B harassment isopleth (1,900 m). Estimated and proposed level of take of each species is less than one percent of the affected stock population and therefore is considered small in relation to the population numbers previously set forth.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur (e.g., will the takes occur in an area or time of significance for marine mammals, are takes occurring to a small, localized population?).

As described above, marine mammals would not be exposed to activities or sound levels which would result in injury (e.g., PTS), serious injury, or mortality. Pile driving would occur in shallow coastal waters of San Francisco Bay to stocks occurring throughout California, and, for gray whales, the eastern Pacific Ocean. The action area (waters around Piers 15-17) is not considered as providing significant habitat for harbor seals. The closest haulout is 3 kms away on Yerba Buena Island; however, noise levels about NMFS harassment thresholds would only extend to 1,900 m in-water. Marine mammals approaching the action area would likely be traveling or opportunistically foraging. However, marine mammals foraging on herring runs would not be affected by

construction because the Exploratorium would not conduct pile driving for two weeks if a herring run is observed by the on-site PSO, who would monitor the area daily between December 1-February 28. In addition, a PSO would monitor for marine mammals twice a day to estimate take and verify impacts to marine mammals are not above those described here. The amount of take the Exploratorium has requested, and NMFS proposes to authorize, is considered small (less than one percent) relative to the estimated populations of 34,233 Pacific harbor seals, 238,000 California sea lions, 9,189 harbor porpoises, and 18,813 gray whales. As previously noted, no affected marine mammals are listed under the ESA or considered strategic under the MMPA.

Marine mammals may be temporarily impacted by pile driving noise. However, marine mammals are expected to avoid the area, thereby reducing exposure and impacts. Further, although the relocation project is expected to take up to two years, installation of the 69 steel piles would only occur for approximately 19 days. Further, San Francisco Bay is a highly industrialized area and species such as harbor seals and California sea lions flourish throughout the Bay. Therefore, animals are likely tolerant or habituated to anthropogenic disturbance, including low level vibratory pile driving operations, and noise from other anthropogenic sources (e.g., vessels in the adjacent shipping lane) may mask construction related sounds. Finally, breeding and pupping season occur outside of the proposed pile driving timeframe; therefore, no disruption to reproductive behavior is anticipated. There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily determines that the Exploratorium's relocation project will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are anticipated to occur within the action area. Therefore, Section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS is preparing an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals and other applicable environmental resources resulting from issuance of a one-year IHA and the potential issuance of additional authorization for incidental harassment for the ongoing project. Upon completion, this EA will be available on the NMFS website listed in the beginning of this document.

Dated: July 16, 2010.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XW81

Takes of Marine Mammals Incidental to Specified Activities; Installation of Meteorological Data Collection Facilities in the Mid-Atlantic Outer Continental Shelf

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received two applications from Bluewater Wind (Bluewater) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to pile driving associated with installation of two meteorological data collection facilities (MDCFs); one each off the coast of Delaware and New Jersey. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Bluewater to

incidentally harass, by Level B Harassment only, eight species of marine mammals during the installation of both MDCFs. The IHA would be effective from October 1–November 15, 2010.

DATES: Comments and information must be received no later than August 23, 2010.

ADDRESSES: Comments on the applications should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is PR1.0648-XW81@noaa.gov. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

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

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. The following associated document is also available at the same internet address:

Environmental Assessment (EA) on the *Issuance of Leases for Wind Resource Data Collection on the Outer Continental Shelf Offshore Delaware and New Jersey* (MMS, 2009). Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713–2289, ext 151.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of

marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On May 5, 2010, NMFS received two applications from Bluewater for the taking, by Level B harassment, of marine mammals incidental to pile driving associated with installation of a MDCF in Federal waters approximately 16.5 miles off the coast of Delaware and one approximately 20 miles off the coast of New Jersey during October 2010. Bluewater provided supplemental information to NMFS on June 8, 2010, completing the applications. In

summary, to build each MDCF, Bluewater must drive, via an impact hammer, a single 3-meter pile into the seabed which will act as the foundation to elevate and support the data collection device. Pile driving has the potential to result in the take, by Level B harassment, of eight species marine mammals within the action area as it elevates underwater noise levels. The IHA would be effective from October 1–November 15, 2010.

Description of the Specified Activity

In November 2009, the Mineral Management Service (MMS) issued a lease to Bluewater for construction and operation of MDCF's designed to support future development of Bluewater's planned Delaware and New Jersey Offshore Wind Parks. The purpose of installing the MDCF's is to determine the feasibility of a commercial-scale offshore wind energy park at the proposed project site. Bluewater would collect and analyze at least one full year of meteorological data inclusive of wind speed and direction at multiple heights, information on other seasonal meteorological conditions (e.g., turbulence, temperature, pressure, and atmospheric stability), the marine environment (e.g., ocean currents, tides, and waves), and avian and bat activity (e.g., activity within the potential rotor swept area, flight altitude). The proposed IHA would authorize the take, by Level B harassment only, of marine mammals incidental to pile driving the monopole foundation required to support the wind data collection devices, not future installation of wind turbines.

Bluewater has proposed installing a single 3-meter diameter pile foundation to elevate and stabilize a data collection device at two locations; one located in the Outer Continental Shelf (OCS) Official Protraction Diagram (OPD) lease block Salisbury, NJ 18–05 Lease Block 6325 (approximately 16 miles off Delaware) and one at OCS OPD lease block Wilmington, NJ 18–02 Block 6936 (approximately 20 miles off NJ). The mean lower low water depth (MLLW) at the Delaware and New Jersey site is approximately 69 feet (21 m) and 82 feet (25 m), respectively. Sediments in the region of the project area are characterized by terrigenous quartz sand, typical of the majority of sediments found in the Mid-Atlantic to Northern continental shelf. No bedrock (which is difficult to pile drive through) was encountered during Bluewater's sub-bottom profiling operations in 2009 at either location. Pile driving is scheduled to occur during in October 2010; however, given unforeseen

construction or weather related delays, NMFS is proposing to make the IHA effective until November 15, 2010.

To install the monopole foundation, Bluewater would use a IHC–S 900 Hydraulic Impact Hammer (or equal) with a maximum rated impact force of 900 kilojoules (KJ). Noise emissions are proportional to hammer blow energy, which is determined by the weight of the falling mass and height of the fall. The IHC–S 900 hammer is a relatively larger hammer than those needed for coastal construction projects. Therefore, source levels generated from this hammer are higher than those from impact hammers used to drive piles in shallow, coastal waters. To be conservative in its acoustic modeling, Bluewater has assumed the full impact force of 900 KJ will be required for construction; however, full force may not be necessary.

Bluewater anticipates it will take approximately 8 to 12 hours to mobilize and demobilize the construction vessels on site; however, only 3–8 of these hours would be spent pile driving. The two MDCF's would not be installed simultaneously; the Delaware MDCF would be installed first followed by the New Jersey MDCF approximately 1–2 weeks later. Because of physical parameters associated with this project (e.g., pile size, water depth), Bluewater has indicated a vibratory hammer cannot be used. Pile driving activities would be restricted to daylight hours between one-half hour after sunrise and one-half hour prior to sunset.

Bluewater would transport the MDCF foundation materials and equipment to the project site slowly (less than 10 knots) on a deck cargo barge. In addition, installation of the fixed MDCF will also necessitate the use of crew boats, tugs, and crane barge support vessels. Contrary to Bluewater's original proposal during the MMS leasing process, no aircraft will be used during the MDCF installation. Bluewater estimates the construction radius (total work area needed during construction operations centered on the MDCF construction site) would be approximately 450 meters. All vessels would abide by NOAA Fisheries Northeast Regional Viewing Guidelines (http://www.nmfs.noaa.gov/pr/pdfs/education/viewing_northeast.pdf).

Description of Marine Mammals in the Area of the Specified Activity

Several species of marine mammals are known to traverse or occasionally inhabit the waters within the action area of project construction activities, including some species listed as threatened or endangered under the

Endangered Species Act (ESA). Thirty-four marine mammal species including 29 cetaceans, four pinnipeds, and one sirenian species have confirmed occurrences in the mid-Atlantic OCS (Table 1).

TABLE 1—MARINE MAMMAL OCCURRENCE ON THE OCS OFF DELAWARE AND NEW JERSEY

Species	Status	Population
Suborder Mysticeti (baleen whales)		
North Atlantic right whale (<i>Eubaleana glacialis</i>)	Endangered	306.
Humpback whale (<i>Megaptera novaeangliae</i>)	Endangered	902.
Fin whale (<i>Balaenoptera physalus</i>)	Endangered	2,269.
Sei whale (<i>Balaenoptera borealis</i>)	Endangered	Unknown.
Blue whale (<i>Balaenoptera musculus</i>)	Endangered	Unknown.
Minke whale (<i>Balaenoptera acutorostrata</i>)	None	2,998.
Suborder Odontoceti (toothed whales)		
Sperm whale (<i>Physeter macrocephalus</i>)	Endangered	4,804.
Pygmy sperm whale (<i>Kogia breviceps</i>)	None	395.
Dwarf sperm whale (<i>Kogia sima</i>)	None	395.
Cuvier's beaked whale (<i>Ziphius cavirostris</i>)	None	3,513.
True's beaked whale (<i>Mesoplodon mirus</i>)	None	3,513.
Gervais' beaked whale (<i>Mesoplodon europaeus</i>)	None	3,513.
Sowerby's beaked whale (<i>Mesoplodon bidens</i>)	None	3,513.
Blainville's beaked whale (<i>Mesoplodon densirostris</i>)	None	3,513.
Bottlenose dolphin (<i>Tursiops truncatus</i>)	Coastal Stock—Depleted	Coastal—Unknown; Offshore—81,588.
Pantropical spotted dolphin (<i>Stenella attenuata</i>)	None	4,439.
Atlantic spotted dolphin (<i>Stenella frontalis</i>)	None	50,978.
Spinner dolphin (<i>Stenella longirostris</i>)	None.	
Clymene dolphin (<i>Stenella clymene</i>)	None	Unknown.
Striped dolphin (<i>Stenella coeruleoalba</i>)	None.	
Common dolphin (<i>Delphinus delphis</i>)	None	120,743.
White-beaked dolphin (<i>Lagenorhynchus albirostris</i>)	None.	
Atlantic White-Sided dolphin (<i>Lagenorhynchus acutus</i>)	None.	
Risso's dolphin (<i>Grampus griseus</i>)	None	15,053.
Melon-headed whale (<i>Peponocephala electra</i>)	None.	
Pygmy killer whale (<i>Feresa attenuate</i>)	None.	
Long-finned pilot whale (<i>Globicephala melas</i>)	None	31,139.
Short-finned pilot whale (<i>Globicephala macrorhynchus</i>)	None.	
Harbor porpoise (<i>Phocoena phocoena</i>)	None	89,054.
Order Carnivora		
Suborder Pinnipedia (seals, sea lions, walruses)		
Harbor seal (<i>Phoca vitulina</i>)	None	99,340.
Gray seal (<i>Halichoerus grypus</i>)	None	Unknown.
Hooded seal (<i>Cystophora cristata</i>)	None	Unknown.
Harp seal (<i>Pagophilus groenlandicus</i>)	None	Unknown.
Order Sirenia		
West Indian manatee (<i>Trichechus manatus</i>)	None	1,822.

Some marine mammals species are likely to occur within the action area more so than others; however, marine mammal occurrence within the action areas during the 3–8 hours of pile driving is expected to be minimal. During July–October 2009, multiple geophysical and geotechnical (G&G) surveys were conducted by three wind park developers off the coast of New Jersey, all of which had dedicated protected species observers onboard the survey vessel. In general, sightings of marine mammals were uncommon. No marine mammals were sighted during G&G surveys conducted between July

24–August 1, 2009, approximately 17 miles off the New Jersey coast (RPS GeoCet, 2009). Similarly, during nine days of G&G surveys from August 25–September 21, no marine mammals were sighted approximately 12 miles of the southeast coast of New Jersey (AIS, 2009). Only during geophysical surveys conducted by Bluewater from August 14–17, 2009 (within lease block 6936) were marine mammals observed; one group was confirmed *Tursiops* comprised of two individuals; the other group was of an unknown species and contained five individuals (Geo-Marine, 2009).

In addition to the G&G survey, from January to December 2008, the New Jersey Department of the Environment (NJDOE) conducted monthly marine mammal and avian surveys off of New Jersey out to approximately 20 nautical miles (NM) (37 km); however, no surveys were conducted in October or November. Shipboard surveys were conducted over 3 days in July and August each and four days in September. Total on-effort transect length per month equaled approximately 417 NM (773 km), 481 NM (891 km), and 440 NM (816 km), respectively. The abundance data from

the July–October quarterly report is presented in Table 2. Based on these data and the data from the G&G surveys, the potential for marine mammals to

occur within the action area exists; however, given the limited duration of pile driving associated with the project (3–8 hours), it is unlikely many

individual marine mammals would be harassed by the specified activity.

TABLE 2—SUMMARY OF MARINE MAMMAL SIGHTINGS FROM THE NJDOE SHIPBOARD SURVEYS FROM JULY THROUGH SEPTEMBER 2008 (GEO-MARINE, 2008).

Species	Number of sightings per survey month		
	July	August	September
Humpback whale	0	2	3
Fin whale	1	37	1
Bottlenose dolphin	44	0	7
Harbor porpoise	1	0	0
Unidentified dolphin	1	0	2
Unidentified large whale	0	0	1

On May 14, 2009, the NMFS Northeast Region concluded informal ESA consultation with MMS on issuance of lease blocks. In summary, NMFS determined that, given a 1,000 m exclusion zone (*i.e.*, if ESA listed species are seen within 1,000 m of the active pile driver, operation will cease until that animal clears the area), ESA-listed marine mammals are not likely to be adversely affected by the specified activity. This determination was based on acoustical information provided, in part, by Bluewater which estimated the 160 dB re: 1 microPa isopleth (NMFS' Level B harassment threshold for impulsive noise) to be approximately 500 m. Bluewater's IHA application presents a more recent and thorough acoustic analysis that reveals the Level B harassment threshold (160 dB) isopleth may extend to approximately 7,000 m (not 500 m). Bluewater and NMFS consider the 7,000 m Level B harassment distance conservative.

Given the timing of the activity (October) and short duration of pile driving (3–8 hours), North Atlantic right whales would be rare in the action area but are possible. The location of the proposed MDfC is within the main right whale migratory corridor (*i.e.*, within 20 miles of shore in 5–15 fathoms of water). However, right whales are most likely to occur in the mid-Atlantic between November and April.

Although ESA-listed whales may be present, Bluewater would implement mitigation measures such that no ESA-listed marine mammal, including right whales, would be exposed to sound levels at or above NMFS behavioral harassment threshold for impulsive noise (*i.e.*, 160 dB rms). Therefore, Bluewater has determined that only eight species of marine mammals have the potential to be taken by harassment incidental to MDfC installation off Delaware and New Jersey. These

include bottlenose dolphins, spotted dolphins, common dolphins, Atlantic white-sided dolphins, Risso's dolphins, pilot whales, harbor porpoise, and harbor seals. None of these species are listed under the ESA. The western north Atlantic coastal stock of bottlenose dolphins is the only species listed as depleted under the MMPA. The action area does not provide significant reproductive, migratory and feeding habitat for any marine mammal. Animals will likely be transiting through the area or opportunistically resting or foraging. A detailed description on species status, abundance, and ecology of the eight species of cetaceans and pinnipeds that may be taken from the specified activity are provided in the IHA application and are summarized here with updates to some population size estimates.

Bottlenose Dolphins

There are two morphologically and genetically distinct bottlenose dolphin stocks in the Western Atlantic Ocean: coastal and offshore. Coastal bottlenose dolphins are continuously distributed along the Atlantic coast south of Long Island, New York around the Florida peninsula and along the Gulf of Mexico coast. Initially, a single stock of coastal morphotype bottlenose dolphins was thought to migrate seasonally between New Jersey (summer months) and central Florida based on seasonal patterns in strandings during a large scale mortality event occurring during 1987–1988 (Scott *et al.*, 1988). However, re-analysis of stranding data (McLellan *et al.*, 2003) and extensive analysis of genetic, photo-identification, satellite telemetry, and stable isotope studies demonstrate a complex mosaic of coastal bottlenose dolphin stocks (NMFS 2001). Seven management units within the range of the coastal western North Atlantic bottlenose dolphin

(Atlantic coast south of Long Island through the Gulf of Mexico) have been defined. Animals within the action area may belong to either the Southern Migratory Management Unit (MMU) or Northern Migratory Management Unit (NMMU).

The coastal stock of bottlenose dolphins resides along the inner continental shelf and around islands preferring waters less than 30–40 meters in depth, typically travel in groups of multiple animals, and may carry soft barnacles (*Xenobalanus* sp.) on the dorsal fin or flukes (NOAA Fisheries 2001, 2008; McLellan *et al.*, 2003). The offshore form are large robust animals which tend to travel in small groups of 1–3 individuals and are distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean. The best abundance estimates of the SMMU and NMMU come from summer aerial surveys which estimate the populations to be 10,341 and 7,489, respectively (NMFS, 2008). The offshore stock is estimated at 81,588 individuals (NMFS, 2008).

Spotted Dolphins

There are two species of spotted dolphin in the Atlantic Ocean, the Atlantic spotted dolphin (*Stenella frontalis*), and the pantropical spotted dolphin (*S. attenuata*) (Perrin, 1987). Where they co-occur, the two species can be difficult to differentiate (Waring *et al.*, 2006). Atlantic spotted dolphins prefer tropical to warm temperate waters along the continental shelf 10 to 200 meters (33 to 650 feet) deep to slope waters greater than 500 meters (1,640 feet) deep. Recent surveys in the Navy's Virginia Capes Operating Area (VACAPES OPAREA), which includes waters off Delaware through North Carolina, indicate higher abundance of spotted dolphin in deep, continental slope waters east of North Carolina, but

few, if any, in the vicinity of the project area (DoN, 2007b). The best available population estimates for Atlantic and Pantropical spotted dolphins are 50,978 and 4,439, respectively.

Common Dolphin

The common dolphin may be one of the most widely distributed species of cetaceans, as it is found world-wide in temperate, tropical, and subtropical seas. Mitochondrial DNA (mtDNA), and morphometric cranial analysis of North Atlantic specimens suggest that common dolphins in the western North Atlantic are composed of a single panmictic group whereas gene flow between western and eastern North Atlantic animals is limited (Westgate, 2005). Common dolphins can be found in pelagic waters of the Atlantic and Pacific Oceans along the 200- to 2,000-meter (650- to 6,500-foot) isobaths over the continental shelf. They are present in the western Atlantic from Newfoundland to Florida. This species is especially common along shelf edges and in areas associated with Gulf Stream features and sharp bottom relief such as seamounts and escarpments (Reeves *et al.*, 2002; NMFS, 2007)—bathymetric features not found at the project site.

Recent surveys in the Northeast Study Area (New Jersey through Maine) inclusive of the Navy's Atlantic City OPAREA, which includes waters off Delaware through North Carolina, indicate higher abundance of common dolphin in deep, continental slope waters throughout the Mid-Atlantic region, but few, if any, in the vicinity of the project area (DoN, 2007a and b). The best abundance estimate for common dolphins in the western North Atlantic is 120,743 animals (NMFS, 2007).

Atlantic White-sided Dolphins

Atlantic white-sided dolphins are typically found at depths greater than 330 feet (100 meters) in the cool temperate and subpolar waters of the North Atlantic, generally along the continental shelf between the Gulf Stream and the Labrador current to as far south as North Carolina (Bulloch 1993; Reeves *et al.* 2002). NMFS recognizes three stocks of the Atlantic white-sided dolphin in the western North Atlantic: a Gulf of Maine stock, a Gulf of St. Lawrence stock, and a Labrador Sea stock (Waring *et al.*, 2006). Although this species is widely distributed, sightings in the vicinity of Hudson Canyon and points south have occurred at low densities (Waring *et al.* 2006). The best available current abundance estimate for white-sided

dolphins in the western North Atlantic stock is 63,368 (NMFS, 2009).

Risso's Dolphin

Risso's dolphins are typically an offshore dolphin whose inshore appearance is uncommon (Reeves *et al.*, 2002). Risso's dolphins prefer temperate to tropical waters along the continental shelf edge and can range from Cape Hatteras to Georges Bank from spring through fall, and throughout the Mid-Atlantic Bight out to oceanic waters during winter (Payne *et al.*, 1984). Risso's dolphins are usually seen in groups of 12 to 40 individuals (NMFS, 2009). Loose aggregations of 100 to 200, or even several thousand, are seen occasionally (Reeves *et al.* 2002). Based on a survey from Maryland to the Bay of Fundy in 2004, the estimated population size for Risso's dolphins is 15,053 (NMFS, 2009).

Pilot Whale

There are two species of pilot whales in the western North Atlantic—the Atlantic or long-finned pilot whale, *Globicephala melas*, and the short-finned pilot whale, *G. macrorhynchus*. Sightings of these animals in the U.S. Atlantic Exclusive Economic Zone (EEZ), which extends from the coastline to 200 nm, occur in oceanic waters and along the continental shelf and continental slope in the northern Gulf of Mexico (Hansen *et al.* 1996; Mullin and Hoggard 2000; Mullin and Fulling 2003). Pilot whales are highly social and typical group size can range from the tens to hundreds and may reach up to 1,200 individuals (Zachariassen, 1993; Bloch, 1998). Information on stock differentiation for the Atlantic population based on morphological, genetic, and/or behavioral data is in progress. Pending these results, the western North Atlantic *Globicephala* sp. population(s) is provisionally being considered a separate stock from the northern Gulf of Mexico stock(s). Because these species are difficult to differentiate at sea, seasonal abundance estimates are reported for both long-finned and short-finned pilot whales. The best abundance estimate for *Globicephala* sp. is 31,139 (NMFS 2009).

Harbor Porpoise

The harbor porpoise inhabits shallow, coastal waters, often found in bays, estuaries, and harbors. During fall and spring, harbor porpoises are widely dispersed in the North Atlantic from New Jersey to Maine, with lower densities farther north and south. During winter (January to March), intermediate densities of harbor

porpoises can be found in waters off New Jersey to North Carolina. They are seen from the coastline to deep waters (≤ 1800 m; Westgate *et al.*, 1998), although the majority of the population is found over the continental shelf. Gaskin (1984; 1992) proposed that there were four separate populations in the western North Atlantic: the Gulf of Maine/Bay of Fundy, Gulf of St. Lawrence, Newfoundland, and Greenland populations. As described in NMFS' most recent stock assessment report (2009), this hypothesis has been recently supported by mtDNA analysis, organochlorine contaminants, heavy metals, and life history parameters. The aggregation of porpoises found in the mid-Atlantic during winter may be composed of a mix of all these stocks; however, the Gulf of Maine/Bay of Fundy stock is likely the largest contributor (NMFS, 2009). The best current abundance estimate of the Gulf of Maine/Bay of Fundy harbor porpoise stock is 89,054 (NMFS, 2009).

Harbor Seals

Harbor seals are the most abundant seals in eastern United States waters and are commonly found in all nearshore waters of the Atlantic Ocean and adjoining seas above northern Florida. However, their "normal" southern range is probably only to the waters off the coast of New Jersey. In late autumn and winter, harbor seals may be at sea continuously for several weeks or more (Reeves *et al.*, 2002). Although the stock structure of the western North Atlantic population is unknown, it is thought that harbor seals found along the eastern U.S. and Canadian coasts represent one population (Temte *et al.*, 1991). In late autumn and winter, harbor seals may be at sea continuously for several weeks or more, presumably feeding to recover body mass lost during the reproductive and molting seasons and to fatten up for the next breeding season (Reeves *et al.* 2002). (Reeves *et al.*, 2002). The population estimate for the western North Atlantic stock of harbor seals is 99,340 (Marine Mammal Center, 2002; NOAA, 1993; Waring *et al.*, 2006).

Potential Effects on Marine Mammals

NMFS has preliminarily determined that open-water impact pile driving of the single monopile at each site, as outlined in the project description, has the potential to result in behavioral harassment of marine mammals if they are present near the action area. However, NMFS notes that the limited duration of pile driving (3–8 hours) will minimize the chance marine mammals are exposed to pile driving noise and

pile driving at the sites will not occur concurrently; therefore, no cumulative impacts are anticipated. Bluewater has proposed a mitigation and monitoring plan designed to eliminate potential for Level A (injurious) harassment of all marine mammals and also Level B harassment of ESA-listed marine mammals (see *Proposed Mitigation* section).

Noise from pile driving may harass marine mammals. Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water. Sound is generally characterized by several variables, including frequency and sound level. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10-dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. All underwater noise levels presented here are

quantified in decibels relative to 1 micro Pascal (re: 1 microPa), unless otherwise noted.

Marine mammals are continually exposed to many sources of sound. Naturally occurring noise from lightning, rain, sub-sea earthquakes, and biological sounds (e.g., snapping shrimp, whale songs) are ubiquitous throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Type and significance of marine mammal reactions to noise are likely to depend on a variety of factors including, but not limited to, received levels, the behavioral state (e.g., feeding, traveling, etc.) of the animal at the time it receives the stimulus, frequency of the sound, distance from the source, source characteristics (e.g., is the source moving or stationary) and the level of the sound relative to ambient conditions (Southall *et al.*, 2007).

NMFS is in the process of developing guidelines for determining sound pressure level (SPL) thresholds for acoustic harassment based on the best available science. In the interim, NMFS generally considers 180 and 190 dB root mean square (rms) as the level at which cetaceans and pinnipeds, respectively, could be subjected to Level A (injurious) harassment. Level B (behavioral) harassment has the potential to occur if marine mammals are exposed to pulsed sounds (e.g. impact pile driving) at or above 160 dB rms, but below injurious thresholds. These thresholds are considered conservative.

Bluewater's analyzed pile driving data collected during offshore wind farm construction in Europe to estimate the distances to NMFS' threshold levels during pile driving off Delaware and New Jersey (see sections 2.2 and 2.3 in Bluewater's IHA application. Table 3 below summarizes the estimated distances to NMFS' Level A and B harassment isopleths at each location based on Bluewater's modeling. Water depth is the main contributing factor to any discrepancy between the two proposed sites.

TABLE 3—ESTIMATED DISTANCES TO NMFS' HARASSMENT THRESHOLDS FOR IMPACT PILE DRIVING OFF DELAWARE AND NEW JERSEY

Site location	190 dB re: 1 microPa (rms) ¹	180 dB re: 1 microPa (rms) ²	160 dB re: 1 microPa (rms) ³
OCS—Delaware	330 m	760 m	7,230 m
OCS—New Jersey	375 m	1,000 m	6,600 m

¹ Level A harassment threshold for pinnipeds in water.

² Level A harassment threshold for cetaceans.

³ Level B harassment thresholds for pinnipeds and cetaceans from impulsive noise.

Hearing Impairment

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very loud sounds. Hearing impairment is measured in two forms: Temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (i.e., 40 dB of TTS). Due to proposed mitigation measures, NMFS does not expect that marine mammals will be exposed to levels that could elicit PTS; therefore, it will not be discussed further.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to, in cases of strong TTS, days. For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects

on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Of all marine mammals which could be encountered during the very short pile driving period (3–8 hours), bottlenose and spotted dolphins are the species most likely to come within the action area as they are the most abundant. Bottlenose dolphins have been the subject for most TTS studies and can be considered a surrogate for other delphinids (e.g., spotted dolphins, common dolphins) that may be exposed to Bluewater's pile driving activity. For bottlenose dolphins, eight different captive individuals have been exposed to impulsive anthropogenic sound, with TTS being induced in five individuals (Schlundt *et al.*, 2000; Nachtigall *et al.*, 2004; Finneran *et al.*, 2007; Mooney *et al.*, 2009). TTS onset occurred when animals were exposed to sound levels

ranging from 182 to 203 dB re: 1 μ Pa²-s (SEL), with a median TTS onset level of 192.5 dB SEL. For pinnipeds, underwater TTS experiments involving exposure to pulse noise is limited to a single study. Finneran *et al.* (2003) found no measurable TTS when two California sea lions were exposed to sounds up to 183 dB re: 1 microPa (peak-to-peak). No TTS studies have been conducted on mysticetes; therefore, no data exist. However, if the pattern holds true as that for mid-frequency cetaceans and pinnipeds, one can assume that TTS occurs in mysticetes at levels much higher than NMFS' Level B behavioral harassment threshold for impulsive noise (*i.e.*, 160 dB) and likely above NMFS' Level A (injurious) harassment thresholds.

Bluewater is proposing to pile drive continuously for 3–8 hours. Until recently, previous marine mammal TTS studies have generally supported an equal energy relationship hypothesis whereby as amplitude and duration of sound exposure increase, generally, so does the amount of TS and recovery time (Southall *et al.*, 2007). However, two recent studies by Mooney *et al.* (2009a, 2009b) on a single bottlenose dolphin exposed to playbacks of Navy mid-frequency active sonar or octave-band (non-impulsive) noise (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band noise (centered at 2.5 kHz) concluded that for all noise exposure situations, the equal energy relationship may not be the best indicator to predict TTS onset levels. Generally, with sound exposures of equal energy, those that were quieter SPLs with longer duration were found to induce TTS onset more than those of louder (higher SPLs) and shorter duration. For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.*, 1966; Ward, 1997). Although Bluewater's pile driving would be both loud and continuous for 3–8 hours, NMFS anticipates that if TTS does occur, it would be short in duration as: (1) Pile driving would cease if animals come within the 190 or 180 dB isopleth for pinnipeds and cetaceans, respectively; and (2) marine mammals will likely not linger in areas with sound pressure levels high enough to induce long-term TTS.

Behavioral Impacts

NMFS has discussed behavioral impacts resulting from impact pile driving for various other projects (*e.g.*, 73 FR 38180; 74 FR 18492; 74 FR 63724) which are relevant here. Additionally,

in 2009, the MMS prepared an EA and associated Finding of No Significant Impact (FONSI) on the *Issuance of Leases for Wind Resource Data Collection on the Outer Continental Shelf Offshore Delaware and New Jersey* which analyzes the impacts of constructing, operating, and decommissioning MDCFs similar to ones proposed by Bluewater in their MMPA application. In summary, MMS found that noise from pile driving could disturb normal marine mammal behaviors (*e.g.*, feeding, social interactions), mask calls from conspecifics, disrupt echolocation capabilities, and mask sounds generated by predators. Behavioral effects may be incurred at ranges of many miles, and hearing impairment may occur at close range (Madsen *et al.*, 2006). Behavioral reactions may include avoidance of, or flight from, the sound source and its immediate surroundings, disruption of feeding behavior, interruption of vocal activity, and modification of vocal patterns (Watkins and Scheville, 1975; Malme *et al.*, 1984; Bowles *et al.*, 1994; Mate *et al.*, 1994). These impacts are similar to those previous identified by NMFS for the previous pile driving projects discussed above. NMFS characterizes the potential effects described here as indicative of Level B (behavioral) harassment.

In addition to noise related impacts to marine mammals, NMFS has considered the specified activity includes the impacts from vessel traffic (*i.e.*, ship strikes) and potential operational discharges from MDCF construction and operation. The marine mammals most vulnerable to vessel strikes are slow-moving and/or spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, right whales, fin whales, sperm whales). Smaller marine mammals such as delphinids, are agile and move more quickly through the water, making them less susceptible to ship strikes. Vessels used for construction include crew boats and slow moving support vessels such as tugs and barges. To prevent ship strikes, crew aboard all vessels associated with the specified activity transiting to and from the construction site would actively watch for whales and other marine mammals and vessel operators would abide by NMFS' Northeast Marine Mammal Viewing Guidelines. As a result, NMFS does not anticipate a ship strike is likely to occur.

MMS's EA also analyzed impacts from operational waste generated from vessels includes bilge and ballast waters, trash and debris, and sanitary and domestic wastes. Operational

discharges from construction vessels would be released into the open ocean where they would be rapidly diluted and dispersed, or collected and taken to shore for treatment and disposal. Sanitary and domestic wastes would be processed through on-site waste treatment facilities before being discharged overboard or would be tanked to shore for disposal there. Deck drainage would also be processed prior to discharge. The discharge or disposal of solid debris into offshore waters from OCS structures and vessels is prohibited by the MMS (30 CFR 250.300) and the USCG (MARPOL, Annex V, Public Law 100–220 [101 Statute 1458]). MMS and USCG would enforce such prohibitions; hence, the entanglement in or ingestion of proposed action-related trash and debris by marine mammals would not be expected. Because of the limited amount of vessel traffic and construction activity that would occur from Bluewater's proposed activities, the release of liquid wastes would occur infrequently and cease following completion of tower construction. NMFS agrees with MMS's analysis and, as such, has preliminarily determined that impacts to marine mammals from the discharge of waste materials or the accidental release of fuels are expected to be negligible.

Anticipated Effects on Habitat

The footprint of the foundation and scour protection (if used) is approximately 0.06 acre (30-foot radius around the monopile foundation) at the MDCF site. Under the terms of the MMS lease, within a period of one year after cancellation, expiration, relinquishment, or other termination of the lease, the lessee shall remove all devices, works and structures from the leased area and restore the leased area to its original condition before issuance of the lease (MMS 2008). Bluewater's consultation with the NMFS under section 7 of the ESA for the MMS lease, completed May 14, 2009, concluded that all effects of the proposed project, including those to habitat, will be insignificant or discountable. Under the MMPA, the same determination on effects to marine mammal habitat applies based on the factors in the earlier consultation.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying

particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Bluewater has proposed, and NMFS supports, the following mitigation measures designed to eliminate the potential for serious injury/mortality and Level A (injurious) harassment and minimize Level B (behavioral) harassment to marine mammals:

Establishment of Exclusion Zone

Bluewater would establish and monitor a preliminary 1,000 m Level A harassment exclusion zone (EZ) around the pile driving site in order to eliminate the potential for injury (Level A harassment) of marine mammals. This zone is designed to include all areas where the underwater SPLs are anticipated to equal or exceed 180 dB rms. If the acoustic survey (see Acoustic Monitoring section) determines that the area ensounded by sounds exceeding 180 dB extends beyond the preliminary 1,000-meter EZ, a new safety exclusion zone would be established. Otherwise, the 1,000-meter EZ will remain in place. Triggers and protocol for pile driving shut down for this zone are described below.

Bluewater would also establish a 7-km EZ at the Delaware site for ESA-listed marine mammals (*i.e.*, large whales) to avoid Level B (behavioral) harassment to these species. Should acoustic monitoring at the Delaware site determine the estimated distance to the 160 dB isopleth (the Level B harassment threshold level) is not accurate, the large whale exclusion zone would be altered for the New Jersey site accordingly, after accounting for depth differences between the two sites.

Pile Driving Shut-Down and Delay Triggers and Procedures

At least one protected species observer (PSO) stationed onboard the pile-driving vessel would monitor the established 1,000 m EZ for 30 minutes prior to the soft-start of pile driving. If the PSO observes a marine mammal within this zone during this time, the PSO would notify the Resident Engineer (or other authorized individual) who would then delay pile driving. Pile driving would not commence until the PSO confirms that animal has moved out of and on a path away from the EZ or a PSO has not sighted the animal within the EZ for 15 minutes. If a marine mammal approaches or enters the exclusion zone after pile driving has begun, pile driving would cease until the PSO confirms that the animal has moved out of and on a path away from

the EZ or the PSO has not sighted the animal within the EZ for 15 minutes. If pile driving ceases for 30 minutes or more, the PSO would observe for an additional 30-minute period before he/she would notify the Resident Engineer (or other authorized individual) that none of the aforementioned situations are triggered and pile driving could commence.

On a separate vessel navigating at approximately 4–5 kms around the pile hammer, PSOs would monitor for large whales. Protocol for pile shut down and delay would follow the procedures described above for the 1,000 EZ.

Ramp-Up Procedures

A ramp-up or soft-start will be used at the beginning of pile driving in order to provide additional protection to marine mammals near the project area by allowing them time to vacate the area prior to the commencement of pile-driving activities. The soft-start requires an initial set of 3 strikes from the impact hammer at 40 percent energy with a one minute waiting period between subsequent 3-strike sets. The procedure will be repeated two additional times. If marine mammals are sighted within the exclusion zone prior to pile-driving, or during the soft start, the Resident Engineer (or other authorized individual) will delay pile driving until the animal has moved outside the exclusion zone and no marine mammals are sighted for a period of 30 minutes.

Use of Sound Attenuation Devices

Bluewater has conducted a sound attenuation device feasibility study and has concluded that traditional devices (*e.g.*, bubble curtain, wood cap, sleeve) are not practical or feasible for the proposed activity for various reasons (see Bluewater's application). However, Bluewater would continue to explore other options and, if found, would implement a sound attenuation device during pile driving.

Reduced Hammer Force

Bluewater would not ramp-up to full power if, at decreased power, the pile can be driven to the desired depth. Recall that source levels are directly related to hammer force. The estimates to the Level A and Level B harassment thresholds are based on maximum hammer force (900 kJ); hence if less energy is used, noise levels would be less than anticipated.

Time-of-Day and Weather Restrictions

Pile-driving will be limited to day light hours between one-half hour after sunrise and one-half hour prior to sunset. If detection capability of a

marine mammal within the EZ is obscured by foul weather (*e.g.*, rough seas, fog), Bluewater would delay or suspend pile driving operations until the EZ is clear.

NMFS has carefully evaluated the applicant's proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Visual Monitoring

Bluewater is proposing to conduct both visual and acoustic monitoring to better understand impacts to marine mammals from pile driving and estimate take. At least one PSO would be stationed at the pile hammer to monitor, and implement mitigation if necessary, the preliminary 1,000 m EZ and notify the Resident Engineer (or other authorized person) if shut down is necessary. In addition, at least one PSO, in a dedicated visual monitoring vessel circumnavigating the pile hammer at a distance of 4–5 kms, would monitor the

Level B harassment zone (*i.e.*, those waters estimated to carry sound levels at or above 160 dB) to determine take numbers for non-listed marine mammals located at a distance to the pile hammer and call for pile driving shut down should a large whale enter this zone. PSOs would be stationed at the highest vantage point possible aboard support vessels (the higher the platform, the greater distance seen). In addition, a visual monitor would be aboard the acoustic monitoring vessel to observe for marine mammals. All PSOs will be in contact with each other at all times.

Acoustic Monitoring

Bluewater would carry out an acoustic study as described in the application (Attachment 1—Underwater Noise Survey Protocol). The plan includes the use of hydrophone array deployed by vessel within the near field (*i.e.*, within 1,000 m) which provides data in real time and two autonomous recorders in the far field (2 km and 5 km from the hammer) which will archive sound data until they are retrieved and downloaded. The plan is designed to: (1) Empirically verify the marine mammal exclusion and harassment zones; (2) estimate site specific underwater sound transmission loss decay rates in the action area; (3) provide a digital sound recording of acoustic measurements completed during pile driving; and (4) investigate background noise levels in absence of pile driving. As stated previously, the acoustic models contained within the application are likely an overestimate of sound levels; however, by how much cannot be determined at this time. Empirical data collection will help refine these numbers. Based on the data

collected at the each site, the EZ would be adjusted accordingly (but not less than 1,000 m) and from the autonomous recorders at the Delaware site, estimates to the Level B isopleths may be refined for the New Jersey site after adjustment for water depth differences. In addition, MMS may also conduct an independent sound study during pile driving, providing further acoustical data.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as:

Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

As discussed in the *Potential Effects* section above, marine mammals exposed to certain levels of pile driving noise may be taken by Level B harassment. Monitoring and mitigation measures will prevent animals from being exposed to levels which could induce Level A (injury) harassment. Responses to the specified activity may include avoidance, altered patterns in foraging, traveling, and resting patterns, masking, and stress hormone production. Many of these effects are difficult to quantify; therefore, NMFS has established threshold criteria which indicate the levels at which any of these effects may occur and a take is possible. Hence these levels are conservative and currently are being refined to better reflect the best scientific data available.

Bluewater has determined that eight species of marine mammals have the potential to be taken, by Level B harassment only, incidental to pile driving. Tables 4 and 5 below provide Bluewater’s proposed estimated take levels for Delaware and New Jersey, respectively. For all species, the requested take is less than 1% of the population; therefore, take numbers can be considered small relative to the population size. Although some species have low average and maximum calculated take estimates based on density, these species (*e.g.*, spotted dolphin, common dolphin) can travel in large groups, hence higher numbers of take are requested given the assumption that an entire group would come within the designated Level B harassment isopleths. Due to the short duration of pile driving (3–8 hours) it is unlikely single individuals would be exposed multiple times, further reducing impacts from Level B harassment. In addition, the number of requested takes proposed here are unlikely to all occur (*i.e.*, it is unlikely all these species would be present within the action area over a period of 3–8 hours); however, it is difficult to determine which species may or may not be encountered. For example, only spotted dolphins may come within the Level B harassment zone during pile driving; however, these animals travel in large groups so all take for this species may be used. Bluewater would cease pile driving if marine mammals come within 1,000 m of the pile; therefore, no Level A takes are requested nor would any be authorized in the proposed IHA. In addition, no ESA-listed species would be taken by harassment (Level A or B) given the implementation of the mitigation and monitoring measures described above.

TABLE 4—REQUESTED TAKE NUMBERS, BY SPECIES, OFF DELAWARE

Species	Density Fall (No./100 km ²)	Average take estimate ^a	Maximum take estimate ^b	Requested take (number of animals)
Bottlenose dolphin	3.969	4.95	11.90	15
Spotted dolphin	8.730	14.06	28.11	35
Common dolphin	5.275	8.09	16.99	20
Atlantic White-Sided dolphin	0.410	.066	1.32	15
Risso’s dolphin	3.288	5.29	10.59	15
Pilot whale	1.696	2.73	5.46	10
Harbor porpoise	3.200	5.15	10.30	15
Harbor seal ^c	9.743	16.69	31.37	35

^a Density values from Dept. of Navy (2007a,b).
^b Maximum take estimate 2x average take estimate.
^c Density estimate from Barlas (1999) used for this species.

TABLE 5—REQUESTED TAKE NUMBERS, BY SPECIES, OFF NEW JERSEY

Species	Density Fall (no./100 km ²) ^a	Average take estimate	Maximum take estimate ^b	Requested take (number of animals)
Bottlenose dolphin	3.969	4.94	9.88	15
Spotted dolphin	8.730	11.67	23.35	35
Common dolphin	5.275	7.05	14.11	20
Atlantic White-Sided dolphin	0.410	.055	1.10	15
Risso's dolphin	3.288	4.40	8.79	15
Pilot whale	1.696	2.27	4.54	10
Harbor porpoise	3.200	4.28	8.56	10
Harbor seal ^c	9.743	13.03	26.05	30

^a Density values from DoN (2007a,b).

^b Maximum take estimate 2x average take estimate.

^c Density estimate from Barlas (1999) used for this species.

Bluewater would operate support vessels (e.g., small vessels, barges, tugs) to deliver and install equipment at the MDCF site; however, operation of these vessels is not anticipated to result in takes of marine mammals. Vessels would transit to the site slowly and operators would follow NMFS' Northeast Regional marine mammal viewing guidelines. Vessel transit speed is similar to that in NMFS' final rule concerning right whale vessel collision reduction strategy which established operational measures for the shipping industry to reduce the potential for large vessel collisions with North Atlantic right whales while transiting to and from mid-Atlantic ports during right whale migratory periods (73 FR 60173; October 10, 2008). For these reasons (slow transit, viewing guideline adherence) NMFS does not anticipate take of marine mammals incidental to support vessel operation.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers the following: number of anticipated mortalities; number and nature of anticipated injuries; number, nature, intensity, and duration of Level B harassment; is the nature of the anticipated takes such that we would expect it to actually impact rates of recruitment or survival; and context in which the takes occur—that is will the takes occur in areas (and/or times) of significance for marine mammals (e.g., feeding or resting areas, reproductive areas, rookeries, critical habitat, etc.).

Due to the implementation of mitigation measures, no ESA-listed species would be exposed to sound levels exceeding those established by NMFS as indicative of harassment. Therefore, no take of ESA-listed marine mammals are anticipated to occur. Non-ESA listed marine mammals may be exposed temporarily to pile driving noise; however, at each location, pile driving would occur for only 3–8 hours in total. The waters in the mid-Atlantic OCS are not designated as critical habitat for ESA-listed marine mammals, nor do they provide significant habitat for any marine mammal species (i.e., no significant foraging or reproductive areas are known to be in this area). Animals within the action area are likely to be traveling, resting, socializing or opportunistically foraging. Noise from pile driving may temporarily disturb animals in these behavioral states and induce mild TTS; however, no significant or long-term impacts are anticipated given the implementation of mitigation measures, short duration of pile driving and the anticipation that individuals are not expected to linger within the action area. While pile driving noise may affect more than one individual, population level effects are not anticipated as impacts are anticipated to be limited to short term behavioral changes in individuals (e.g., avoidance, cessation of activity at time of noise exposure, change in vocalization patterns) and potential masking effects. These effects would not alter fitness or reproductive success. Bluewater would not conduct pile driving at both sites simultaneously; therefore, no cumulative impacts which could arise from exposure to noise from multiple pile hammers are expected. Finally, the project footprint is extremely small, and each MDCF would be removed after 1–2 years. Therefore, no long term impacts to marine mammal habitat are anticipated.

Bluewater has conducted a conservative analysis of estimated sound levels and used these estimates to determine take. Hence, the number of animals potentially taken is also likely an overestimated as it is not anticipated that all species listed in Tables 3 and 4 would be encountered during the short duration of pile driving. The number of animals requested to be taken is considered small (less than 1 percent) when compared to the estimated stock size for each species. Again, no ESA-listed species would be taken based on implementation of the proposed mitigation and monitoring measures and no Level A (injurious) harassment, serious injury, or mortality is anticipated nor would any be authorized in the proposed IHA.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that pile driving conducted by Bluewater during MDCF installation will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

Bluewater is not requesting, nor is NMFS proposing, take of ESA listed species; hence, ESA consultation is not necessary for issuance of the proposed IHA.

National Environmental Policy Act (NEPA)

On June 2, 2009, the MMS issued an EA and associated Finding of No Significant Impact (FONSI) on the *Issuance of Leases for Wind Resource Data Collection on the Outer Continental Shelf Offshore Delaware and New Jersey*. The EA evaluates the impacts to the human environment, including those to marine mammals, from issuing seven leases in the Atlantic OCS for purposes of constructing, operating, and decommissioning a MDCF in each lease block. The MDCFs proposed by Bluewater are included in that analysis. NMFS will either adopt MMS's EA or conduct a separate NEPA analysis, as necessary, prior to making a final determination of the issuance of the IHA. The EA is available for comment on NMFS' Web site (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>) for the duration of the

public comment period of the proposed IHA.

Dated: July 15, 2010.
James H. Lecky,
*Director, Office of Protected Resources,
National Marine Fisheries Service.*
[FR Doc. 2010-17968 Filed 7-21-10; 8:45 am]
BILLING CODE 3510-22-P

to fulfill the requirements of section 155 of Public Law 104-164, dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

SUPPLEMENTARY INFORMATION: The following are copies of letters to the Speaker of the House of Representatives, Transmittals 10-09, 10-33, and 10-37 with associated attachments.

Dated: July 19, 2010.
Mitchell S. Bryman,
*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

Transmittal No. 10-09

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10-09 with attached transmittal, and policy justification.

BILLING CODE 5000-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary
[Transmittal Nos. 10-09, 10-33, and 10-37]

36(b)(1) Arms Sales Notifications

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of three section 36(b)(1) arms sales notifications



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 13 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-09, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Chile for defense articles and services estimated to cost \$105 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeanne L. Farmer
Acting Deputy Director

- Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 10-09

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

- (i) Prospective Purchaser: Chile
- (ii) Total Estimated Value:
- | | |
|--------------------------|---------------|
| Major Defense Equipment* | \$ 65 million |
| Other | \$ 40 million |
| TOTAL | \$105 million |
- (iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: three (3) Forward Area Air Defense (FAAD) Command and Control Intelligence Systems (C2I), three (3) Single Channel Ground and Airborne Radio Systems (SINGARS) Vehicle Dual Long-Range Radio Systems (AN/VRC-92E), fourteen (14) Enhanced Position Location Reporting System (EPLRS) Radio Transmitters, three (3) FAAD Force Operations Systems Air and Missile Defense Workstations (AMDWS), spare and repair parts, support equipment, communication support equipment, repair and return, tool and test equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.
- (iv) Military Department: Army (ULS)
- (v) Prior Related Cases, if any: None
- (vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None
- (vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None.
- (viii) Date Report Delivered to Congress: JUL 13 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Chile – Forward Area Air Defense Engagement and Force Operations Systems**

The Government of Chile has requested a possible sale of three (3) Forward Area Air Defense (FAAD) Command and Control Intelligence Systems (C2I), three (3) Single Channel Ground and Airborne Radio Systems (SINCGARS) Vehicle Dual Long-Range Radio Systems (AN/VRC-92E), fourteen (14) Enhanced Position Location Reporting System (EPLRS) Radio Transmitters, three (3) FAAD Force Operations Systems Air and Missile Defense Workstations (AMDWS), spare and repair parts, support equipment, communication support equipment, repair and return, tool and test equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The estimated cost is \$105 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South America.

Chile intends to use these systems to modernize its air defense posture. The sale of these systems will positively contribute to the Chilean military's goal to update its capability while further enhancing greater interoperability between Chile, the U.S., and other allies. Chile will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Northrop Grumman in Carson, California; Raytheon in Ft. Wayne, Indiana; Raytheon in Fullerton, California; and ITT Industries in Ft. Wayne, Indiana. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require up to 4 U.S. Government or contractor representatives to travel to Chile for a period of 5 weeks for equipment deprocessing, fielding, system checkout, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10–33

The following is a copy of a letter to the Speaker of the House of

Representatives, Transmittal 10–33 with attached transmittal, policy justification, and Sensitivity of Technology.
BILLING CODE 5001–06–P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 15 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-33, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Canada for defense articles and services estimated to cost \$377 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,


Richard A. Genaille, Jr.
Deputy Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 10-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

- (i) Prospective Purchaser: Canada
- (ii) Total Estimated Value:
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 322 million |
| Other | <u>\$ 55 million</u> |
| TOTAL | \$ 377 million |
- (iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 10 AN/TPQ-36 (EQ-36) Enhanced FIREFINDER Radars or 10 AN/MPQ-64F1 SENTINEL Radars, 10 AN/VRC-92E or AN/VRC-92F Single Channel Ground and Airborne Radio System (SINGARS) Vehicular Dual Long-Range System Radios; 10 SENTINEL 11521A High Mobility Multipurpose Wheeled Vehicles (HMMWVs), 10 AN/TPX 57 Identification Friend or Foe (IFF), trailers, generators, repair and return support, tool and test equipment, communications support equipment, U.S. Government and contractor technical and logistics personnel support services, support equipment, spare and repair parts, and other related elements of logistics support.
- (iv) Military Department: Army (ZYP and ZYE)
- (v) Prior Related Cases, if any: None
- (vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None
- (vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex.
- (viii) Date Report Delivered to Congress: JUL 15 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATIONCanada – AN/TPQ-36 (EQ-36) FIREFINDER Radars or AN/MPQ-64F1 SENTINEL Radars

The government of Canada has requested a possible sale of 10 AN/TPQ-36 (EQ-36) Enhanced FIREFINDER Radars or 10 AN/MPQ-64F1 SENTINEL Radars, 10 AN/VRC-92E or AN/VRC-92F Single Channel Ground and Airborne Radio System (SINCGARS) Vehicular Dual Long-Range System Radios; 10 SENTINEL 11521A High Mobility Multipurpose Wheeled Vehicles (HMMWVs), 10 AN/TPX 57 Identification Friend or Foe (IFF), trailers, generators, repair and return support, tool and test equipment, communications support equipment, U.S. Government and contractor technical and logistics personnel support services, support equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is \$377 million.

The proposed sale will contribute to the foreign policy and national security of the United States by improving the security of a NATO ally that has been, and continues to be, an important force for political stability and economic progress in North America.

The proposed equipment sale will assist Canada by modernizing its forces. This will promote Canadian interoperability with U.S. forces and allow both countries to work together on future operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Thales Raytheon Systems of Fullerton, California, International Telephone and Telegraph of Fort Wayne, Indiana, American General of South Bend, Indiana, and Lockheed Martin in Syracuse, New York. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Canada.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Date Report Delivered to Congress: JUL 15 2010

Transmittal No. 10-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amendedAnnex
Item No. vii(vii) Sensitivity of Technology:

1. The Enhanced AN/TPQ-36 (EQ-36) FIREFINDER radar system is an enhancement of the AN/TPQ-36(V)8 target acquisition counter fire radar system. The radar system will detect in-flight projectiles and determine and communicate fire point locations mortars, artillery, rockets and missiles. The EQ-36 radar system provides AN/TPQ-37 type performance and improves operational and support costs. The EQ-36 radar system also improves on the present 360 degree coverage pattern from a static 90 degrees to a continuous 360 degrees. The EQ-36 hardware and software is Unclassified sensitive until deployed in theater with classified mapping and position data, at which time it is classified to the highest classification of the information up to Secret.

2. The AN/MPQ-64 SENTINEL Radar System is a fielded air defense radar system in the Army inventory. SENTINEL is a derivative of the AN/TPQ-36 FIREFINDER System used for artillery detection and the AN/TPQ-36A Norwegian-adapted Hawk system. The SENTINEL radar (AN/MPQ-64) is the sensor for the Short Range Air Defense (SHORAD) weapon systems, including the Avenger, any ground-launched Stinger platform, and Bradley-Linebacker. SENTINEL is a mobile phased-array radar that provides highly accurate three dimensional radar track data to operate systems via the Forward Area Air Defense (FAAD) Command, Control, and Intelligence (C2I) node. SENTINEL's detection range, mobility, and 360 degree azimuth coverage allow it to support SHORAD weapons located throughout the division area. SENTINEL acquires, tracks, and reports cruise missiles, unmanned aerial vehicles, fixed and rotary wing aircraft in clutter and electronic counter measures environments. The SENTINEL export configuration (AN/MPQ-64F1) will be a derivative of the U.S. Army's Improved SENTINEL Radar that will be classified Confidential at the system level, when the classified software is loaded into the hardware. The hardware with the software removed and purged is Unclassified.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 10-37

The following is a copy of a letter to the Speaker of the House of

Representatives, Transmittal 10-37 with attached transmittal, policy justification and Sensitivity of Technology.

BILLING CODE 5001-06-P



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 07 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-37, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost \$2.1 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Genaille, Jr.".

Richard A. Genaille, Jr.
Deputy Director

- Enclosures:
1. Transmittal
 2. Policy Justification
 3. Sensitivity of Technology

Transmittal No. 10-37

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

- (i) Prospective Purchaser: Australia
- (ii) Total Estimated Value:
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$1.1 billion |
| Other | <u>\$1.0 billion</u> |
| TOTAL | \$2.1 billion |
- (iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 24 MH-60R SEAHAWK Multi-Mission Helicopters, 60 T-700 GE 401C Engines (48 installed and 12 spares), communication equipment, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.
- (iv) Military Department: Navy (SCF)
- (v) Prior Related Cases, if any: None
- (vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None
- (vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached
- (viii) Date Report Delivered to Congress: JUL 07 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATIONAustralia – MH-60R Multi-Mission Helicopters

The Government of Australia has requested a possible sale of 24 MH-60R SEAHAWK Multi-Mission Helicopters, 60 T-700 GE 401C Engines (48 installed and 12 spares), communication equipment, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is \$2.1 billion.

Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. Australia's efforts in peacekeeping and humanitarian operations in Iraq and in Afghanistan have served U.S. national security interests. This proposed sale is consistent with those objectives and facilitates burden sharing with our allies.

The proposed sale of the MH-60R SEAHAWK helicopters will improve Australia's anti-submarine and surface warfare capability and provide an improved search and rescue and anti-ship surveillance capability. Australia will also use the enhanced capability in future contingency operations encompassing humanitarian assistance, disaster relief, and stability operations in the Asia-Pacific region. Australia will have no difficulty absorbing these additional helicopters into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors are Sikorsky Aircraft Corporation in Stratford, Connecticut, Lockheed Martin in Owego, New York, General Electric in Lynn, Massachusetts, and Raytheon Corporation in Portsmouth, Rhode Island. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of ten contractor representatives to Australia to support delivery of the MH-60R helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-37

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MH-60R SEAHAWK Multi-Mission Helicopter contains new generation technology. It is equipped for a range of missions including: anti-submarine warfare (ASW), anti-surface warfare (ASuW), search and rescue, naval gunfire support, surveillance, communications relay, logistics support, personnel transfer and vertical replenishment. The fully integrated glass cockpit is equipped with four 8in x 10in (20.3cm x 25.4cm) full-color multi-function mission and flight displays that are night-vision goggle compatible and sunlight readable. The pilots and aircrew have common programmable keysets, a mass memory unit, mission and flight management computers and MII-60R dedicated operational software. The navigation suite includes LN-100G dual embedded global positioning system and inertial navigation system. The helicopter is equipped with a fully digital communications suite, with Link 16, ARC-210 radios for voice, Ultra High Frequency / Very High Frequency (UHF/VHF), satellite communications, and a Harris Hawklink Ku-band datalink. The helicopter is fitted with an AN/ALQ-210 electronic support measures system (ESM). Electronic warfare systems include the AN/AAR-47 missile warning system, AN/ALQ-144 infrared jammer, and AN/ALE-39 chaff and flare decoy dispenser. The MII-60R, including the mission equipment is classified Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2010-17965 Filed 7-21-10; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE**Office of the Secretary****Notice of Intent To Grant an Exclusive License; Doar, Peku, Sall Limited Liability Company****AGENCY:** National Security Agency, DoD.**ACTION:** Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant Doar, Peku, Sall Limited Liability Company a revocable, non-assignable, exclusive, license to practice the following Government-Owned inventions as described in the following: U.S. Patent No. 5,656,552 entitled "Method of making a thin conformal high-yielding multi-chip module"; U.S. Patent No. 5,835,912 entitled "Method of efficiency and flexibility storing, retrieving, and modifying data in any language representation"; U.S. Patent No. 6,005,986 entitled "Method of identifying the script of a document irrespective of orientation"; U.S. Patent

No. 6,070,175 entitled "Method of file editing using framemaker enhanced by application programming interface clients"; U.S. Patent No. 6,144,189 entitled "Device for and method of switching and monitoring batteries"; U.S. Patent No. 6,298,144 entitled "Device for and method of detecting motion in an image"; U.S. Patent No. 6,391,744 entitled "Method of fabricating a non-SOI device on an SOI starting wafer and thinning the same"; U.S. Patent No. 6,493,366 entitled "Vertical cavity surface emitting laser with oxidized strain-compensated superlattice of group III-V semiconductor"; U.S. Patent No. 6,519,362 entitled "Method of extracting text present in a color image"; U.S. Patent No. 6,531,414 entitled "Method of oxidizing strain-compensated superlattice of group III-V semiconductor"; U.S. Patent No. 6,704,449 entitled "Method of extracting text from graphical images"; U.S. Patent No. 6,941,013 entitled "Method of image binarization using histogram modeling"; U.S. Patent No. 6,977,212 entitled "Fabricating a semiconductor device using fully cured bisbenzocyclobutene"; U.S. Patent No. 7,232,740 entitled "Method for bumping a thin wafer"; U.S.

Patent No. 7,286,359 entitled "Use of thermally conductive vias to extract heat from microelectronic chips and method of manufacturing"; U.S. Patent No. 7,320,937 entitled "Method of reliably electroless-plating integrated circuit die,"; and U.S. Patent No. 7,351,608 entitled "Method of precisely aligning components in flexible integrated circuit module."

The above-mentioned inventions are assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with any supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the National Security Agency Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755-6541.

FOR FURTHER INFORMATION CONTACT: Marian T. Roche, Director, Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755-6541, telephone (443) 479-9569.

Dated: July 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010-17967 Filed 7-21-10; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2010-0025]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add a new system of records.

SUMMARY: The Department of the Navy proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on August 23, 2010, unless comments are received that would result in a contrary determination.

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

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number 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: Mrs. Miriam Brown-Lam (202) 685-6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from Mrs. Miriam Brown-Lam, HEAD, FOIA/Privacy Act Policy Branch, the Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350-2000.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 2, 2010, to the House Committee on Government Report, the Senate Committee on Homeland

Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: July 19, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N03501-3

SYSTEM NAME:

Readiness and Cost Reporting Program (RCRP) Records.

SYSTEM LOCATION:

Defense Enterprise Computing Center (DECC), 5450 Carlisle Pike, Mechanicsburg, PA 17050-0975.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy active duty and reserve personnel assigned to units within the Navy Expeditionary Combat Command (NECC) organization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, last four digits of Social Security Number (SSN), duty station, Unit Identification Code, rate, grade, designator, Navy Enlisted Code, Navy Officer Billet Classification Code, Active Duty start date, projected rotation Date, End Active Obligated Service, gear issued, qualifications (courses, graduation dates and expirations) and readiness related status information (medical readiness, physical readiness, administrative status, availability, deployability). Additionally the system maintains RCRP user account and authorization information (user identifier, user role/privileges and security questions).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 117, Readiness Reporting System: Establishment; Reporting to Congressional Committees; DoD Directive 5149.2, Senior Readiness Oversight Council; DoD Directive 7730.65, Department of Defense Readiness Reporting System; and OPNAV Instruction 3501.36, Defense Readiness Reporting System—Navy (DRRS-N); and E.O. 9397 (SSN) as amended.

PURPOSE(S):

RCRP is a readiness reporting system based on Mission Essential Tasks (METs) which provides a standardized, enterprise-wide capability for the Navy Expeditionary Combat Command

(NECC) operating forces to measure, display and report the readiness status of personnel, equipment, supply, training and ordnance resources and meet Defense Readiness Reporting System—Navy (DRRS-N) requirements. RCRP provides Commanders at appropriate levels within NECC with the ability to visualize the readiness of their units and subordinate units based on Chain of Command construct and associated permissions/roles in response to mission needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on electronic storage media.

RETRIEVABILITY:

Records about individuals may be retrieved using a combination of name, geographic and demographic characteristics (such as name, last four digits of Social Security Number (SSN), grade, Unit Identification Code, and duty station) as inputs.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords and Common Access Card (CAC). All individuals to be granted access to this system of records are to have received Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Records are destroyed when 2 years old by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Expeditionary Combat Command, 1575 Gator Blvd, Joint Expeditionary Base Little Creek, Virginia Beach, VA 23459-3024.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Commander, Navy Expeditionary Combat Command, Code (N8), 1575 Gator Blvd, Joint Expeditionary Base Little Creek, Virginia Beach, VA 23459-3024.

The request should be signed and include full name, last four digits of Social Security Number (SSN), grade, Unit Identification Code, duty station and a complete mailing address. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Expeditionary Combat Command, Code (N8), 1575 Gator Blvd, Joint Expeditionary Base Little Creek, Virginia Beach, VA 23459-3024.

The request should be signed and include full name, last four digits of Social Security Number (SSN), grade, Unit Identification Code, duty station and a complete mailing address. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, command personnel, and automated data systems for personnel and training.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010-17891 Filed 7-21-10; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Department of the Air Force**

[Docket ID: USAF-2010-0021]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on August 23, 2010, unless comments are received that would result in a contrary determination.

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

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number 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: Mr. Charles J. Shedrick, 703-696-6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on July 2, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget pursuant to paragraph 4c of Appendix I

to Office of Management and Budget Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996; 61 FR 6427).

Dated: July 19, 2010.

Mitchell S. Bryman,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AFJA I**SYSTEM NAME:**

Courts-martial and Article 15 Records (December 31, 2008; 73 FR 80376).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Military Justice and Magistrate Court Records."

SYSTEM LOCATION:

Delete entry and replace with "The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420. Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150-4746.

Headquarters of major commands and all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Delete entry and replace with "Individuals subject to the Uniform Code of Military Justice and the Magistrate court program."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Records of trial by courts-martial, Social Security Number (SSN), military service number, individual's full name, nonjudicial punishment under Article 15 of the Uniform Code of Military Justice, and magistrate court proceedings. Records include case summaries, military justice activity reports, witness statements, investigative reports, medical records, personnel records, financial records, reports of investigations, commander directed inquiries, and other reports and records from local, state, and other federal agencies."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 10 U.S.C. 8037, Judge Advocate General,

Deputy Judge Advocate General: Appointment and duties; 10 U.S.C. 815(g), Commanding officer's nonjudicial punishment; 10 U.S.C. 854, Record of Trial; 10 U.S.C. 865, Disposition of records after review by the convening authority; 10 U.S.C. 938, Complaints of Wrongs; 18 U.S.C. 3401, Misdemeanors; application of probation laws; AFI 51-201, Administration of Military Justice; AFI 51-202, Nonjudicial Punishment; AFI 51-905, Use of Magistrate Judges for Trial of Misdemeanors Committed by Civilians; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "Investigate, adjudicate and prosecute adverse action cases, Article 138 complaints, and other administrative and criminal actions related to violation of federal law and regulations and state law occurring on and off a military installation; for use by appellate authorities and federal and state licensing authorities; for statistical purposes and to manage case processing; and to provide victims and witnesses information consistent with the requirements of the Victim and Witness Assistance Program, the Victims' Rights and Restitution Act of 1990, and other laws and regulations governing the providing of information to victims and witnesses related to military justice actions and criminal cases and their administrative disposition."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records from this system may be disclosed to other federal agencies and courts for official purposes, to include a determination of rights and entitlements of individuals concerned.

To a governmental board or agency or health care professional society or organization if such record or document is needed to perform licensing or professional standards monitoring; to medical institutions or organizations for official purposes, wherein the individual has applied for or been granted authority or employment to provide health care services if such record or document is needed to assess the professional qualifications of such member.

To victims and witnesses for the purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program, the Victims' Rights and Restitution Act of 1990, and other laws and regulations governing the providing of information to victims and witnesses related to military justice actions and criminal cases, and their administrative disposition.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper files and electronic storage media."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Magistrate court records are destroyed 3 years after a case is closed.

Article 15 records maintained at base legal offices are destroyed after 3 years or when no longer needed, whichever is later, and forwarded for filing in the member's permanent master personnel record.

Original court-martial records of trials are retired as permanent records. Duplicate copies of general courts-martial records maintained at base legal offices are destroyed 2 years after final review. Duplicate copies of all other courts-martial records maintained at base legal offices are destroyed 1 year after final review.

Records and reports stored in computer databases are maintained until UCMJ action is final or when no longer needed, whichever is later.

Paper records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by overwriting or permanently deleting."

* * * * *

F051 AFJA I

SYSTEM NAME:

Military Justice and Magistrate Court Records.

SYSTEM LOCATION:

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150-4746.

Headquarters of major commands and all levels down to and including Air

Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals subject to the Uniform Code of Military Justice and the Magistrate court program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of trial by courts-martial, Social Security Number (SSN), military service number, individual's full name, nonjudicial punishment under Article 15 of the Uniform Code of Military Justice, and magistrate court proceedings. Records include case summaries, military justice activity reports, witness statements, investigative reports, medical records, personnel records, financial records, reports of investigations, commander directed inquiries, and other reports and records from local, state, and other federal agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 10 U.S.C. 8037, Judge Advocate General, Deputy Judge Advocate General: Appointment and duties; 10 U.S.C. 815(g), Commanding officer's nonjudicial punishment; 10 U.S.C. 854, Record of Trial; 10 U.S.C. 865, Disposition of records after review by the convening authority; 10 U.S.C. 938, Complaints of Wrongs; 18 U.S.C. 3401, Misdemeanors; application of probation laws; AFI 51-201, Administration of Military Justice; AFI 51-202, Nonjudicial Punishment; AFI 51-905, Use of Magistrate Judges for Trial of Misdemeanors Committed by Civilians; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Investigate, adjudicate and prosecute adverse action cases, Article 138 complaints, and other administrative and criminal actions related to violation of federal law and regulations and state law occurring on and off a military installation; for use by appellate authorities and federal and state licensing authorities; for statistical purposes and to manage case processing; and to provide victims and witnesses information consistent with the requirements of the Victim and Witness Assistance Program, the Victims' Rights and Restitution Act of 1990, and other laws and regulations governing the providing of information to victims and witnesses related to military justice actions and criminal cases and their administrative disposition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records from this system may be disclosed to other federal agencies and courts for official purposes, to include a determination of rights and entitlements of individuals concerned.

To a governmental board or agency or health care professional society or organization if such record or document is needed to perform licensing or professional standards monitoring; to medical institutions or organizations for official purposes, wherein the individual has applied for or been granted authority or employment to provide health care services if such record or document is needed to assess the professional qualifications of such member.

To victims and witnesses for the purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program, the Victims' Rights and Restitution Act of 1990, and other laws and regulations governing the providing of information to victims and witnesses related to military justice actions and criminal cases, and their administrative disposition.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic storage media.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number (SSN), or military service number.

SAFEGUARDS:

Records are accessed by authorized personnel as necessary to accomplish their official duties. Paper records are stored in vaults and locked rooms or cabinets. Computer records have access controls, to include password protection and encryption. Physical servers reside in an office space behind cyber lock.

RETENTION AND DISPOSAL:

Magistrate court records are destroyed 3 years after a case is closed.

Article 15 records maintained at base legal offices are destroyed after 3 years or when no longer needed, whichever is later, and forwarded for filing in the member's permanent master personnel record.

Original court-martial records of trials are retired as permanent records. Duplicate copies of general courts-martial records maintained at base legal offices are destroyed 2 years after final review. Duplicate copies of all other courts-martial records maintained at base legal offices are destroyed 1 year after final review.

Records and reports stored in computer databases are maintained until UCMJ action is final or when no longer needed, whichever is later.

Paper records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by overwriting or permanently deleting.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

Individuals should provide their full name and Social Security Number (SSN) and/or military service number; unit of assignment; date of trial; type of court; date of discharge action; and date of punishment imposed in the case of Article 15 action may also be necessary, as appropriate.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

Individuals should provide their full name and Social Security Number (SSN) and/or military service number; unit of assignment; date of trial; type of court; date of discharge action; and date of punishment imposed in the case of Article 15 action may also be necessary, as appropriate.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction

33-332; 32 CFR Part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from almost any source can be included if it is relevant and material to the proceedings. These include, but are not limited to, witness statements; police reports; reports from local, state, and federal agencies; information submitted by an individual making an Article 138 complaint; Inspector General investigations; and commander directed inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2).

However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b.

[FR Doc. 2010-17962 Filed 7-21-10; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF-2010-0020]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on August 23, 2010, unless comments are received that would result in a contrary determination.

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

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Room 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number 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: Mr. Charles Shedrick at (703) 696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPF, 1800 Air Force Pentagon, Washington, DC 20330–1800.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 19, 2010.

Mitchell S. Bryman,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

F021 AFSPC A

SYSTEM NAME:

Cable Affairs Personnel/Agency Records (June 11, 1997; 62 FR 31793)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with “Intercontinental Ballistic Missile Cable Affairs Offices at missile bases reporting to Headquarters Air Global Strike

Command. Official mailing addresses are published as an appendix to the Air Force’s compilation of systems of records notices.”

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with “10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; and AFI 21–202, Volume 1, Missile Maintenance Management.”

* * * * *

RETRIEVABILITY:

Delete entry and replace with “Records may be retrieved by name, home address and telephone number.”

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with “Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330–1030. Chief, Nuclear Command, Control and Communications Branch, Headquarters Air Force Global Strike Command/A6ON, 414 Curtiss Road, Suite 227, Barksdale Air Force Base, LA 71110–2455.”

NOTIFICATION PROCEDURE:

Delete entry and replace with “Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330–1030, or to the Chief, Nuclear Command, Control and Communications Branch, Headquarters Air Force Global Strike Command/A6ON, 414 Curtiss Road, Suite 227, Barksdale Air Force Base, LA 71110–2455.

Request should include full name (First, M.I. and Last Name), home address, home telephone number and reason for your request.”

RECORD ACCESS PROCEDURES:

Delete entry and replace with “Individuals seeking to access records about themselves contained in this system should address requests to the Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330–1030, or to the Chief, Nuclear Command, Control and Communications Branch, Headquarters Air Force Global Strike Command/A6ON, 414 Curtiss Road, Suite 227, Barksdale Air Force Base, LA 71110–2455.

The request should include full name (First, M.I. and Last Name) mailing address and primary and alternate telephone numbers.”

* * * * *

F021 AFSPC A

SYSTEM NAME:

Cable Affairs Personnel/Agency Records

SYSTEM LOCATION:

Intercontinental Ballistic Missile Cable Affairs Offices at missile bases reporting to Headquarters Air Global Strike Command. Official mailing addresses are published as an appendix to the Air Force’s compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-United States Air Force personnel/agencies that cross or could cross, inundate, or otherwise affect the Hardened Intersite Cable System (HICS) and/or its rights-of-way (ROW). The personnel/agencies include landowners, tenants, highway/road departments, public and private utility companies, contractors, farm agencies (Federal, State, and local), municipal offices, and railroads.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records reflecting information on personnel/agencies who affect, or are affected by, the Hardened Intersite Cable System and its rights-of-way and/or actions on the Hardened Intersite Cable System and its rights-of-way.

Landowners and/or tenants information will include name, home address and home telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; and AFI 21–202, Volume 1, Missile Maintenance Management.

PURPOSE(S):

Used to track and monitor all agency activities that affect the Hardened Intersite Cable System and its rights-of-way (such as highway crossings, utility crossings, construction, earth moving, *etc.*) and could impair Hardened Intersite Cable System hardness integrity.

Also used to maintain contact with personnel/agencies to coordinate Hardened Intersite Cable System or Hardened Intersite Cable System rights-of-way maintenance/construction actions performed by the United States Air Force (USAF) or USAF contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Maintained in file folders and electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name, home address and telephone number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until no longer needed for reference. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting, or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330-1030.
Chief, Nuclear Command, Control and Communications Branch, Headquarters Air Force Global Strike Command/A6ON, 414 Curtiss Road, Suite 227, Barksdale Air Force Base, LA 71110-2455.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330-1030, or to the Chief, Nuclear Command, Control and Communications Branch, Headquarters Air Force Global Strike Command/

A6ON, 414 Curtiss Road, Suite 227, Barksdale Air Force Base, LA 71110-2455.

Request should include full name (First, M.I. and Last Name), home address, home telephone number and reason for your request.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Maintenance, Deputy Chief of Staff/Logistics, Headquarters United States Air Force, 1030 Air Force Pentagon, Washington, DC 20330-1030, or to the Chief, Nuclear Command, Control and Communications Branch, Headquarters Air Force Global Strike Command/A6ON, 414 Curtiss Road, Suite 227, Barksdale Air Force Base, LA 71110-2455.

The request should include full name (First, M.I. and Last Name) mailing address and primary and alternate telephone numbers.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Survey information obtained through replies from personnel/agencies as defined in categories of individuals above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010-17963 Filed 7-21-10; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION**Submission for OMB Review; Comment Request**

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13).
DATES: Interested persons are invited to submit comments on or before August 23, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New

Executive Office Building, Washington, DC 20503, be faxed to (202) 395-5806 or e-mailed to

oira_submission@omb.eop.gov with a cc: to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: July 16, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title of Collection: Application for Grants under the Business and International Education (BIE) Program.
OMB #: 1840-0794.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Estimated Number of Annual Responses: 100.

Estimated Annual Burden Hours: 10,017.

Abstract: Business and International Educational Program provides grants to institutions of higher education that enter into an agreement with a trade association to improve the academic teaching of the business curriculum and to conduct outreach activities. The application will be used for new awards.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary

Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or from the Department's Web site at <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4321. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address ICDocketMgr@ed.gov or faxed to 202–401–0920. Please specify the complete title and OMB Control Number of the information collection when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–17943 Filed 7–21–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 20, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance

Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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.

Dated: July 19, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: 21st Century Community Learning Centers (21st CCLC): Early Childhood Best Practices Project.

OMB #: 1810–NEW.

OMB Form #: N/A.

Frequency: On Occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 3,878.

Burden Hours: 4,105.

Abstract: The 21st Century Community Learning Centers (21st CCLC) program provides services to pre-Kindergarten and Kindergarten children through its afterschool program, but has little to no knowledge about how these programs function—i.e., activities, staffing patterns, curriculum, and other elements that may impact program quality. This survey will provide broad descriptive information on the range and quality of service provided to children participating in 21st CCLC programs.

Requests for 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 4362. 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 when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–17941 Filed 7–21–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 20, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested,

e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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.

Dated: July 16, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Scholar Data Report: Personnel Development Program, Part D of Individuals with Disabilities Education Act (IDEA).

OMB #: 1820-0530.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 450.

Burden Hours: 3,510.

Abstract: This package is a revision and contains instructions and the form necessary for grantees and contractors supported under the Individuals with Disabilities Education Act (IDEA), Personnel Development to Improve Services and Results for Children with Disabilities, Catalog Federal Domestic Assistance (CFDA) No. 84.325. Data obtained are used to evaluate and monitor the implementation of IDEA and for performance reporting. Analysis of these data will be used in the following ways: (a) To inform the activities and priorities specific to personnel preparation conducted by the U.S. Department of Education, Office of Special Education Programs (OSEP); (b) to determine variation in personnel preparation and factors related to that variation; and c) to evaluate the outcomes of the IDEA and the Personnel Development Program's performance measures under the Government

Performance and Results Act (GPRA) and the Program Assessment Rating Tool (PART). OSEP revisions have: (a) Modified items that collect information on scholars' knowledge and skills to reduce grantee work burden and to diminish response ambiguity, to simplify data entry and analysis, and to delete two items that were no longer needed; (b) added one item to determine whether the grantee expects the scholar to complete the program; (c) added two items to first section to determine if scholar received funding under a previous grant and the number of credit hours earned prior to starting the current grant program and that will be accepted for program completion; and (d) enhanced instructions for a few items to make the form more user-friendly and diminish response ambiguity.

Requests for 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 4363. 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 when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 2010-17944 Filed 7-21-10; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on DOE's request the Office of Management and Budget (OMB) to extend for three years the emergency Information Collection Request Title: OE Recovery Act Financial Assistance Grants, OMB Control No. 1910-5149 that DOE is submitting to OMB pursuant to the

Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before August 23, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to:

Matthew Grosso, Program Analyst, U.S. Department of Energy, OE/Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, or by fax at 202-586-5860, or by e-mail at matthew.grosso@hq.doe.gov; and DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Matthew Grosso at matthew.grosso@hq.doe.gov, or <http://www.oe.energy.gov/recovery/1285.htm>.

SUPPLEMENTARY INFORMATION:

This information collection request contains: (1) OMB No. 1910-5149; (2) *Information Collection Request Title:* OE Recovery Act Financial Assistance Grants; (3) *Type of Request:* Three-year extension of a prior emergency request; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act funds); (5) *Annual Estimated Number of Respondents:* 132; (6) *Annual Estimated Number of Total Responses:* 1,656; (7) *Annual Estimated Number of Burden Hours:* 3,312; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$621,000

for the first year, \$138,000 each subsequent year.

Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), Pub. L. 110-140.

Issued in Washington, DC on July 19, 2010.

Terri T. Lee,

Chief Operating Officer, Electricity Delivery and Energy Reliability.

[FR Doc. 2010-17893 Filed 7-21-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Implementing the National Broadband Plan; Comment Period Extension

AGENCY: Office of the General Counsel, DOE.

ACTION: Notice of extension of public comment period for reply comments.

SUMMARY: On May 11, 2010, the Department of Energy (DOE) published in the **Federal Register** two requests for information (RFI) regarding the implementation of the National Broadband Policy. The comment period on the RFIs closed on July 12, 2010, and reply comments are due on July 26, 2010. This notice announces that the period for submitting reply comments is extended to August 9, 2010.

DATES: DOE will accept reply comments, data, and information regarding the National Broadband Plan RFI: Data Access and the National Broadband Plan RFI: Communications Requirement received no later than August 9, 2010.

ADDRESSES: Any comments submitted must identify the National Broadband Plan RFI: Data Access or the National Broadband Plan RFI: Communications Requirement, as appropriate. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* broadband@hq.doe.gov.

Include "NBP RFI: Data Access" or "NBP RFI: Communications Requirement" in the subject line of the message.

- *Postal Mail:* U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Room 6A245, Washington, DC 20585-0121. Please submit one signed original paper copy.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen C. McLaughlin, Senior Legal Advisor to the General Counsel (202) 586-5281; broadband@hq.doe.gov. For media inquiries, you may contact Jen Stutsman at (202) 586-4940.

SUPPLEMENTARY INFORMATION: On May 11, 2010, the DOE released two RFIs in the **Federal Register** regarding the implementation of the National Broadband Policy. (75 FR 26203, 75 FR 26206). The first RFI requested information from electric utilities, consumer groups, and other interested parties regarding the protection of and access to consumer energy usage data as federal, state, and private entities seek to develop Smart Grid technologies. The second RFI requested information on the evolving needs of electric utilities as Smart Grid technologies are more broadly deployed. These RFIs, intended to solicit opinions from a diversity of stakeholders, provided for the submission of comments by July 12, 2010, and the submission of reply comments by July 26, 2010. To date, DOE has received more than 80 comments from electric utilities, private corporations, and consumer groups.

Given the high volume of comment submission and the apparent public interest, the DOE has determined that an extension of the public reply comment period is appropriate and is hereby extending the reply comment period. DOE will consider any comments received by August 9, 2010 and deems any comments received between July 12, 2010 and July 22, 2010 to be timely submitted.

Issued in Washington, DC, on July 16, 2010.

Scott Blake Harris,

General Counsel.

[FR Doc. 2010-18005 Filed 7-21-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10-470-000]

El Paso Natural Gas Company; Notice of Application

July 15, 2010.

Take notice that on July 13, 2010, El Paso Natural Gas Company (El Paso), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP10-470-000, an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to construct and operate replacement pipeline segments across the San Francisco River in Greenlee County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be

viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Susan C. Stires, Director, Regulatory Affairs, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, or by calling (719) 667-7514 (telephone) or (719) 667-7534 (fax), EPNGRegulatoryAffairs@elpaso.com, or to Craig V. Richardson, Vice President and General Counsel, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, or by calling (719) 520-4712 (telephone) or (719) 520-4898 (fax), EPNGLegalFERC@elpaso.com.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to

the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 29, 2010.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17880 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13717-000]

Copper Valley Electric Association, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 15, 2010.

On April 19, 2010, Copper Valley Electric Association, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Silver Lake Hydroelectric Project, located on Silver Lake and Duck River, in the Valdez-Cordova Census Area, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 400- to 600-foot-long, 100- to 125-foot-high roller-compacted concrete dam constructed at the outfall of Silver Lake to Duck River; (2) Silver Lake, with a surface area of 1,678 acres and a storage capacity of 165,200 acre-feet at elevation 425 feet mean sea level (msl)¹; (3) a 9-foot-diameter, 6,000-foot-long buried steel penstock; (4) a powerhouse containing three Francis turbine/generating units having a total installed capacity of 15 megawatts; (5) an open-channel tailrace; (6) an ecological return flow facility to support resident species within the bypassed reach of the Duck River; (7) a 50-foot-wide, 140-foot-long switchyard, with generation stepped down at the switchyard to serve local requirements; (8) approximately 4.5 miles of new roads to access the dam and powerhouse; (9) a 100-foot-long dock bulkhead with a 20-foot-wide, 30-foot-long seaplane/floatplane ramp; (10) a 300-foot-long, 150-foot-wide housing structure for plant operators; (11) a 40-foot-wide, 100-foot-long maintenance shop; and (12) appurtenant facilities. The proposed Silver Lake Hydroelectric

Project would have an average annual generation of 44.8 gigawatt-hours.

Applicant Contact: Robert A. Wilkinson, Copper Valley Electric Association, Inc., P.O. Box 45, Mile 187 Glenn Highway, Glennallen, Alaska 99588-0045; phone: (907) 822-3171.

FERC Contact: Jennifer Harper, 202-502-6136.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov/docs-filing/ferconline.asp>) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov; call toll-free at (866) 208-3676; or, for TTY, contact (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13717-000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17882 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

¹ Currently, Silver Lake has a surface area of 978 acres at 306 feet msl. The new dam will raise the surface elevation of Silver Lake to 425 feet msl, which will inundate about 700 acres (as calculated by Staff) of tribal land owned by the Chugach Alaska Corporation (Source: Permit Application filed April 19, 2010).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2851–016]

Cellu Tissue Corporation; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

July 15, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License (<1.5 MW).

b. *Project No.:* 2851–016.

c. *Date Filed:* April 29, 2010.

d. *Applicant:* Cellu Tissue Corporation.

e. *Name of Project:* Natural Dam Hydroelectric Project.

f. *Location:* The existing project is located on the Oswegatchie River in the town of Gouverneur, St. Lawrence County, New York. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Chris Fiedler or Robin Gaumes, Cellu Tissue Corp., Natural Dam Mill, 4921 Route 58N, Gouverneur, NY 13642, (315) 287–7190.

i. *FERC Contact:* John Baummer telephone (202) 502–6837, and e-mail john.baummer@ferc.gov.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.*

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov/docs-filing/ferconline.asp>) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Natural Dam Hydroelectric Project consists of: (1) A 230-foot-long, 3-foot-high concrete dam with a 155-foot-long spillway section equipped with a 2.2-foot-high inflatable rubber crest gate with a deflated crest elevation of 394.0 feet National Geodetic Vertical Datum (NGVD), and a 72-foot-long gated section equipped with 7 steel bulkhead headgates; (2) a 180-foot-long auxiliary dam/spillway with a crest elevation of 397.3 feet NGVD; (3) a 570-acre impoundment with a normal water surface elevation of 396.0 feet NGVD; (4) a 152-foot-long headpond with headgates connected to a power flume along the right bank of the river; (5) a 570-foot-long bypassed reach; (6) a powerhouse containing three generating units with a total installed capacity of 1,020 kW; (7) transformers located in a transformer yard adjacent to the north wall of the Powerhouse; and (8) other appurtenances.

Cellu Tissue Corporation proposes to: (1) Operate the project in a run-of-river mode with a minimum impoundment elevation of 395.85 feet; (2) maintain a minimum bypass flow of 77 cubic feet per second (cfs) or inflow, whichever is less; (3) upgrade water level monitoring equipment for the impoundment; and (4) install equipment to allow for automatic pond level control.

A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket

number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item (h) above.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	September 13, 2010.
Commission issue non-draft EA	January 11, 2011.
Comments on EA	February 10, 2011.
Modified terms and conditions	April 11, 2011.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17886 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13728-000]

Goodwin Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 15, 2010.

On May 10, 2010, Goodwin Power, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Goodwin Dam Project, located on the Stanislaus River in Tuolumne and Calaveras counties, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be located at the existing Goodwin dam¹ and would harness water that currently flows over the spillway of the Goodwin dam. The proposed project would

consist of: (1) One electrical generating unit, with a total installed capacity of 4 megawatts; (2) a 300-foot-long, 9-foot-diameter steel penstock to be installed through the dam body close to the southern abutment; (3) a powerhouse to be constructed approximately 300 feet below the Goodwin dam on the south side of the Stanislaus River; (4) an approximately 50-foot-long, 20-foot-wide tailrace canal that would take water from the powerhouse to the river bed; (5) a 15-foot-wide, gravel or other all-weather surface access road to be constructed from Tulloch Road to the powerhouse; (6) a new switchyard and 138-kilovolt transmission overhead line or buried cable approximately 1.5 miles in length that would connect to Pacific Gas and Electric Company's transmission lines at Tulloch dam;² and (7) appurtenant facilities.

Applicant Contact: Mr. Magnús Jóhannesson; America Renewables, LLC; 28605 Quailhill Drive, Rancho Palos Verdes, CA 90275; 310-699-6400; mj@americarenewables.com.

FERC Contact: Carolyn Templeton (202) 502-8785; carolyn.templeton@ferc.gov.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on

² Tulloch dam is a component of the Tulloch Hydroelectric Project (FERC Project No. 2067), which is owned and operated by Tri-Dam Project. The Tulloch Hydroelectric Project connects to transmission lines owned and operated by Pacific Gas and Electric Company.

the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13728) in the docket number field to access the document. For assistance, call toll free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17887 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 15, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC05-29-002.

Applicants: PNM Resources, Inc., Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits filing seeking Commission approval to modify the order issued by the Commission to remove the Markey Monitor Plan with an Independent Market Monitor etc.

Filed Date: 07/12/2010.

Accession Number: 20100712-0209.

Comment Date: 5 p.m. e.t. on Monday, August 2, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99-3911-007.

Applicants: Northbrook New York, LLC.

Description: Northbrook New York, LLC submits Sub Third Revised Sheet No. 1 *et al.* to FERC Electric Tariff, First Revised Volume No. 1.

Filed Date: 07/13/2010.

Accession Number: 20100713-0016.

Comment Date: 5 p.m. e.t. on Tuesday, August 3, 2010.

Docket Numbers: ER00-2706-008; ER01-2760-007; ER01-390-008; ER08-1255-002; ER99-2769-011; ER99-3450-010.

Applicants: Chandler Wind Partners, LLC, Foote Creek II, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners,

¹ The existing Goodwin dam is owned by the Oakdale Irrigation District and San Joaquin Irrigation District.

LLC, Oak Creek Wind Power, LLC, Foote Creek III, LLC.

Description: Supplement to Notice of Change in Status of Chandler Wind Partners, LLC, *et al.*

Filed Date: 06/10/2010.

Accession Number: 20100610-5093.

Comment Date: 5 p.m. e.t. on

Thursday, July 22, 2010.

Docket Numbers: ER03-1330-003.

Applicants: Ebersen, Inc.

Description: Ebersen, Inc. submit Shareholders/Stakeholders.

Filed Date: 07/12/2010.

Accession Number: 20100712-0055.

Comment Date: 5 p.m. e.t. on

Monday, August 2, 2010.

Docket Numbers: ER06-560-007;
ER06-560-004.

Applicants: Credit Suisse Energy LLC

Description: Credit Suisse Energy LLC Supplemental Information for Notices of Non-Material Change in Status.

Filed Date: 07/15/2010

Accession Number: 20100715-5066.

Comment Date: 5 p.m. e.t. on

Thursday, August 5, 2010.

Docket Numbers: ER10-895-004.

Applicants: The Detroit Edison Company.

Description: Detroit Edison Company submits a request for an effective date of the delayed Notice of Cancellation.

Filed Date: 07/14/2010.

Accession Number: 20100714-0204.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1047-001.

Applicants: Pacific Gas and Electric Company.

Description: Compliance Refund Report of Pacific Gas and Electric Company Service Agreement for Wholesale Distribution Service and Interconnection Agreement with Monterey Regional Waste Management District.

Filed Date: 07/07/2010

Accession Number: 20100707-5128.

Comment Date: 5 p.m. e.t. on

Wednesday, July 28, 2010.

Docket Numbers: ER10-1106-002.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35: Compliance Filing to Revise GMC Tariff to be effective 4/28/2010.

Filed Date: 07/15/2010.

Accession Number: 20100715-5043.

Comment Date: 5 p.m. e.t. on

Thursday, August 5, 2010.

Docket Numbers: ER10-1762-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits modifications to their Open

Access Transmission Tariff and the Amended and Restated Operating Agreement.

Filed Date: 07/13/2010.

Accession Number: 20100714-0201.

Comment Date: 5 p.m. e.t. on

Tuesday, August 3, 2010.

Docket Numbers: ER10-1732-000;
ER10-1733-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits partially executed Generator Interconnection Agreement with American Transmission Company, LLC etc.

Filed Date: 07/07/2010.

Accession Number: 20100708-0207.

Comment Date: 5 p.m. e.t. on

Wednesday, July 28, 2010

Docket Numbers: ER10-1754-000.

Applicants: Kentucky Power Company.

Description: American Electric Power Corp on behalf of Kentucky Power Co. submits the third revised Interconnection and local delivery service agreement.

Filed Date: 07/12/2010.

Accession Number: 20100712-0210.

Comment Date: 5 p.m. e.t. on

Monday, August 2, 2010.

Docket Numbers: ER10-1773-000.

Applicants: Allegheny Energy Supply Company LLC.

Description: Allegheny Energy Supply Company, LLC submits request for authorization to make wholesale power sales to its affiliate.

Filed Date: 07/14/2010.

Accession Number: 20100714-0206.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1774-000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.12: Baseline Open Access Transmission Tariff of Carolina Power and Light Co. to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5116.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1775-000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits tariff filing per 35.12: Baseline Open Access Transmission Tariff of Florida Power Corporation to be effective 7/14/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5117.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1776-000.

Applicants: Leaning Juniper Wind Power II LLC.

Description: Leaning Juniper Wind Power II LLC submits tariff filing per 35.12: 20100714 initial tariff to be effective 9/12/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5118.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1777-000.

Applicants: Sundevil Power Holdings, LLC.

Description: Sundevil Power Holdings, LLC submits tariff filing per 35.12: Initial Market Based Rates to be effective 8/16/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5119.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1778-000.

Applicants: EWO Marketing, Inc. *Description:* EWO Marketing, Inc. submits tariff filing per 35.13(a)(2)(iii): EWOM-SRMPA Short Term CBR Agreement to be effective 7/19/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5121.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1779-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, Inc submits an executed interconnection construction service agreement with Blackstone Wind Farm II, LLC *et al.*

Filed Date: 07/14/2010.

Accession Number: 20100715-0201.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1780-000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, Inc submits an executed Wholesale Market Participation Agreement with Sustainable Energy Holdings, LLC *et al.*

Filed Date: 07/14/2010.

Accession Number: 20100715-0202.

Comment Date: 5 p.m. e.t. on

Wednesday, August 4, 2010.

Docket Numbers: ER10-1781-000.

Applicants: Northern Indiana Public Service Company.

Description: Northern Indiana Public Service Company submits tariff filing per 35.12: Baseline to be effective 7/15/2010.

Filed Date: 07/15/2010.

Accession Number: 20100715-5030.

Comment Date: 5 p.m. e.t. on

Thursday, August 5, 2010.

Docket Numbers: ER10-1782-000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits tariff filing per 35.13(a)(1): Wholesale Transmission Rate Case to be effective 7/15/2010.

Filed Date: 07/15/2010.

Accession Number: 20100715-5041.

Comment Date: 5 p.m. e.t. on Thursday, August 5, 2010.

Take notice that the Commission received the following land acquisition filings:

Docket Numbers: LA10-1-000; ER01-2233-000.

Applicants: GWF Energy LLC.

Description: GWF Energy LLC submits its Quarterly Report of Generation Site Acquisition pursuant to Order No. 697-C and 697-D.

Filed Date: 06/25/2010.

Accession Number: 20100625-5141.

Comment Date: 5 p.m. e.t. on Friday, July 16, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. e.t. on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17884 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 16, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-964-000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Evergreen—Non-Conforming to be effective 8/16/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5040.

Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Docket Numbers: RP10-965-000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits tariff filing per 154.204: Evergreen Non-Conforming to be effective 8/16/2010.

Filed Date: 07/14/2010.

Accession Number: 20100714-5044.

Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Docket Numbers: RP10-967-000.

Applicants: Garden Banks Gas Pipeline, LLC.

Description: Garden Banks Gas Pipeline, LLC submits tariff filing per 154.203: Baseline Filing to be effective 8/15/2010.

Filed Date: 07/15/2010.

Accession Number: 20100715-5018.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 27, 2010.

Docket Numbers: RP10-968-000.

Applicants: Iroquois Gas Transmission System, LP.

Description: Iroquois Gas Transmission System, LP submits tariff filing per 154.202: BASELINE LOADER to be effective 7/15/2010.

Filed Date: 07/15/2010.

Accession Number: 20100715-5019.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 27, 2010.

Docket Numbers: RP10-969-000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Company LLC submits First Revised Sheet 7 *et al* of its FERC Gas tariff, Fourth Revised Volume 1, to be effective 7/16/10.

Filed Date: 07/15/2010.

Accession Number: 20100715-0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 27, 2010.

Docket Numbers: RP10-970-000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: Natural Gas Pipeline Company of America LLC submits First Revised Sheet 35C.12 *et al* to the FERC Gas Tariff, Seventh Revised Volume 1 to be effective 7/16/10.

Filed Date: 07/15/2010.

Accession Number: 20100715-0206.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 27, 2010.

Docket Numbers: RP10-971-000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Extension Rights for Lease Capacity to be effective 8/13/2010.

Filed Date: 07/15/2010.

Accession Number: 20100715-5056.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 27, 2010.

Docket Numbers: RP10-972-000.

Applicants: Gulfstream Natural Gas System, LLC.

Description: Gulfstream Natural Gas System, LLC submits tariff filing per 154.203: Gulfstream Baseline Filing to be effective 7/16/2010.

Filed Date: 07/16/2010.

Accession Number: 20100716–5014.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 28, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17913 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 8, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–896–000.

Applicants: Granite State Gas

Transmission, Inc.

Description: Granite State Gas Transmission, Inc submits First Revised Sheet 15 et al. to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 8/1/10.

Filed Date: 06/29/2010.

Accession Number: 20100629–0121.

Comment Date: 5 p.m. e.t. on Monday, July 12, 2010.

Docket Numbers: RP10–947–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Revise NNS Rate Schedule to be effective 8/6/2010.

Filed Date: 07/06/2010.

Accession Number: 20100706–5036.

Comment Date: 5 p.m. e.t. on Monday, July 19, 2010.

Docket Numbers: RP10–948–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits Third Revised Sheet 142 et al. to its FERC Gas Tariff, First Revised Volume 1, to be effective 8/1/10.

Filed Date: 07/02/2010.

Accession Number: 20100706–0215.

Comment Date: 5 p.m. e.t. on Wednesday, July 14, 2010.

Docket Numbers: RP10–949–000.

Applicants: Southern LNG Company, LLC.

Description: Southern LNG Company, LLC submits SLNG–1 Service Agreement 1SLNG, Exhibits A and F et al.

Filed Date: 07/06/2010.

Accession Number: 20100706–0220.

Comment Date: 5 p.m. e.t. on Monday, July 19, 2010.

Docket Numbers: RP10–950–000.

Applicants: Saltville Gas Storage Company L.L.C.

Description: Saltville Gas Storage Company L.L.C. submits tariff filing per 154.204: Negotiated Rate Agreements—Atmos Energy Marketing, to be effective 7/2/2010.

Filed Date: 07/07/2010.

Accession Number: 20100707–5022.

Comment Date: 5 p.m. e.t. on Monday, July 19, 2010.

Docket Numbers: CP10–18–001.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits its Original Sheet No. 1208, et al., to FERC Gas Tariff, Original Volume No. 2.

Filed Date: 06/29/2010.

Accession Number: 2010629–0124.

Comment Date: 5 p.m. e.t. on Monday, July 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. e.t. on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17912 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 12, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-401-000. RP10-577-000.

Applicants: Columbia Gas Transmission, LLC.

Description: Response to Data Request of Columbia Gas Transmission, LLC.

Filed Date: 07/07/2010.

Accession Number: 20100707-5064.

Comment Date: 5 p.m. e.t. on

Monday, July 19, 2010.

Docket Numbers: RP10-952-000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits Second Revised Sheet 579 of its FERC Gas Tariff, Sixth Revised Volume 1, to be effective 8/6/10.

Filed Date: 07/07/2010.

Accession Number: 20100708-0204.

Comment Date: 5 p.m. e.t. on

Monday, July 19, 2010.

Docket Numbers: RP10-953-000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. 2010 Report of Overrun and Penalty Revenue Distribution.

Filed Date: 07/08/2010.

Accession Number: 20100708-5061.

Comment Date: 5 p.m. e.t. on

Tuesday, July 20, 2010.

Docket Numbers: RP10-954-000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits tariff filing per 154.204: Master Service Agreement 7-9-10 to be effective 8/9/2010.

Filed Date: 07/09/2010.

Accession Number: 20100709-5029.

Comment Date: 5 p.m. e.t. on

Wednesday, July 21, 2010.

Docket Numbers: RP10-955-000.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.204:

DTI—Administrative Changes Volume No. 1A to be effective 8/8/2010.

Filed Date: 07/09/2010.

Accession Number: 20100709-5065.

Comment Date: 5 p.m. e.t. on

Wednesday, July 21, 2010.

Docket Numbers: RP10-956-000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits the Fourth Revised Sheet 2 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 8/9/10.

Filed Date: 07/09/2010.

Accession Number: 20100709-0210.

Comment Date: 5 p.m. e.t. on

Wednesday, July 21, 2010.

Docket Numbers: RP10-958-000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: AMDDO Modification to be effective 8/12/2010.

Filed Date: 07/12/2010.

Accession Number: 20100712-5026.

Comment Date: 5 p.m. e.t. on

Monday, July 26, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. e.t. on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17911 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 6, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-938-000.

Applicants: Ozark Gas Transmission, LLC.

Description: Ozark Gas Transmission, LLC submits Third Revised Sheet 1 *et al.* of its Tariff Gas Tariff, First Volume 1 to be effective 8/1/10.

Filed Date: 07/01/2010.

Accession Number: 20100702-0202.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10-939-000.

Applicants: Maritimes & Northeast Pipeline, LLC.

Description: Maritimes & Northeast Pipeline, LLC submits First Revised Sheet 153A *et al.* of its FERC Gas Tariff, First Revised Volume 1, to be effective 8/1/10.

Filed Date: 07/01/2010.

Accession Number: 20100702-0201.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10-940-000.

Applicants: ANR Pipeline Company. *Description:* ANR Pipeline Company submits Seventy-Second Sheet 18 *et al.* of its FERC Gas Tariff, Original Volume 1, to be effective 8/1/10.

Filed Date: 07/01/2010.

Accession Number: 20100702-0200.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10-941-000.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton, LP submits Fourth Revised Sheet 5 *et al.* to FERC Gas Tariff, Original Volume 1 to be effective 8/1/10.

Filed Date: 07/02/2010.

Accession Number: 20100702-0218.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: RP10-942-000.
Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits tariff filing per 154.203: Baseline to be effective 7/2/2010.

Filed Date: 07/02/2010.

Accession Number: 20100702-5057.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: RP10-943-000.
Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Sequent to be effective 7/1/2010.

Filed Date: 07/02/2010.

Accession Number: 20100702-5070.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: RP10-944-000.
Applicants: Gulfstream Natural Gas System, LLC.

Description: Gulfstream Natural Gas System, LLC submits Third Revised Sheet 8.01d to FERC Gas Tariff, Original Volume 1, to be effective 7/1/10.

Filed Date: 06/30/2010.

Accession Number: 20100701-0245.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10-945-000.
Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits Second Revised Sheet 215 to its FERC Gas Tariff, Second Revised Volume 1, to be effective 7/19/10.

Filed Date: 07/02/2010.

Accession Number: 20100706-0201.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: RP10-946-000.
Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits Seventh Revised Sheet 1 to its FERC Gas Tariff, Third Revised Volume 1, to be effective 8/2/10.

Filed Date: 07/02/2010.

Accession Number: 20100706-0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Any person desiring to intervene or to protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17910 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

July 14, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-957-000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits Fourth Revised Sheet 686 of its FERC Gas Tariff, Sixth Revised Volume 1.

Filed Date: 07/09/2010.

Accession Number: 20100712-0205.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: RP10-959-000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits tariff filing per 154.601: CVH Negotiated Rate to be effective 6/1/2010.

Filed Date: 07/12/2010.

Accession Number: 20100712-5127.
Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Docket Numbers: RP10-960-000.

Applicants: B-R Pipeline Company.

Description: B-R Pipeline Company submits tariff filing per 154.203: Baseline Resubmission to be effective 7/12/2010.

Filed Date: 07/12/2010.

Accession Number: 20100712-5129.
Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Docket Numbers: RP10-961-000.

Applicants: USG Pipeline Company.

Description: USG Pipeline Company submits tariff filing per 154.203: Baseline Resubmission to be effective 7/12/2010.

Filed Date: 07/12/2010.

Accession Number: 20100712-5141.
Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Docket Numbers: RP10-962-000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits Third Revised Sheet 1 *et al.* of its FERC Gas Tariff, Second Revised Volume 1, to be effective 8/13/10.

Filed Date: 07/13/2010.

Accession Number: 20100713-0202.
Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Docket Numbers: RP10-963-000.

Applicants: Granite State Gas Transmission, Inc.

Description: Granite State Gas Transmission, Inc. submits tariff filing per 154.203: Baseline Filing for Granite State Gas Transmission, Inc. to be effective 7/13/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713-5061.

Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Docket Number: CP10-467-000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Application for order permitting and approving abandonment of service re Transcontinental Gas Pipe Line Company, LLC.

Filed Date: 06/30/2010.

Accession Number: 20100701-0243.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in

Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17909 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

July 14, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09-406-003.

Applicants: Paiute Pipeline Company.

Description: Paiute Pipeline Company submits a refund report.

Filed Date: 06/14/2010.

Accession Number: 20100614-0216.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: RP10-738-001.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff filing per 154.203: Settlement Implementation Amendment to be effective 6/1/2010.

Filed Date: 07/09/2010.

Accession Number: 20100709-5056.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: RP10-756-001.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits tariff filing per: Supplemental Baseline Filing to be effective 5/24/2010.

Filed Date: 07/13/2010.

Accession Number: 20100713-5040.

Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest

must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17908 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 08, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10-79-000.

Applicants: Wildorado Wind Two, LLC.

Description: Joint Application of Wildorado Wind Two, LLC for Authorization under section 203 of the Federal Power Act and Request for Confidential Treatment, Expedited Consideration and Waivers.

Filed Date: 07/07/2010.

Accession Number: 20100707-5103.

Comment Date: 5 p.m. e.t. on Wednesday, July 28, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97-1481-013.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits its triennial update to its market power analysis.

Filed Date: 06/30/2010.

Accession Number: 20100707-0203.

Comment Date: 5 p.m. e.t. on Monday, August 30, 2010.

Docket Numbers: ER97–2801–030; ER99–2156–021; ER96–719–028; ER07–1236–005.

Applicants: PacifiCorp, Cordova Energy Company LLC, MidAmerican Energy Company, Yuma Cogeneration Associates.

Description: MidAmerican Parties submit Triennial Market Power Update al.

Filed Date: 06/30/2010.

Accession Number: 20100707–0207.

Comment Date: 5 p.m. e.t. on Monday, August 30, 2010.

Docket Numbers: ER01–1305–017.

Applicants: Westar Generating, Inc. *Description:* Westar Generating, Inc. Informational Filing under ER01–1305.

Filed Date: 07/02/2010.

Accession Number: 20100702–5019.

Comment Date: 5 p.m. e.t. on Friday, July 23, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. e.t. on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–17901 Filed 7–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP10–951–000]

Texas Gas Service Company, a Division of ONEOK, Inc. v. El Paso Natural Gas Company; Notice of Complaint

July 9, 2010.

Take notice that on July 7, 2010, pursuant to section 5 of the Natural Gas Act, 15 U.S.C. 717d (2006) and Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2010), Texas Gas Service Company, a Division of ONEOK (TGS) (Complainants) filed a formal complaint against El Paso Natural Gas Company (EPNG) (Respondent) alleging that EPNG's Mainline postage stamp cost allocation methodology is unjust and unreasonable, and that it should be replaced with just and reasonable zone-based fuel rates.

TGS certifies that copies of the complaint were served on individuals listed on the Commission's official service list in EPNG's current rate case, Docket No. RP08–426, as well as contacts for EPNG as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 27, 2010.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–17914 Filed 7–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. PF10-16-000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Mid-Atlantic Connector Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

July 15, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Mid-Atlantic Connector Expansion Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Fairfax, Prince William, Pittsylvania, and Fluvanna Counties, Virginia. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on August 16, 2010.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, we invite you to attend the public scoping meeting scheduled as follows: FERC Public Scoping Meeting, Mid-Atlantic Connector Expansion Project, August 4, 2010, 7 p.m., Virginia Run Community Center, 15355 Wetherburn Court, Centerville, VA 20120.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that

approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (<http://www.ferc.gov>). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Transco's planned Mid-Atlantic Connector Expansion Project would increase capacity by 142,000 dekatherms per day from Transco's Cascade Creek Interconnect in Rockingham County, North Carolina, to delivery points in Virginia and Maryland. The project would consist of the following facilities in Virginia:

- Construction of about 1.44 miles of new 42-inch-diameter pipeline loop¹ (Mainline D) and appurtenant facilities from Transco's Compressor Station 185 in Prince William County to milepost (MP) 1584.83 in Fairfax County;
- Replacement of about 1.35 miles of Mainline B pipeline with the new Mainline D pipeline from MP 1584.83 to MP 1586.17 in Fairfax County;
- New and replacement compressor units at Transco's existing Compressor Stations 165 and 175 in Pittsylvania and Fluvanna Counties, respectively; and
- Relocation of a pig launcher² in Fairfax County to Transco's existing Compressor Station 185 in Prince William County.

The general location of the project facilities is shown in appendix 1.³

Land Requirements for Construction

The new pipeline loop and pipeline replacement would primarily be installed within Transco's existing rights-of-way. Installation of the new Mainline D loop would be between

¹ A pipeline loop is constructed parallel to an existing pipeline to increase capacity.

² A "pig" is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

³ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at <http://www.ferc.gov> using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE, Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Transco's Mainline B and C pipeline rights-of-way. Transco would replace the Mainline B pipeline with the new Mainline D pipeline between Transco's existing Mainline A and C pipelines. Transco would install the new Mainline D pipeline within the same trench of Mainline B. Following construction, permanent operation of the pipelines would remain within Transco's existing rights-of-way. The modifications at Compressor Stations 165 and 175 would take place entirely within the existing fenced stations.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us⁴ to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some Federal and State agencies to discuss their involvement in

⁴ "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 5.

FERC staff will be involved in discussions with other jurisdictional agencies to identify their issues and concerns. These agencies include, but are not limited to, the National Park Service; U.S. Fish and Wildlife Service; Virginia State Historic Preservation Office; and Virginia Department of Environmental Quality. With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.⁵ We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Transco. This preliminary list of issues

may be changed based on your comments and our analysis.

- Impacts on residential and commercial areas; and
- Impacts from the new loop pipeline on the Manassas National Battlefield Park in Manassas, Virginia.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before August 16, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF10-16-000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502-8258 or efiling@ferc.gov.

(1) You may file your comments electronically by using the Quick Comment feature, which is located at <http://www.ferc.gov> under the link called *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the *Documents and Filings* link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called *Sign up* or *eRegister*. You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials;

environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

Once Transco files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF10-16). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission,

⁵ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17885 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF10-18-000]

Ryckman Creek Resources, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Ryckman Creek Storage Project and Request for Comments on Environmental Issues

July 15, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA). The EA will discuss the environmental impacts of the Ryckman Creek Storage Project (Project) involving construction and operation of facilities by Ryckman Creek Resources, LLC (Ryckman Creek) in Uinta County, Wyoming. This EA will be used by the Commission in its decisionmaking process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help the Commission staff and cooperating agencies determine which issues need to be evaluated in the EA. Please note that the scoping period for this Project will close on August 16, 2010. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in Appendix 1.

The FERC will be the lead Federal agency for the preparation of the EA. The EA will satisfy the requirements of

the National Environmental Policy Act (NEPA) and will be used by the FERC to consider the environmental impacts that could result if it issues Ryckman Creek Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act.

The Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of the EA to satisfy its respective NEPA and planning responsibilities since the Project would cross Federal land under the jurisdiction of the Kemmerer Field Office in Wyoming. Under sections 17 and 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185(f) and 226(m)), the BLM has the authority to issue underground gas storage agreements and right-of-way grants for all affected Federal lands. This would be in accordance with title 43 Code of Federal Regulations (CFR) parts 2800, 2880, and 5105.5 subsequent 2800, 2880, and 3160-11 Manuals, and Handbook 2801-1. As a cooperating agency, the BLM would adopt the EA per Title 40 CFR 1506.3 to meet its responsibilities under NEPA in considering Ryckman Creek's application for a Right-of-Way Grant and Temporary Use Permit for the portion of the Project on Federal land, by the Kemmerer Field Office, High Desert District; and the issuance of an Underground Gas Storage Agreement by the Wyoming State Office, Reservoir Management Group, Casper, Wyoming.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (<http://www.ferc.gov>). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Ryckman Creek plans to convert a partially depleted oil field, known as the Ryckman Nugget Unit (Unit), into a natural gas storage field offering approximately 25 to 30 billion cubic feet (Bcf) of high deliverability working gas capacity in Uinta County, Wyoming. Ryckman Creek would also construct and operate about 3.9 miles of 16- to 20-inch-diameter pipeline header system connecting the existing Canyon Creek Compressor Station with the Unit. The Project will provide for the injection and withdrawal of natural gas into and out of the Unit via interconnects with the existing Kern River, Questar, and Overthrust/REX pipelines directly adjacent to the Canyon Creek Compressor Station. Combined, these three interconnect pipelines provide a total of 1.55 Bcf per day of take-away capacity. Prior to and concurrent with the development of the storage field, Ryckman Creek proposes to initiate enhanced oil recovery (EOR) operations of the petroleum reserves remaining in the Unit.

The Ryckman Creek Storage Project would consist of the following facilities, all in Uinta County, Wyoming:

- Drill and complete up to five new horizontal injection/withdrawal (I/W) wells and convert an EOR horizontal withdrawal well, to be drilled in the initial EOR phase in 2010, to an I/W well for storage operations.

- The Project would require an additional 6,000 to 9,000 horsepower (hp), for a total of 28,000 to 31,000 hp at the existing Canyon Creek Compressor Station. One or two new electric-driven compressors would be added and four of the existing compressor units would be retrofitted.

- Create a central gas/liquids separation facility (Ryckman Plant) where all of the gas pipelines meet. It would contain a small electric-driven compressor to compress casing head gas, liquids separation equipment, and water and gas handling equipment.

- Construct a 3.9-mile-long high pressure header pipeline between the Ryckman Plant at the storage field and the Canyon Creek Compressor Station.

- Construct 4 mile(s) of new 8-inch-diameter storage field I/W lines.

- Convert one previously re-entered well to an observation well.

- Construct ancillary facilities, as necessary to operate the Project (*e.g.*, valves, meters, filtration, safety, cleaning and inspection equipment).

- Construct temporary laydown and temporary support facilities. To the extent feasible, some of these would be located within the existing disturbed,

fenced areas at either the Canyon Creek Compressor Station or on the original site of the previous oil and gas production operations on the Unit.

- Re-enter/re-complete up to 13 production wells (EOR development concurrent with storage operations).
- Re-enter/re-complete up to two saltwater disposal wells, one on the Unit and one off-Unit (the first of two saltwater disposal wells would be re-completed in 2010 as part of the initial EOR development).
- Re-use/construct production well gathering system (EOR development concurrent with storage operations).
- Construct a water/hydrocarbon liquids dew point control plant and a nitrogen reject unit (NRU) at the existing Canyon Creek Compressor Station.
- Certain facilities may need to be abandoned at the Canyon Creek Compressor Station.

The general location of the project facilities is shown in appendix 2.¹

Land Requirements for Construction

Construction of the planned facilities would disturb about 177 acres of land for the pipelines and wells. Following construction, about 128 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses. Additional land would be required for construction and operation of the aboveground facilities, for access roads, and additional temporary workspaces.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us² to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments

received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife including migratory birds;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some Federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA. See Appendix 1 for an overview of the Commission's Pre-Filing Environmental Review Process.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 6.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the BLM has expressed their intention to participate as a cooperating

agency in the preparation of the EA to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.³ We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before August 16, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502-8258 or efiling@ferc.gov.

(1) You may file your comments electronically by using the Quick Comment feature, which is located at <http://www.ferc.gov> under the link called "Documents and Filings". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "Documents and Filings" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "Sign up" or "eRegister". You will be asked to select the type of filing you are making. A comment on a particular

¹ The appendices referenced in this notice are not being printed in the *Federal Register*. Copies of appendices were sent to all those receiving this notice in the mail and are available at <http://www.ferc.gov> using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

² "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

³ The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

Once Ryckman Creek files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenor play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs,

at (866) 208-FERC, or on the FERC Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF10-18-000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Kimberly D. Bose,
Secretary.

[FR Doc. 2010-17881 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13272-001]

Alaska Village Electric Cooperative; Notice of Environmental Site Review and Scoping Meeting

July 15, 2010.

- a. *Project No.:* 13272-001.
- b. *Name of Project:* Old Harbor Hydroelectric Project.
- c. *Location:* On Mountain Creek, near the town of Old Harbor, Kodiak Island Borough, Alaska.
- d. *Potential Applicant Contact:* Brent Petrie, Alaska Village Electric Cooperative, 4831 Eagle Street, Anchorage, Alaska 99503-7497, (907) 565-5358 or e-mail at bpetrie@avec.org.
- e. *FERC Contact:* Carolyn Templeton at (202) 502-8785 or e-mail at carolyn.templeton@ferc.gov.
- f. *Project History*

On August 24, 2009, Alaska Village Electric Cooperative (AVEC) filed a Pre-Application Document (PAD) with the Commission, pursuant to 18 CFR 5.6 of

the Commission's regulations. The PAD described the proposed project location, facilities, and operations and included information on the existing environment and any known and potential impacts of the proposed project on specified resources. The Commission issued Scoping Documents 1¹ and 2 on September 9, 2009 and January 4, 2010, respectively, which outlined the subject areas to be addressed in the Commission's environmental document. On January 4, 2010 and May 5, 2010, AVEC filed, with the Commission, their proposed² and revised study plans, respectively. The plans outlined studies that would be necessary to evaluate the effects of project construction and operation and identified specific measures to mitigate project impacts. On June 4, 2010, the Director of the Office of Energy Projects issued his study plan determination which approved, with modifications, AVEC's revised study plan.

g. On Thursday, October 22, 2009, Commission staff conducted a daytime scoping meeting for the proposed Old Harbor Hydroelectric Project at AVEC's office in Anchorage, Alaska. Due to inclement weather conditions, the environmental site review and evening scoping meeting that was scheduled for Wednesday, October 21, 2009 in Old Harbor, Alaska was cancelled. Therefore, Commission staff will conduct an environmental site review and scoping meeting on Tuesday, August 17, 2010 and are inviting all interested individuals, organizations, and agencies to attend one or both of these events, and to assist staff in identifying the scope of environmental issues to be addressed in the environmental document. The details of the environmental site review and evening scoping meeting are as follows:

Environmental Site Review

AVEC and Commission staff will conduct an environmental site review of the project area on Tuesday, August 17, 2010, beginning at 1:00 p.m. at the Old Harbor Native Corporation office. Those wishing to participate should contact Robin Reich by August 6, 2010 [e-mail, robin@solsticeak.com or phone, (907)

¹ Upon issuance of Scoping Document 1, a 60-day comment period was open for all interested individuals, organizations, and agencies to provide comments on the PAD and Scoping Document 1, as well as study requests. Comments received were then incorporated, if applicable, into the Commission's Scoping Document 2.

² Following the filing of AVEC's proposed study plan, a 90-day comment period was open for all interested individuals, organizations, and agencies to provide comments on AVEC's proposed study plan. Comments received were then incorporated, if applicable, into AVEC's revised study plan.

929–5960] for details on how to participate. The environmental site review will include an all-terrain vehicle ride to the proposed project intake and other features. Proper footwear and gear is strongly recommended.

Evening Scoping Meeting

Date: Tuesday, August 17, 2010.

Time: 6 p.m.

Location: Old Harbor Native Corporation Office Building, 12 Elderberry Drive, Old Harbor, Alaska 99643.

Phone: (907) 286–2286.

Scoping Meeting Objectives

Scoping meeting participants should come prepared to discuss their issues and/or concerns with the proposed Old Harbor Hydroelectric Project. Please review the PAD, Scoping Documents 1 and 2, AVEC's proposed and revised study plans, and the Commission's study plan determination in preparation for the scoping meeting. These documents, as well as other documents pertaining to the record for this proceeding, may be viewed on the Web at <http://www.ferc.gov>, using the "Documents & Filings" link followed by the "eLibrary" link. After clicking on the "General Search" link, select "All" for the "Date Range" and type the project number, P–13272, into the "Docket Number" box.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–17883 Filed 7–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1673–000]

Synergics Roth Rock North Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 9, 2010.

This is a supplemental notice in the above-referenced proceeding of Synergics Roth Rock North Wind Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 29, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–17907 Filed 7–21–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1680–000]

Ally Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 9, 2010.

This is a supplemental notice in the above-referenced proceeding of Ally Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 29, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17906 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10-1705-000]

Starion Energy NY, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 9, 2010.

This is a supplemental notice in the above-referenced proceeding of Starion Energy NY, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 29, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17904 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10-1637-000]

Synergics Roth Rock Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 9, 2010.

This is a supplemental notice in the above-referenced proceeding of Synergics Roth Rock Wind Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 29, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010-17905 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10-1716-000]

East Coast Power and Gas, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 9, 2010.

This is a supplemental notice in the above-referenced proceeding of East Coast Power and Gas, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 29, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010-17903 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10-1725-000]

Hardscrabble Wind Power LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 9, 2010.

This is a supplemental notice in the above-referenced proceeding of Hardscrabble Wind Power LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 29, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010-17902 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Production Incentives for Cellulosic Biofuels: Notice of Program Intent

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Program Intent.

SUMMARY: The Department of Energy (DOE) today gives notice that the Office of Biomass Program, in the Office of Energy Efficiency and Renewable Energy, intends to conduct a Reverse Auction pursuant to section 942 of the Energy Policy Act of 2005 (EPA 2005). Through this notice, biofuels producers and other interested parties are invited to submit pre-auction eligibility information in accordance with the process described below.

DATES: Pre-auction eligibility information must be received by September 20, 2010.

ADDRESSES: E-mail pre-auction eligibility information to 942@go.doe.gov between July 22, 2010 through September 20, 2010.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to: Mr. Neil Rossmeissl, Office of the Biomass Program, U.S. Department of Energy, Mailstop EE-2E, Room 5H021, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-8668 or at Neil.Rossmeissl@ee.doe.gov; or Ms. Liz Moore, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401-3393, (303) 275-4769 or Liz.Moore@go.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background and Overview
- II. Discussion of Pre-Auction Eligibility Process
 - A. Invitation To Participate
 - B. Pre-Auction Eligibility Statement
 - C. Eligibility
- III. Reverse Auction Process
 - A. Eligibility
 - B. Open Timeframe
- IV. Post-Auction Requirements and Information for Successful Bidders

I. Background and Overview

As stated in 10 CFR part 452, "Production Incentives for Cellulosic Biofuels; Reverse Auction Procedures and Standards," (74 FR 52867, October 15, 2009) ("Final Rule"), Section 942 of the EPA 2005, Public Law 109-58 (August 8, 2005), requires the Secretary of Energy (Secretary), in consultation with the Secretary of Agriculture, the Secretary of Defense, and the Administrator of the Environmental

Protection Agency, to establish an incentive program for the production of cellulosic biofuels and to implement that program by means of a "reverse auction." Through this Notice of Program Intent ("Notice"), DOE is initiating the reverse auction process by inviting interested parties to submit pre-auction eligibility statements. DOE will notify each party that submits a pre-auction eligibility statement of its acceptance or rejection. Only eligible parties will be invited to submit bids for the reverse auction. Approximately \$4,600,000 in incentives will be available from this reverse auction.

II. Discussion of Pre-Auction Eligibility Process

A. Invitation To Participate

All interested parties are invited to submit pre-auction eligibility statements. Pre-auction eligibility statements must be submitted to 942@go.doe.gov between July 22, 2010 through September 20, 2010, no later than 5 p.m. Mountain Time. Section 452.4(b) of the Final Rule provides that "DOE shall notify each entity that files a pre-auction eligibility submission of its acceptance or rejection no later than 15 days before the reverse auction for which the submission was made. A DOE decision constitutes final agency action and is conclusive."

B. Pre-Auction Eligibility Statement

A pre-auction eligibility statement will, at a minimum:

- (i) Demonstrate that the filing party owns and operates or plans to own and operate an eligible cellulosic biofuels production facility;
- (ii) Identify the site or proposed site for the filing party's eligible cellulosic biofuels production facility;
- (iii) Demonstrate that the cellulosic biofuel to be produced for purposes of receiving an award either currently is suitable for widespread general use as a transportation fuel or will be suitable for such use in a timeframe and in sufficient volumes to significantly contribute to the goal of 1 billion gallons of refined cellulosic biofuel by August 2015.

(iv) Provide audited or *pro forma* financial statements for the latest 12 month period; and

(v) Identify one or more proposed sources of financing for the construction or expansion of the filing party's eligible cellulosic biofuels production facility.

DOE will provide the format for the pre-auction eligibility statement. It may be obtained by request from 942@go.doe.gov or from the corresponding postings on <http://www.eere.energy.gov> or <http://www.grants.gov>.

www.eere.energy.gov or <http://www.grants.gov>. Where the applicant provides audited financial statements to satisfy (iv) above, the statements must be audited by an independent firm. At the applicant's discretion, a narrative may be included to address any of the above requirements. This attachment must not exceed three pages when printed on 8.5" by 11" paper with 1 inch margins (top, bottom, left, and right), single spaced, with font not smaller than 11 point.

C. Eligibility

As defined in the Final Rule, eligible cellulosic biofuels production facility means a facility—

- Located in the United States (including U.S. territories and possessions);
- Which meets all applicable Federal and State permitting requirements; and
- Employs a demonstrated refining technology.

An eligible cellulosic biofuels production facility must also be operational and producing the eligible cellulosic biofuel no later than three years after the bid is submitted to the reverse auction. Facilities must have the capacity to produce a minimum of 10 million gallons per year of cellulosic biofuel. Incentives are specific to a facility. If the facility should change ownership during the course of the award period, the incentive will be paid to the new owner of the facility, if the successor entity meets all eligibility requirements.

For the cellulosic biofuel to be eligible under this program, bidders must also demonstrate that they will produce a cellulosic biofuel which either currently is suitable for widespread general use as a transportation fuel or, alternatively, that the cellulosic biofuel will be suitable for such use in a timeframe and in sufficient volumes to significantly contribute to the goal of 1 billion gallons of refined cellulosic biofuel by the statutory deadline. This description may include, but is not limited to the following:

- Obtaining vehicle manufacturer(s) approval;
- Obtaining EPA fuel registration(s);
- Establishing standards for use, production, storage, transportation, and retail dispensing; and
- Establishing a distribution/dispensing infrastructure.

Additionally, the pre-auction eligibility statements must estimate the costs and discuss the activities required for eventually commercializing the proposed cellulosic biofuel.

The pre-auction eligibility statements must also calculate the lower heating

BTU value (LHV) of the proposed cellulosic value as compared to gasoline on a volumetric equivalent basis. A table with the most common fuels heating values can be found at: http://cta.ornl.gov/bedb/appendix_a/Lower-Higher_Heating_Values_for_Various_Fuels.xls. Incentives will be scaled proportionately to the energy content of the cellulosic biofuel.

An eligible biofuels producer must either own and operate or plan to own and operate an eligible cellulosic biofuels facility. The awards are site specific; an eligible biofuels producer cannot transfer the incentive to another facility. The producer will be responsible for satisfying all terms and conditions of the incentive award, including but not limited to, reporting requirements to DOE.

III. Reverse Auction Process

A. Eligibility

Bids will only be accepted from bidders who were notified of their eligibility by DOE after submitting acceptable pre-auction eligibility statements. In addition to being notified of their acceptance into the bidding pool, bidders will be notified of the process by which bids will be accepted via a funding opportunity announcement (FOA) to be published at <http://www.grants.gov>. Bids that are not consistent with the information submitted in the pre-auction eligibility statements will be rejected.

B. Open Timeframe

The specific bidding window will be identified in the published FOA. It is anticipated that the bidding window will occur during September 2010. The reverse auction will be conducted via a closed bid process and only the final bid received from a bidder will be considered.

IV. Post-Auction Requirements and Information for Successful Bidders

Successful bidders will be required to adhere to all criteria described in the Final Rule as well as the Terms and Conditions that will be contained within the Assistance Agreement award executed by DOE. These requirements include, but are not limited to, the following:

- Progress Reports,
- Production Agreements,
- Confirmation of Continuing Eligibility, and
- Contractual Condition on Eligibility.

Post-Auction Requirements are identified in the Final Rule and will be available in the published FOA.

Issued in Golden, CO on July 15, 2010.

Jamie Harris,

Director, Office of Acquisition and Financial Assistance, Golden Field Office.

[FR Doc. 2010-17987 Filed 7-21-10; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10-15-000]

Smart Grid Update; Notice of Commissioner and Staff Attendance at FERC/NARUC Collaborative on Smart Response Meeting

July 15, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meeting:

FERC/NARUC Collaborative on Smart Response: Sacramento Convention Center, 1400 J Street, Sacramento, CA 95814. July 18, 2010 (8:15 a.m.–12:30 p.m.)

Further information may be found at <http://summer.narucmeetings.org/program.cfm>.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010-17888 Filed 7-21-10; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9178-4]

Protection of Stratospheric Ozone: Request for Applications for Essential Use Allowances for 2012 and 2013

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is requesting applications for essential use allowances for calendar years 2012 and 2013. Essential use allowances provide exemptions from the phaseout of production and import of ozone-depleting substances. Essential use allowances must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The U.S. Government will use the applications received in response to this notice as the basis for its nomination of essential uses at the 23rd Meeting of the Parties to the Protocol, to be held in 2011.

DATES: Applications for essential use allowances must be submitted to EPA no later than August 23, 2010 in order for the U.S. Government to complete its review and to submit nominations to the United Nations Environment Programme and the Protocol Parties in a timely manner.

ADDRESSES: Send application materials to: Jeremy Arling, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For applications sent via courier service, use the following direct mailing address: 1310 L Street, NW., Washington, DC 20005, room 1047E.

Confidentiality: Application materials that are confidential should be submitted under separate cover and be clearly identified as “trade secret,” “proprietary,” or “company confidential.” Information covered by a claim of business confidentiality will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent and by means of the procedures set forth in that subpart. Please note that data will be presented in aggregate form by the United States as part of the nomination to the Parties. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Jeremy Arling at the above address, or by telephone at (202) 343-9055, by fax at (202) 343-2338, or by e-mail at arling.jeremy@epa.gov. Information about essential uses may be obtained from EPA’s stratospheric protection Web site at <http://www.epa.gov/ozone/title6/exemptions/essential.html>.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background on the Essential Use Nomination Process
- II. Information Required for Essential Use Applications for Production or Import of Class I Substances in 2012 and 2013

I. Background on the Essential Use Nomination Process

The Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, that non-Article 5 Parties (developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other class I substances (under 40 CFR part 82,

subpart A), except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing “essential use” exemptions from the phaseout of production and import of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25, paragraph 1(a), states that “* * * a use of a controlled substance should qualify as ‘essential’ only if: (i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.” In addition, the Parties agreed “that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *” Decision XII/2 of the Twelfth Meeting of the Parties states that any CFC metered dose inhaler (MDI) product approved after December 31, 2000, is nonessential unless the product meets the criteria in Decision IV/25, paragraph 1(a).

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decision IV/25. If the essential use request is for an MDI product, the user should also consider whether the product meets the criteria of Decision XII/2. In addition, the user should consult recent and ongoing rulemakings by the Food and Drug Administration (FDA) concerning the essential use determination of various MDI moieties. In particular, users should consider FDA’s November 19, 2008, final rulemaking that removes the essential use designation for epinephrine used in MDIs as of December 31, 2011 (73 FR 69532). Users should also consider FDA’s April 14, 2010, rulemaking that removes the essential use designations for flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil used in MDIs at various dates depending upon the inhaler (75 FR 19213).

Users requesting essential use allowances for calendar years 2012 and 2013 should send a completed application to EPA on the candidate use. The application should include information that U.S. Government agencies and the Parties to the Protocol can use to evaluate the candidate use according to the criteria in the Decisions described above.

Upon receipt of applications, EPA reviews the information and works with other interested Federal agencies to determine whether the candidate use meets the essential use criteria and warrants nomination by the United States for an exemption. In the case of multiple exemption requests for a single use, such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review is to ensure that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. Government may adjust the aggregate request to better reflect true market needs.

Nominations submitted by the United States and other Parties are forwarded by the United Nations Ozone Secretariat to the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and its Medical Technical Options Committee (MTOC), which reviews the submissions and makes recommendations to the Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential, and authorize an exemption from the Protocol's production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act. Applicants should be aware that essential use exemptions granted to the United States under the Protocol in recent years have been limited to CFCs for MDIs to treat asthma and chronic obstructive pulmonary disease. Applicants should also be aware that the Parties last authorized an essential use exemption for United States in 2008 for the 2010 calendar year.

The Parties review nominations for essential use exemptions for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2012

and 2013 will be considered by the Parties in 2011 for final action. The quantities of controlled substances that are requested in response to this notice, if approved by the Parties to the Montreal Protocol, will then be allocated as essential use allowances to the specific U.S. companies through notice-and-comment rulemaking, to the extent that such allocations are consistent with the Clean Air Act.

II. Information Required for Essential Use Applications for Production or Import of Class I Substances in 2012 and 2013

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2012 and 2013. This notice is the last opportunity to submit new or revised applications for 2012. This notice is also the first opportunity to submit requests for 2013. Companies will have an opportunity in 2011 to submit new, supplemental, or amended applications for 2013. All requests for exemptions submitted to EPA should present information as requested in the current version of the TEAP *Handbook on Essential Use Nominations*, which was updated in 2009. The handbook is available electronically on the Web at http://ozone.unep.org/teap/Reports/TEAP_Reports/EUN-Handbook2009.pdf.

In brief, the TEAP Handbook states that applicants should present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

In addition, entities should address the following points to ensure that their applications are clear and complete. First, entities that request CFCs for multiple companies should clearly state the amount of CFCs requested for each company. Second, all essential use applications for CFCs should provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown will allow EPA and FDA to make informed decisions regarding the amount of CFCs to be nominated by the U.S. Government for the years 2012 and 2013. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States should submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a

contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder should determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder should provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of essential use allowances. Since the U.S. Government does not forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including comprehensive information pertaining to the research and development of alternative CFC MDI products per Decision VIII/10, para. 1 as specified in the Supplement to Nomination Request (pg. 46).

Finally, consistent with Decision XIX/13 taken in September 2007 at the 19th Meeting of the Parties, when requesting essential use CFCs for MDIs, applicants should provide the following information: (1) The company's commitment to the reformulation of the concerned products; (2) the timetable in which each reformulation process may be completed; and (3) evidence that the company is diligently seeking approval of any CFC-free alternative(s) in its domestic and export markets and transitioning those markets away from its CFC products.

The accounting framework matrix in the Handbook (Table IV) titled "Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical Applications" requests data for the year 2010 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import and the country(s) of manufacture, the amount on hand at the start of the year, the amount available for use in 2010, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2010. Because all data necessary for applicants to complete Table IV will not be available until after the control period ends on December 31, 2010, companies should not include this chart with their essential use applications in response to this notice. Instead, companies should report their data as required by 40 CFR 82.13(u)(2) in Section 5 of the report titled "Essential Use Allowance Holders and Laboratory Supplier Quarterly Report and Essential Use Allowance Holder Annual Report."

This form may be found on EPA's Web site at http://www.epa.gov/ozone/record/downloads/EssentialUse_Class.doc. EPA will then compile each company's responses and complete the U.S Accounting Framework for Essential Uses for submission to the Parties to the Montreal Protocol by the end of January 2011. EPA may also request additional information from companies to support the U.S. nomination using its information gathering authority under section 114 of the Act.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United States' progress in phasing out CFC MDIs, including education programs to inform patients and health care providers of the CFC phaseout and the transition to alternatives. Accordingly, applicants are strongly advised to present detailed information on these educational programs, including the scope and cost of such efforts and the medical and patient organizations involved in the work. In addition, EPA expects that Parties will be interested in research and development activities being undertaken by MDI manufacturers to develop and transition to alternative CFC-free MDI products. To this end, applicants are encouraged to provide detailed information on these efforts. Applicants should submit their exemption requests to EPA as noted in the "Addresses" section above.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this notice under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0170.

Dated: July 14, 2010.

Jackie Krieger,
Acting Director, Office of Atmospheric Programs.

[FR Doc. 2010-17964 Filed 7-21-10; 8:45 am]

BILLING CODE 6560-50-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 also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *C-B-G, Inc., West Liberty, Iowa*, to acquire additional shares for a total of up to 50.01 percent, of Washington Bancorp, Washington, Iowa, and thereby acquire shares of Federation Bank, Washington, Iowa.

Board of Governors of the Federal Reserve System, July 19, 2010.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. 2010-17900 Filed 7-21-10; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

[File No. 091 0032]

Fidelity National Financial, Inc.; Analysis of the Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the

consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before August 16, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Fidelity National Financial, File No. 091 0032" to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . ." as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://public.commentworks.com/ftc/fidelitynationalfinancial>) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (<https://public.commentworks.com/ftc/fidelitynationalfinancial>). If this Notice

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (<http://www.ftc.gov/>) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Fidelity National Financial, File No. 091 0032" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtml>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtml>).

FOR FURTHER INFORMATION CONTACT:

Joseph Lipinsky (206-220-4473), FTC Northwest Regional Office, FTC, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent

agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 16, 2010), on the World Wide Web, at (<http://www.ftc.gov/os/actions.shtml>). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission" or "FTC") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Fidelity National Financial, Inc. ("Fidelity"). Fidelity purchased three title insurance subsidiaries from LandAmerica Financial, Inc. ("LandAmerica"). The subsidiaries were Commonwealth Land Title Insurance Company ("Commonwealth"), Lawyers Title Insurance Company ("Lawyers"), and United Capital Title Insurance Company ("United"). Fidelity's acquisition of Commonwealth and Lawyers created likely anticompetitive effects that the proposed Consent Agreement resolves. Under the terms of the proposed Consent Agreement, Fidelity is required, among other things, to divest one share of its ownership interest in a joint title plant serving the Portland, Oregon, metropolitan area, and divest a copy of its title data serving Benton, Jackson, Linn, and Marion Counties, in Oregon. Additionally, Fidelity will sell a copy of title data that LandAmerica had provided to a third party, Data Trace, to a pre-approved purchaser to remedy the competitive concern in three counties in the Detroit, Michigan, metropolitan area.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

On November 25, 2008, Fidelity and LandAmerica entered into an acquisition agreement under which Fidelity acquired LandAmerica's title insurance subsidiaries for an amount valued, at the time of entering into the acquisition agreement, at approximately \$258 million ("Acquisition"). The Commission's Complaint alleges that Fidelity's acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by eliminating an actual, direct, and substantial competitor from certain local markets in the United States.

II. Description of the Parties and the Acquisition

Fidelity, a publicly traded company, is based in Jacksonville, Florida. Its title insurance services facilitate the purchase, sale, transfer, and finance of residential and commercial real estate. Fidelity provides title insurance to residential and commercial property buyers and sellers, real estate agents and brokers, developers, attorneys, mortgage brokers and lenders, and title insurance agents through its subsidiaries, Fidelity National Title Company, Title Insurance Company, Ticor Title Insurance Company, Commonwealth, and Lawyers.

LandAmerica was a publicly traded company based in Glen Allen, Virginia, that operated through wholly owned subsidiaries. LandAmerica generated the majority of its income from its title insurance subsidiaries, Commonwealth and Lawyers.

On Tuesday, December 16, 2008, the United States Bankruptcy Court for the Eastern District of Virginia held a hearing on LandAmerica's motion to sell its subsidiaries to Fidelity. The bankruptcy court took testimony from LandAmerica, Fidelity, the unsecured creditors committee, the secured creditors committee, and the FTC. The court found that Fidelity's purchase of the LandAmerica title insurance subsidiaries was in the best interest of the estate, and approved the sale of the subsidiaries to Fidelity.

III. Title Information Services

Title insurance companies insure clients against the risk that clear title is not transferred during the sale of property. Risks include failure to detect defective deeds or to discover liens, adverse court judgments, or encumbrances created by other security interests. In order to conduct title searches in a timely fashion, title insurers need access to the most accurate, up-to-date, and conveniently

arranged title information. That information is found, among other places, in title plants, which are private collections of historic and current information about the status of title to real property. Because title information is essential to conducting a title search, ownership of, or access to, a title plant is a title insurer's primary competitive asset.

IV. The Complaint

The Commission's Complaint alleges that Fidelity's acquisition of LandAmerica's title insurance subsidiaries may substantially lessen competition in the provision of title information services in several counties in Oregon, and three counties making up the Detroit, Michigan, metropolitan area, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

The Complaint alleges that the relevant product market in which to analyze the effects of the acquisition is the provision of title information services. "Title information services" means access to selected information contained in a title plant that is used to determine ownership of, and interests in, real property in connection with the underwriting and issuance of title insurance policies.

The Complaint also alleges that the relevant geographic markets are local in nature. Title information is generated and collected on a county level and, because of the highly local character of the real estate markets in which the title information services are used, geographic markets for title information services are highly localized and consist of the county or other local jurisdiction embraced by the real property information contained in the title plant. The three geographic areas of concern outlined in the Complaint are: (1) the tri-county Portland, Oregon, metropolitan area consisting of Clackamas, Multnomah, and Washington Counties; (2) Benton, Jackson, Linn, and Marion Counties, in Oregon; and (3) the tri-county Detroit, Michigan, metropolitan area consisting of Oakland, Macomb, and Wayne Counties.

In the Portland, Oregon, metropolitan area, the acquisition of LandAmerica's subsidiaries vested Fidelity with a controlling interest in the sole title plant providing title insurance information services. Absent the proposed relief regarding the title plant serving the Portland metropolitan area, Fidelity's acquisition of LandAmerica's subsidiaries increases the risk that

Fidelity would unilaterally restrict or withhold access to title information, thus eliminating the potential for a new title insurance company to enter.

In Benton, Jackson, Linn, and Marion Counties in Oregon, the acquisition of LandAmerica's subsidiaries reduced the number of independent title plants providing title information services in these counties from four to three. Absent the proposed relief in these counties, Fidelity's acquisition would increase the risk of collusion among the remaining market participants to restrict or withhold access to title information, thus eliminating the potential for a new title insurance company to enter.

In three counties in the Detroit, Michigan, metropolitan area, Fidelity's purchase of LandAmerica's subsidiaries may give Fidelity the power to affect the competitive significance of Data Trace, an independent title information services provider. Data Trace, in which LandAmerica once had an ownership interest, is a provider of title plant information services in the Detroit metropolitan area.

Based on the facts above, the Complaint alleges that Fidelity's acquisition of LandAmerica's subsidiaries could eliminate actual, direct, and substantial competition between Fidelity and LandAmerica's subsidiaries in the relevant markets; increase Fidelity's ability to unilaterally exercise market power in the Detroit and Portland metropolitan areas; and substantially increase the level of concentration and enhance the probability of coordination in Benton, Jackson, Linn, and Marion Counties, in Oregon.

As stated in the Complaint, entry would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of this acquisition. There are relatively long time frames and large capital expenses associated with building and maintaining title plants. Among other things, intensive time and labor are required in each local jurisdiction to develop effective data collection technology and to compile historical data.

V. The Terms of the Consent Agreement

The proposed Consent Agreement will remedy the Commission's competitive concerns resulting from Fidelity's acquisition in each of the relevant markets discussed above. Pursuant to the proposed Consent Agreement, Fidelity will divest one share of its ownership interest in a joint title plant that serves the Portland, Oregon, metropolitan area to Northwest Title. This will remedy the competitive

harm in that local market by ensuring that Fidelity no longer owns a majority of the only joint title plant serving that market. The proposed Consent Agreement also requires Fidelity to divest a copy of each of the title plants serving Benton, Jackson, Linn, and Marion Counties, in Oregon to Northwest Title. The sale of the title plants in Benton, Jackson, Linn, and Marion counties will eliminate the competitive harm that otherwise would have resulted in those markets by restoring the number of independent title plant owners within each county to the pre-acquisition level.

Northwest Title is a privately-held company that is part of a family of six companies involved in real estate. Although the company will be a new entrant in the relevant markets, it does have experience in the title insurance business, and has pre-existing relationships with entities and individuals in the real estate market, mortgage banking industry, and related businesses. Moreover, Northwest Title is financially viable and is positioned to quickly achieve the remedial purposes of the proposed Consent Agreement.

Additionally, pursuant to the proposed Consent Agreement, Fidelity will sell a copy of the title data that LandAmerica's subsidiaries had provided to Data Trace to a pre-approved purchaser, for the three counties making up the Detroit, Michigan, metropolitan area.

Finally, the proposed Consent Agreement requires Fidelity to provide the Commission with prior written notice before acquiring fifty (50) percent or more of any joint title plant in the following states: California, Colorado, Nevada, New Mexico, Oregon, and Texas. In all of these states, Fidelity's acquisition of LandAmerica's subsidiaries increased Fidelity's ownership interest in joint title plants. Without this prior notification provision, in the future Fidelity could gain a controlling interest in joint plants serving these states without the FTC's knowledge.

VI. Opportunity for Public Comment

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement again and the comments received and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final. By accepting the Consent Agreement subject to final approval, the

Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to inform and invite public comment on the Consent Agreement, including the proposed divestitures, and to aid the Commission in its determination of whether to make the Consent Agreement final. This analysis is not intended to constitute an official interpretation of the Consent Agreement, nor is it intended to modify the terms of the Consent Agreement in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2010-17978 Filed 7-21-10; 7:20 am]

BILLING CODE 6750-01-S

FEDERAL TRADE COMMISSION

[File No. 092 3087]

Nestle' HealthCare Nutrition, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 16, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Nestle, File No. 092 3087” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtm>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually

identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<https://ftcpublic.commentworks.com/nestle>) and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (<https://ftcpublic.commentworks.com/nestle>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (<http://www.ftc.gov/>) to read the Notice and the news release describing it.

A comment filed in paper form should include the “Nestle, File No. 092 3087” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives,

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

FOR FURTHER INFORMATION CONTACT:

Karen Mandel (202-326-2491), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 14, 2010), on the World Wide Web, at (<http://www.ftc.gov/os/actions.shtm>). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Nestle; HealthCare Nutrition, Inc. (“respondent”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record.

After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of BOOST Kid Essentials, a children's nutritional drink that also delivers probiotics via an attached straw. According to the FTC complaint, respondent represented, in various advertisements, that BOOST Kid Essentials prevents upper respiratory tract infections in children; strengthens the immune system, thereby providing protection against cold and flu viruses; and reduces absences from daycare or school due to illness. The complaint alleges that these claims are unsubstantiated and thus violate the FTC Act.

The FTC complaint further charges that respondent represented that clinical studies prove that BOOST Kid Essentials reduces the general incidence of illness in children, including upper respiratory tract infections; reduces the duration of acute diarrhea in children up to age thirteen (the age group for which the product is marketed); and strengthens the immune system, thereby providing protection against cold and flu viruses. The complaint alleges that these claims are false and thus violate the FTC Act.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. The order covers representations made in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product, in or affecting commerce. The order defines a covered product as BOOST Kid Essentials, any drink product containing probiotics, or any nutritionally complete drink, other than infant formula, medical foods, and any product not sold primarily through conventional retail channels.

Part I of the consent order is designed to address the complaint allegations concerning respondent's allegedly unsubstantiated representations that its products prevent upper respiratory tract infections (URTIs). Part I prohibits respondent from making representations that a covered product prevents or reduces the risk of URTIs, including, but not limited to, cold or flu viruses, unless the representation is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration (FDA) pursuant to the Nutrition Labeling and Education Act of 1990 (NLEA). Under this provision, therefore, respondent

cannot make a claim of URTI risk reduction unless the FDA has issued a regulation authorizing the claim based on a finding that there is significant scientific agreement among experts qualified by scientific training and experience to evaluate such claims, considering the totality of publicly available scientific evidence. As noted in the Commission's Enforcement Policy Statement on Food Advertising, "[t]he Commission regards the 'significant scientific agreement' standard, as set forth in the NLEA and FDA's regulations, to be the principal guide to what experts in the field of diet-disease relationships would consider reasonable substantiation for an unqualified health claim." Enforcement Policy Statement on Food Advertising (1994), available at (<http://www.ftc.gov/bcp/policystmt/ad-food.shtm>). Thus, although the Enforcement Policy Statement does not say that the only way a food advertiser can adequately substantiate a disease risk-reduction claim is through FDA authorization, the Commission has determined that requiring FDA pre-approval before respondent makes a URTI risk-reduction claim for its covered products will facilitate compliance with the order and is reasonably related to the enforcement of this order.

Respondent may decide to make an advertising claim characterizing limited scientific evidence supporting the relationship between a covered product and URTIs. However, if the net impression is that a covered product prevents or reduces the risk of URTIs, and not merely that there is limited scientific evidence supporting the claim, the advertisement would be covered under Part I. The Commission notes that its experience and research show that it is very difficult to adequately qualify a disease risk-reduction claim in advertising to indicate that the science supporting the claimed effect is limited. In other words, reasonable consumers may interpret an advertisement to mean that the product will prevent or reduce the risk of URTIs, even if respondent includes language indicating that the science supporting the effect is limited in some way. However, if respondent possesses reliable empirical testing demonstrating that the net impression of an advertisement making a qualified claim for a covered product does not convey that it will prevent or reduce the risk of URTIs, then that claim would be covered under the relevant subsequent parts of the order.

Although Part I requires FDA approval before respondent can make claims that a covered product prevents

or reduces the risk of URTIs, the Commission does not intend Part I to limit respondent to using the precise language specified in an FDA-approved health claim. To the contrary, if the FDA has approved a claim that a covered product can prevent or reduce the risk of URTIs, respondent may use a variety of words and images to communicate that claim in its advertising. Likewise, regardless of the particular words or images used, if the net impression of an advertisement is that a covered product prevents or reduces the risk of URTIs, then for the ad to comply with the order, the FDA must have authorized a health claim based on significant scientific agreement that such product provides such a benefit.

Part II of the consent order prohibits respondent from making representations that a covered product reduces the duration of acute diarrhea in children up to the age of thirteen, or reduces absences from daycare or school due to illness, unless the representation is non-misleading and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates that the representation is true. For purposes of Part II, competent and reliable scientific evidence means at least two adequate and well-controlled human clinical studies of the product, or of an essentially equivalent product, conducted by different researchers, independently of each other, that conform to acceptable designs and protocols and whose results, when considered in light of the entire body of relevant and reliable scientific evidence, are sufficient to substantiate that the representation is true. For purposes of the order, essentially equivalent product means a product that contains the identical ingredients, except for inactive ingredients (e.g., inactive binders, flavors, preservatives, colors, fillers, excipients), in the same form and dosage, and with the same route of administration (e.g., orally, sublingually), as the covered product; provided that the covered product may contain additional ingredients if reliable scientific evidence generally accepted by experts in the field demonstrates that the amount and combination of additional ingredients is unlikely to impede or inhibit the effectiveness of the ingredients in the essentially equivalent product.

Part III of the consent order prohibits respondent from making representations, other than representations covered under Parts I or II, about the health benefits, performance, or efficacy of any covered product, unless the representation is

non-misleading, and, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of Part III, competent and reliable scientific evidence means tests, analyses, research, studies, or other evidence that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results.

Part IV of the consent order prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part V of the consent order provides that nothing in the order shall prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the FDA pursuant to the NLEA.

Parts VI, VII, VIII, and IX of the consent order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission.

Part X provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

Richard C. Donohue

Acting Secretary.

[FR Doc. 2010-17838 Filed 7-21-10; 8:45 am]

BILLING CODE 6750-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nomination for Appointment to the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

Authority: 42 U.S.C. 300u-6, Section 1707 of the Public Health Service Act, as amended. The Advisory Committee is governed by provisions of Public Law 92-463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Department of Health and Human Service (HHS), Office of Public Health and Science (OPHS), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Health (ACMH). In accordance with Public Law 105-392, the Committee provides advice to the Deputy Assistant Secretary for Minority Health, on the development of goals and specific program activities of the Office of Minority Health (OMH) designed to improve the health of racial and ethnic minority groups. Nominations of qualified candidates are being sought to fill current and impending vacant positions on the Committee.

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EST on October 20, 2010, at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Dr. Garth Graham, Deputy Assistant Secretary for Minority Health, Office of Minority Health, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Baltimore, Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852; Telephone: (240) 453-2882.

A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. Baltimore or by accessing the Web site managed by OMH at <http://www.minorityhealth.gov/acmh>.

SUPPLEMENTARY INFORMATION:

Pursuant to Public Law 105-392, the Secretary of Health and Human Services established the ACMH. The Committee shall provide advice to the Deputy Assistant Secretary for Minority Health in carrying out the duties stipulated under Public Law 105-392. This includes providing advice to improve the health of each racial and ethnic minority group and in the development of goals and specific activities of the OMH, which are:

(1) Establish short-range and long-range goals and objectives and coordinate all other activities within the Public Health Service that relate to disease prevention, health promotion, service delivery, and research concerning such individuals;

(2) Enter into interagency agreements with other agencies of the Public Health Service;

(3) Support research, demonstrations, and evaluations to test new and innovative models;

(4) Increase knowledge and understanding of health risk factors;

(5) Develop mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including individuals who are members of racial or ethnic minority groups;

(6) Ensure that the National Center for Health Statistics, within the Centers for Disease Control and Prevention, collects data on the health status of each minority group;

(7) With respect to individuals who lack proficiency in speaking the English language, enter into contracts with public and nonprofit private providers of primary health services for the purpose of increasing the access of these individuals to such services by developing and carrying out programs to provide bilingual or interpretive services;

(8) Support a national minority health resource center to carry out the following:

(a) Facilitate the exchange of information regarding matters relating to health information and health promotion, preventive health services, and education in appropriate use of health care;

(b) Facilitate access to such information;

(c) Assist in the analysis of issues and problems relating to such matters;

(d) Provide technical assistance with respect to the exchange of such information (including facilitating the development of materials for such technical assistance);

(9) Carry out programs to improve access to health care services for individuals with limited proficiency in speaking the English language. Activities under the preceding sentence shall include developing and evaluating model projects; and

(10) Advising in matters related to the development, implementation, and evaluation of health professions education in decreasing disparities in health care outcomes, including cultural competency as a method of eliminating health disparities.

Management and support services for the ACMH are provided by the OMH, which is a program office within the OPHS.

Nominations: The OPHS is requesting nominations for current and impending vacant positions on the ACMH. The Committee is composed of 12 voting members, in addition to non-voting *ex officio* members. This announcement is seeking nominations for voting members. Voting members of the Committee are appointed by the Secretary from individuals who are not officers or employees of the Federal Government and who have expertise regarding issues of minority health. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise working on issues/matters impacting the health of racial and ethnic minority populations. The charter stipulates that the racial and ethnic minority groups shall be equally represented on the Committee membership. This means we are seeking candidates who can represent the health interest of Hispanics/Latino Americans; Blacks/African Americans; American Indians and Alaska Natives; and Asian Americans, Native Hawaiians, and/or other Pacific Islanders.

Mandatory Professional/Technical Qualifications: Nominees must meet all of the following mandatory qualifications to be eligible for consideration.

(1) Expertise in minority health and racial and ethnic health disparities.

(2) Expertise in developing or contributing to the development of health policies and/or programs. This may include experience in the analysis, evaluation, and interpretation of Federal health or regulatory policy.

(3) Involvement in national, regional, Tribal, and/or community efforts to improve minority health.

(4) Educational achievement, professional certification(s) in health-related field (behavioral health, public health, nursing, environmental health, nutrition, pharmacy, epidemiology, health administration, *etc.*), and professional experience that will support ability to give expert advice on issues related to improving minority health and eliminating racial and ethnic health disparities.

Desirable Qualifications: It is desired that the nominee have:

(1) Knowledge of national health policies and programs managed by the HHS.

(2) Job-related training, self-development, and outside professional activities which provides evidence of

initiative, resourcefulness, and potential for effective performance.

Requirements for Nomination Submission: Nominations should be typewritten (one nomination per nominator). The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address, and daytime telephone number, and the home and/or work address, telephone number, and e-mail address of the individual being nominated; (3) a current copy of the nominee's curriculum vitae, and (4) provide narrative responses to the mandatory professional/technical qualifications listed above in regard to the nominee's expertise. Federal employees should not be nominated for consideration of appointment to this Committee.

Individuals selected for appointment to the Committee shall be invited to serve four year terms. Committee members who are not officers or employees of the United States Government will receive a stipend for attending Committee meetings and conducting other business in the interest of the Committee, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, females, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. Nominations must state that the nominee is willing to serve as a member of ACMH and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected candidate. Therefore, individuals selected for nomination will be required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or

contracts to permit evaluation of possible sources of conflict of interest.

Dated: July 8, 2010.

Garth N. Graham,
Deputy Assistant Secretary for Minority Health.

[FR Doc. 2010-17852 Filed 7-21-10; 8:45 am]

BILLING CODE 4150-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

The Negotiated Rulemaking Committee on the Designation of Medically Underserved Populations and Health Professions Shortage Areas

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of establishment.

Authority: The Negotiated Rulemaking Committee on the Designation of Medically Underserved Populations (MUPs) and Health Professions Shortage Areas (HPSAs) was specifically mandated by Section 5602 of Public Law 111-148, the Patient Protection and Affordable Care Act of 2010 (ACA). The Negotiated Rulemaking process is described at 5 U.S.C. 561-569, the Negotiated Rulemaking Act of 1990, Public Law 101-648. Each Negotiated Rulemaking Committee is also governed by the provisions of Public Law 92-463 (5 U.S.C., App.), which sets forth standards for the formation and use of advisory committees.

SUMMARY: Pursuant to Section 5602 of the ACA, HRSA plans to establish a comprehensive methodology and criteria for Designation of MUPs and Primary Care HPSAs [under Sections 330(b)(3) and 332 of the Public Health Service (PHS) Act, respectively], using a Negotiated Rulemaking process. To do this, HRSA announces the establishment of the Negotiated Rulemaking Committee on the Designation of Medically Underserved Populations and Health Professions Shortage Areas.

FOR FURTHER INFORMATION CONTACT: Andy Jordan, Senior Analyst, Office of Shortage Designation, Bureau of Health Professions; e-mail ajordan@hrsa.gov; telephone (301) 594-0197.

SUPPLEMENTARY INFORMATION: Section 5602 of the Patient Protection and Affordable Care Act of 2010 mandates the Negotiated Rulemaking Committee within the Department of Health and Human Services. To comply with the authorizing directive and guidelines

under the Federal Advisory Committee Act (FACA), a charter has been filed with the Committee Management Secretariat in the General Services Administration (GSA), the appropriate committees in the Senate and U.S. House of Representatives, and the Library of Congress to establish the Advisory Board as a non-discretionary Federal advisory committee. The charter was filed on June 29, 2010.

Objectives and Scope of Activities

The purpose of the Negotiated Rulemaking Committee on Designation of MUPs and HPSAs is to provide advice and make recommendations to the Secretary of Health and Human Services, through the Administrator, Health Resources and Services Administration, with respect to developing a new rule containing a revised methodology, criteria and process for such designations.

Membership and Designation

The Committee shall be limited to 25 members, unless it is determined that a greater number of members is necessary for the functioning of the Committee or to achieve balanced membership, including the one Government employee representing HRSA/DHHS. A neutral facilitator, approved by the Committee, shall act as Chair. Members shall be chosen for their ability to represent the various interests that will be significantly affected by the rule, and/or for technical expertise related to indicators and methodologies potentially useful in defining medical underservice and health professions shortage. Members shall be invited to serve for the duration of the Committee.

Administrative Management and Support

HRSA will provide funding and administrative support for the Negotiated Rulemaking Committee to the extent permitted by law within existing appropriations. Management and oversight for support services provided to the Negotiated Rulemaking Committee will be provided by the Bureau of Health Professions, HRSA.

A copy of the Committee charter can be obtained from the designated contacts or by accessing the FACA database that is maintained by the GSA Committee Management Secretariat. The Web site for the FACA database is <http://fido.gov/facadatabase/>.

Dated: July 16, 2010.

Mary K. Wakefield,
Administrator.

[FR Doc. 2010-17837 Filed 7-21-10; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Program Project in Thrombus Formation.

Date: August 6, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Robert T. Su, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, Md 20892-7924, 301-435-0297, sur@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Resource for Bioactive Sphingolipids.

Date: August 12, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892, 301-594-8394, mooreb@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cardiovascular Risk in Diabetes Follow On Study.

Date: August 17, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7213,

Bethesda, MD 20892, 301-594-8394, mooreb@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17996 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: August 19, 2010.

Time: 1 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, PhD, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20892, 301-443-9737, bautistaa@mail.nih.gov.

Information is also available on the Institute's/Center's home page: <http://www.silk.nih.gov/silk/niaaa1/about/roster.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research

and Research Support Awards., National Institutes of Health, HHS)

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17994 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Huang P01.

Date: August 6, 2010.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lisa Dunbar, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301-594-2849, dunbarl@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17993 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Special Emphasis Panel.

Date: July 29-30, 2010.

Time: 6 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Tremont House—A Wyndham Historic Hotel, 2300 Ship's Mechanic Row, Galveston, TX 77555.

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301-594-3907, pikbr@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17991 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Program Project (P01) Applications.

Date: August 9, 2010.

Time: 12 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lisa Dunbar, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301-594-2849, dunbarl@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17990 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Open: September 7, 2010, 8:30 a.m. to 3:30 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

Name of Committee: National Cancer Advisory Board.

Closed: September 7, 2010, 3:30 p.m. to 5 p.m.

Agenda: Review of grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

Name of Committee: National Cancer Advisory Board

Open: September 8, 2010, 8:30 a.m. to 12 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892-8327, (301) 496-5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/ncab.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17988 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Autism Review.

Date: August 5, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, 301-435-6033, rajarams@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17986 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NINDS Conference Grant Review Panel.

Date: July 28, 2010.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852. (Virtual Meeting).

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-496-5390, willarda@ninds.nih.gov.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Translational Muscular Dystrophy (MD).

Date: August 19, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-435-6033, rajarams@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17985 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, R-13 Conference Grants.

Date: August 6, 2010.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18J, Bethesda, MD 20892, 301-594-2773, laffanjo@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17983 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Minority Biomedical Research Support Chemistry Applications.

Date: July 26, 2010.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: C. Craig Hyde, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301-435-3825, hydec@nigms.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17981 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Therapeutics.

Date: July 30, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214,

MSC 7804, Bethesda, MD 20892, 301-451-3493, rahmanl@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology of Aging.

Date: August 10, 2010.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301-408-9436, fungai.chanetsa@nih.hhs.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-17980 Filed 7-21-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Office of Rural Health Policy; Statement of Delegation of Authority

On February 13, 1991, the Assistant Secretary for Health, of the Department of Health and Human Services, delegated to the Administrator, Health Resources and Services Administration (HRSA), with authority to redelegate, all of the authority under Title III, Part D of the Public Health Service Act (42 U.S.C. 254 *et seq.*), as amended, for Primary Health Care.

Notice is hereby given that I have delegated to the Associate Administrator, and the Deputy Associate Administrator, Office of Rural Health Policy, HRSA, the authority vested in the Administrator under Title III, Part D, Section 330L of the Public Health Service Act (42 U.S.C. 245c-18), as amended, pertaining to the functions assigned to the Office for the Advancement of Telehealth, Office of Rural Health Policy.

This authority may be redelegated.

This delegation excludes the authority to make awards and shall be exercised in accordance with the Department's

and HRSA's applicable policies, procedures, and guidelines.

I hereby affirm and ratify any actions taken by the Associate Administrator and Deputy Associate Administrator, Office of Rural Health Policy, or other HRSA officials, which involved the exercise of these authorities prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: July 13, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010-17836 Filed 7-21-10; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Mission, Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), as follows: The Paperwork Reduction Act function is transferred from Chapter KP, the Office of the Deputy Assistant Secretary for Administration (ODASA), as last amended in 71 FR 59117-59123, October 6, 2006, to Chapter KM, the Office of Planning, Research and Evaluation (OPRE), as last amended in 67 FR 67198, November 4, 2002. This notice announces the transfer of the Paperwork Reduction Act functions from the Office of the Deputy Assistant Secretary for Administration to OPRE. The changes are as follows:

I. *Under Chapter KP, Office of the Deputy Assistant Secretary, delete Paragraph A in its entirety and replace with the following:*

KP.20 Functions [71 FR 59117-59123, 10/06/06].

A. The Immediate Office of the Deputy Assistant Secretary for Administration (ODASA) directs and coordinates all administrative activities for the Administration for Children and Families (ACF). The Deputy Assistant Secretary for Administration serves as ACF's: Chief Financial Officer; Chief Grants Management Officer; Federal Managers' Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official serving as Chief Information Officer; Deputy Ethics Counselor; and Personnel Security Representative. The Deputy Assistant

Secretary for Administration serves as the ACF liaison to the Office of the General Counsel, and as appropriate, initiates action in securing resolution of legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters.

The Deputy Assistant Secretary for Administration represents the Assistant Secretary for Children and Families in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with Presidential Management Agenda initiatives. ODASA provides leadership of assigned ACF special initiatives from Departmental, Federal and non-Federal directives to improve service delivery to customers.

The Deputy Assistant Secretary for Administration provides day-to-day executive leadership and direction to the Immediate Office of the Deputy Assistant Secretary; Equal Employment Opportunity and Civil Rights Staff; Office of Information Services; Office of Financial Services; Office of Management Resources; and the Office of Grants Management. The Deputy Director for Administration assists the Deputy Assistant Secretary in carrying out the responsibilities of the Office.

The Immediate Office of the Deputy Assistant Secretary for Administration contains the Administrative Services Team, the Budget Team, and the Physical Security and Safety Team.

The Administrative Services Team provides direction in meeting the human capital management needs within ODASA. The Team provides leadership, guidance, oversight and liaison functions for ODASA personnel-related issues and activities as well as other administrative functions within ODASA. The Team coordinates with the Office of the Secretary to provide ODASA staff with a full array of personnel services, including position management, performance management, employee recognition, staffing, recruitment, employee and labor relations, employee assistance, payroll liaison, staff development and training, and special hiring and placement programs. The Team develops and maintains systems to track personnel actions to keep the Deputy Assistant Secretary for Administration and ODASA Office Directors informed about the status of personnel actions, employee programs, services and benefits.

The Budget Team manages the formulation and execution of ODASA's federal administration budget and assigned ACF program and common

expense budgets. The Budget Team maintains budgetary controls on ODASA accounts, reconciling accounting reports and invoices, and monitoring all spending. The Team develops, defends and executes the assigned funds for rent, repair and alterations, facilities activities, telecommunication, information technology, personnel services and training. The Team also controls ODASA's credit card for small purchases.

The Physical Security and Safety Team is responsible for planning, managing, and directing ACF's safety, security, and emergency management programs. The Team serves as the lead for ACF in coordination and liaison with Departmental, General Services Administration (GSA) and other Federal agencies on implementation of Federal physical security directives. The Team serves as lead for all tenant security matters in the Aerospace Building. The Team is responsible for planning and executing ACF's environmental health program, and ensuring that appropriate occupational health and safety plans are in place. The Team is responsible for issuing, managing and controlling badge and cardkey systems to control access to agency space for security purposes.

B. The Office of Information Services (OIS) [67 FR 54436-40, 08/22/02] supports the Deputy Assistant Secretary in providing centralized information technology (IT) policy, procedures, standards and guidelines. The OIS Director serves as the Deputy Chief Information Officer, supporting the Chief Information Officer in the full range of activities required to carry out ACF's IT and information resource management (IRM) programs. The Office provides liaison with the Office of Management and Budget (OMB), GSA, and Government Accountability Office (GAO) on all IT and IRM matters, and manages major interdepartmental IRM initiatives. It directs and coordinates ACF's Privacy Act responsibilities, and maintains ACF records and forms management programs. OIS develops long-range IRM plans, IRM policy, procurement plans and budgets for ACF information systems. The Office develops and implements procurement strategies for Automated Data Processing (ADP) support services. OIS reviews and analyzes all ADP acquisition documentation for compliance with applicable laws and regulations as well as for procurement strategy. It coordinates technical assistance provided to program offices on ADP support services procurements. The Office oversees the implementation of e-government policies through

leadership and coordination with ACF program and staff offices; develops, recommends and implements policies, procedures, standards and guidelines; and serves as the ACF liaison with HHS and other Federal and non-Federal agencies to coordinate e-government strategies and policies.

OIS plans, manages, maintains and operates ACF's local area networks, nationwide area network and personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing; and manages and maintains a Help Desk for ACF users. OIS develops and implements policies and plans for and acquires and manages data communications services; and provides liaison with HHS, GSA and private firms on data communications equipment and systems. OIS designs, develops, implements and maintains application systems to support ACF budget, program and administrative systems. The Office provides technical assistance to ACF program offices procuring system support services; technical assistance to State and local agencies on ACF computer systems; develops software policy, procedures, standards and guidelines; and conducts required Departmental reviews of ADP systems.

OIS designs, develops, and maintains system support for e-government activities; provides technical assistance to ACF program offices for e-government support services; and provides technical assistance on e-government systems to State and local agencies. The Office develops and/or implements agency telecommunications management policy in accordance with Federal regulations and procedures. The Office reviews and directs payment of agency telephone invoices. It recommends and advises on the design and function of telecommunications systems, based on user needs, costs and technological availability. The Office communicates with private industry service providers to coordinate the acquisition, installation and maintenance of voice/data telecommunications equipment and systems.

It is responsible for other sources of communications such as pagers, cellular phone service, cable TV service, and audio conferencing equipment and service. It updates and maintains the databases for telephone lines and equipment inventories.

OIS establishes, implements, maintains and oversees an IT security program that assures adequate security is provided for all agency information collected, processed, transmitted, stored

or disseminated in general support systems and applications. The Office develops and implements ACF policies, standards and procedures consistent with government-wide IT security policies; conducts the ACF system security activities required by OMB IT security directives; develops, implements and maintains a security training plan for IT professionals; and provides security awareness training for all ACF staff.

II. Under Chapter KM.00, Office of Planning, Research and Evaluation, delete in its entirety and replace with the following:

KM.00 Mission [67 FR 67198, 11/04/02]. The Office of Planning, Research and Evaluation (OPRE) is the principal advisor to the Assistant Secretary for Children and Families on improving the effectiveness and efficiency of programs designed to make measurable improvements in the economic and social well-being of children and families.

The Office provides guidance, analysis, technical assistance, and oversight to ACF programs and across programs in the agency on: strategic planning aimed at measurable results; performance measurement; research and evaluation methodologies; demonstration testing and model development; statistical, policy and program analysis; synthesis and dissemination of research and demonstration findings; application of emerging technologies to improve the effectiveness of programs and service delivery; and coordinates mandated OMB information collection approvals and plans.

The Office, through the Division of Economic Independence and the Division of Child and Family Development, oversees and manages the research programs under sections 413 and 1110 of the Social Security Act, including: priority settings and analysis; managing and coordinating major cross-cutting, leading-edge studies and special initiatives; and collaborating with states, communities, foundations, professional organizations and others to promote the development of children, family-focused services, parental responsibility, employment, and economic independence. Through the Division of Child and Family Development, the Office also oversees and manages the research, demonstration, and evaluation activities under Section 649 of the Head Start Act. In addition, the Office also provides coordination and leadership in implementing the Government Performance and Results Act (GPRA).

III. Under Chapter KM, Office of Planning, Research and Evaluation, delete Paragraph A in its entirety and replace with the following:

KM.20 Functions.

A. The Office of the Director [67 FR 67198, 11/04/02] provides direction and executive leadership to OPRE in administering its responsibilities. It serves as principal advisor to the Assistant Secretary for Children and Families on all matters pertaining to: improving the effectiveness and efficiency of ACF programs; strategic planning; performance measurement; program and policy evaluation; research and demonstrations; state and local innovations and progress; and public/private partnership initiatives of concern to the Assistant Secretary for Children and Families. It represents the Assistant Secretary for Children and Families at various planning, research, and evaluation forums and carries out special Departmental and Administration initiatives. The Office coordinates mandated OMB information collection approvals and plans and includes ACF's Reports Clearance Officer.

July 14, 2010.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

[FR Doc. 2010-17958 Filed 7-21-10; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

Notice is hereby given that under the authority vested in the Assistant Secretary for Children and Families by the memorandum dated November 14, 1991, from the Assistant Secretary for Management and Budget, I hereby delegate to the Director, Office of Planning, Research and Evaluation, the following authorities:¹

¹ The November 14, 1991 delegation of authority, entitled "Redelegation of Clearance Functions Under the Paperwork Reduction Act of 1980, Public Law 96-511, as amended," remains in effect. The Paperwork Reduction Act of 1995, Public Law 104-13, as amended by Public Law 105-106, Div E, Title LI, Subtitle C, section 5125(a), assigned Paperwork Reduction Act responsibilities to the Chief Information Officer (CIO). 44 U.S.C. 3506(a)(2)(A). On March 1, 1996, the Secretary by delegation designated the Assistant Secretary for Management and Budget as the CIO, and redelegated authorities pertaining to the Paperwork Reduction Act to the CIO. Such authorities remain with the CIO. Neither the Secretary nor the CIO has rescinded the November 14, 1991 redelegation of Paperwork

(a) Authorities Delegated.

1. Authority for the preparation and processing of clearances for collections of information, as well as assuring compliance with related policies, standards, procedures and instructions emanating from the OMB, and the Office of the Secretary, Assistant Secretary for Administration, Office of the Chief Information Officer.

2. Authority to review and approve Class C (routine) Collections of Information from the public prior to the submission of these requests to OMB, except where expedited review by OMB is required.

3. Authority to approve, for publication in the **Federal Register**, of notices of ACF's information collection requests submitted to OMB for clearance.

4. Authority to manage ACF's burden reduction program within the ceiling issued by the Department.

5. Authority to manage all other related paperwork reduction staff work, such as direct communication with OMB on routine reports clearance issues.

(b) Limitations.

1. National Performance Review suggestions to reduce OMB clearance will be taken into consideration.

2. These authorities may be redelegated (1) to officials who are outside the program operation chain but are not below the grade (or equivalent) of deputy assistant secretary, or (2) with the prior approval of the Chief Information Officer to other employees.

3. This delegation of authority shall be exercised under the Department's existing policies on delegations and regulations.

(c) Effect on Existing Delegations.

This delegation supersedes any previous delegation of authority pertaining to authorities delegated herein.

(d) Effective Date.

This delegation is effective on the date of signature.

I hereby affirm and ratify any actions taken by the Director, Office of Planning, Research and Evaluation, which involved the exercise of this authority prior to the effective date of this delegation.

Dated: July 14, 2010.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

[FR Doc. 2010-17942 Filed 7-21-10; 8:45 am]

BILLING CODE 4184-01-P

Reduction Act authorities to the Assistant Secretary for Children and Families, thus the November 14, 1991 redelegation remains in effect.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2010-0040]

Agency Information Collection

Activities: Proposed Collection; Comment Request, OMB No. 1660-0015; Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR-Fs

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660-0015; FEMA Form 086-0-26 Property Information; FEMA Form 08-0-26A Elevation; FEMA Form 086-0-26B Community Acknowledgement; FEMA Form 086-0-22, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps; FEMA Form 086-0-22A, Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish).

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning information required by FEMA to amend or revise National Flood Insurance Program Maps to remove certain property from the 1-percent annual chance floodplain.

DATES: Comments must be submitted on or before September 20, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at www.regulations.gov under Docket ID FEMA-2010-0040. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472-3100.

(3) *Facsimile.* Submit comments to (703) 483-2999.

(4) *E-mail*. Submit comments to FEMA-POLICY@dhs.gov. Include Docket ID FEMA-2010-0040 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Ava Hammond, Program Analyst, Mitigation Directorate, Risk Analysis Division, FEMA at (202) 646-3276 for additional information. You may contact the Office of Records Management for copies of the proposed collection of information at facsimile number (202) 646-3347 or e-mail address: FEMA-Information-Collections-Management@dhs.gov.

SUPPLEMENTARY INFORMATION: With the passage of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*), an owner of a structure, with a federally backed mortgage, located in the 1-percent annual chance floodplain, is required to purchase Federal flood insurance. This was in response to the

escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. As part of this effort, the Federal Emergency Management Agency (FEMA) mapped the 1-percent annual chance floodplain in communities. However, due to scale limitations, individual structures that may be above the base flood cannot always be shown as being out of the 1-percent annual chance floodplain. Title 44 CFR 65.17 and 44 CFR 70.3 outline the data that must be submitted for a review of the determination that the structure is not above the base flood level if the owner of the structure wishes to request such. If the information supplied warrants a reversal of the determination, FEMA will issue a Letter of Map Amendment (LOMA) to waive the Federal requirement for flood insurance when data is submitted to show that the property or structure is at or above the elevation of the base flood.

Collection of Information

Title: Revisions to National Flood Insurance Program Maps: Application Forms and Instructions for (C)LOMAs and (C)LOMR-Fs.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660-0015.

Form Titles and Numbers: FEMA Form 086-0-26 Property Information;

FEMA Form 08-0-26A Elevation; FEMA Form 086-0-26B Community Acknowledgement; FEMA Form 086-0-22 Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps; FEMA Form 086-0-22A Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish).

Abstract: This collection of information allows owners of structures that have been found to be in a designated Special Flood Hazard Area (SFHA) the opportunity to request a review of this determination. With the submission of the appropriate documentation, FEMA will conduct a review of the structure in question and either certify the original finding or modify the designation so that it no longer indicates a SFHA identifier. If the structure is found to not be in a SFHA, FEMA will issue a written determination and the appropriate map is modified by a Letter of Map Amendment (LOMA) or a Letter of Map Revision—Based on Fill (LOMR-F). The structure then qualifies for a waiver of flood insurance.

Affected Public: Individuals or households; business or other for profit.

Estimated Total Annual Burden Hours: 129,320 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Homeowners	Property Information Form/FEMA Form 086-0-26.	26,870	1	26,870	1.63	43,798	\$29.26	\$1,281,529
Surveyors	Elevation Form/ FEMA Form 086-0-26A.	18,809	1	18,809	1.25	23,511	35.66	838,402
Engineers	Elevation Form/ FEMA Form 086-0-26A.	8,061	1	8,061	1.25	10,076	50.22	506,017
Community Officials.	Community Acknowledgment Form/FEMA Form 086-0-26B.	4,076	1	4,076	1.38	5,625	55.97	314,831
Homeowners	On-line LOMA/ LOMR-F Tutorial.	2,499	1	2,499	0.5	1,250	29.26	36,575
Subtotal .....	.....	60,315		60,315		84,260		2,977,354

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Homeowner	Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps/ FEMA Form 086-0-22.	16,428	1	16,428	1.2	19,714	29.26	576,832
Homeowner	Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish)/FEMA Form 086-0-22A.	2,347	1	2,347	1.2	2,816	29.26	82,396
Subtotal .....	.....	18,775		18,775		22,530		659,228
Surveyor	Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps/ FEMA Form 086-0-22.	11,500	1	11,500	1.2	13,800	35.66	492,108
Surveyor	Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish)/FEMA Form 086-0-22A.	1,643	1	1,643	1.2	1,972	35.66	70,322
Subtotal .....	.....	13,143		13,143		15,772		562,430
Engineer	Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps/ FEMA Form 086-0-22.	4,928	1	4,928	1.2	5,913	50.22	296,951

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Engineer	Application Form for Single Residential Lot or Structure Amendments to National Flood Insurance Program Maps (Spanish)/FEMA Form 086-0-22A.	704	1	704	1.2	845	50.22	42,436
Subtotal .....	.....	5,632		5,632		6,758		339,437
Total .....	.....	97,865		97,865		129,320		4,370,376

Estimated Cost: The estimated annual operations and maintenance costs for technical services is \$20,540,250. There are no annual start-up or capital costs.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: July 16, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010-17921 Filed 7-21-10; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2010-0039]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660-0023; Effectiveness of a Community's Implementation of the NFIP Community Assistance Program CAC and CAV Reports

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660-0023; FEMA Form 086-0-28, Community Visit Report; FEMA Form 086-0-29, Community Contact Report.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the collection of information through the Community Visit Report and the Community Contact Report to assure that communities are achieving flood loss reduction objectives. The two key methods FEMA uses in determining community assistance needs to meet these objectives are through the Community Assistance Contact (CAC) and Community Assistance Visit (CAV), which serve to provide a systematic

means of monitoring community National Flood Insurance Program (NFIP) compliance.

DATES: Comments must be submitted on or before September 20, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at <http://www.regulations.gov> under Docket ID FEMA-2010-0039. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472-3100.

(3) *Facsimile.* Submit comments to (703) 483-2999.

(4) *E-mail.* Submit comments to FEMA-POLICY@dhs.gov. Include Docket ID FEMA-2010-0039 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Contact Rachel Sears, Program Specialist, Risk Reduction Division, Federal Emergency Management Agency, (202) 646-2977 for additional information. You may contact the Records Management Division for copies of the proposed collection of

information at facsimile number (202) 646-3347 or e-mail address: *FEMA-Information-Collections-Management@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security's Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP) (codified at 42 U.S.C. 4001, *et seq.*), and a major objective of the NFIP is to assure that participating communities are achieving the flood loss reduction objectives through implementation and enforcement of adequate land use and control measures. FEMA's authority to collect information that will allow for the evaluation of how well communities are implementing their floodplain

management programs is found at 42 U.S.C. 4022 and 42 U.S.C. 4102. Title 44 CFR 59.22 directs the respondent to submit evidence of the corrective and preventive measures taken to meet the flood loss reduction objectives.

Collection of Information

Title: Effectiveness of a Community's Implementation of the NFIP Community Assistance Program CAC and CAV Reports.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660-0023.

Form Titles and Numbers: FEMA Form 086-0-28, Community Visit Report; FEMA Form 086-0-29, Community Contact Report.

Abstract: Through the use of a Community Assistance Contact (CAC) or Community Assistance Visit (CAV), FEMA can make a comprehensive assessment of a community's floodplain management program. Through this assessment, FEMA can assist the community to understand the NFIP's requirements, and implement effective flood loss reductions measures. Communities can achieve cost savings through flood mitigation actions by way of insurance premium discounts and reduced property damage.

Affected Public: State, local and Tribal Government.

Estimated Total Annual Burden Hours: 4,000 Hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, local or Tribal government.	FEMA Form 086-0-28/Community Visit Report.	800	1	800	2	1,600	\$35.39	\$56,624
State, local or Tribal government.	FEMA Form 086-0-28/Community Visit Report.	200	1	200	2	400	41.85	16,740
State, local or Tribal government.	FEMA Form 086-0-29/Community Contact Report.	1,600	1	1,600	1	1,600	35.39	56,624
State, local or Tribal government.	FEMA Form 086-0-29/Community Contact Report.	400	1	400	1	400	41.85	16,740
Total .....	.....	3,000	.....	3,000	.....	4,000	.....	146,728

Estimated Cost: There is no capital, start-up, operation or maintenance cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Dated: July 16, 2010.

Tammi Hines,

Acting Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010-17974 Filed 7-21-10; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2010-0018]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Availability of FY2011 Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Each year the Federal Emergency Management Agency (FEMA) is required by the Write-Your-Own (WYO) Program Financial Assistance/Subsidy Arrangement (Arrangement) to notify private insurance companies (Companies) and to make available to the Companies the terms for subscription or re-subscription to the Arrangement. In keeping with that requirement, this notice provides the terms to the Companies to subscribe or re-subscribe to the Arrangement.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, DHS/FEMA, 1800 South Bell Street, Room 720, Arlington, VA 20598-3020, 202-646-3429 (phone), 202-646-3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: Under the Write-Your-Own (WYO) Program Financial Assistance/Subsidy Arrangement (Arrangement), (90 as of June 1, 2010) private sector property insurers issue flood insurance policies

and adjust flood insurance claims under their own names based on an Arrangement with the Federal Insurance Administration (FIA) published at 44 CFR part 62, appendix A. The WYO insurers receive an expense allowance and remit the remaining premium to the Federal Government. The Federal Government also pays flood losses and pays loss adjustment expenses based on a fee schedule. In addition, under certain circumstances reimbursement for litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by the FIA based on documentation submitted by the WYO insurers. The complete Arrangement is published in 44 CFR part 62, appendix A. Each year FEMA is required to publish in the **Federal Register** and make available to the Companies the terms for subscription or re-subscription to the Arrangement.

Though not substantive, there has been a recent change to the marketing guidelines discussed in the Arrangement. As noted in the first sentence of the third paragraph of 44 CFR part 62, appendix A, Article III. B. of the Arrangement:

[t]he amount of expense allowance retained by the Company may increase a maximum of two percentage points, depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G.

The marketing incentive percentage will remain the same. However, through a separate document the National Flood Insurance Program is revising its targeted goals regarding the criteria for growth.

During August 2010, FEMA will send a copy of the offer for the FY2011 Arrangement, together with related materials and submission instructions, to all private insurance companies participating under the current FY2010 Arrangement. Any private insurance company not currently participating in the WYO Program but wishing to consider FEMA's offer for FY2011 may request a copy by writing: DHS/FEMA, Mitigation Directorate, Attn: Edward L. Connor, WYO Program, 1800 South Bell Street, Room 720, Arlington, VA 20598-3020, or contact Edward Connor at 202-646-3445 (facsimile), or Edward.Connor@dhs.gov (e-mail).

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010-17977 Filed 7-21-10; 8:45 am]

BILLING CODE 9110-11-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R5-ES-2010-N132; 50120-1113-0000-F2]

Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit and Associated Habitat Conservation Plan for the Beech Ridge Wind Energy Project, Greenbrier and Nicholas Counties, WV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and notice of meeting.

SUMMARY: Under the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service (Service or "we"), advise the public that we intend to gather information necessary to prepare an Environmental Impact Statement (EIS) on the proposed incidental take permit and associated Habitat Conservation Plan for the Beech Ridge Wind Energy Project (HCP). The proposed HCP is being prepared under the Endangered Species Act of 1973, as amended (ESA). The incidental take permit is needed to authorize the incidental take of listed species as a result of implementing activities covered under the proposed HCP.

We provide this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected tribes, and the public of our intent to prepare an EIS; (3) announce the initiation of a 30-day public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS.

DATES: An "open-house" public meeting will be held on August 9, 2010, from 6 p.m. to 9 p.m. To ensure consideration, please send your written comments for receipt on or before August 23, 2010.

ADDRESSES: The public meeting will be held at the Community Center, 604 Nicholas Street, Rupert, WV 25984. Information, written comments, or questions related to the preparation of the EIS and NEPA process should be submitted to Ms. Laura Hill, Assistant Field Supervisor, by U.S. mail at U.S. Fish and Wildlife Service, West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241; by facsimile at (304) 636-7824; or by electronic mail (e-mail) at fw5es_wvfo@fws.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Hill (**ADDRESSES**) at (304) 636-6586, extension 18. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to participate in the public meeting should contact Laura Hill (**ADDRESSES**) at (304) 636-6586, extension 18, no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the ESA and Federal regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. Under the ESA, the following activities are defined as take: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize "incidental take" of listed species. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are at 50 CFR 13 and 50 CFR 17.

On December 8, 2009, the U.S. District Court of Maryland ruled that Beech Ridge Energy LLC was in violation of section 9 of the ESA for its potential to take endangered Indiana bats (*Myotis sodalis*) and its failure to file an application for an incidental take permit related to its wind energy project located in West Virginia. The Court determined that take of Indiana bats was likely over the life of the project via collision with turbines or barotrauma (*i.e.*, hemorrhaging of bats' lungs in low-pressure areas surrounding operating turbine blades).

The District Court ruled that Beech Ridge Energy LLC's construction and operation of wind turbines (40 in construction at the time, with a total of 124 hoped for by the end of 2010) would violate section 9 of the ESA unless and until the defendants, Beech Ridge Energy LLC, obtained an incidental take permit. The Court enjoined Beech Ridge Energy LLC from building additional turbines beyond the 40 already under construction, and restricted turbine operation to the bat hibernation season (November 15 to March 31) until Beech Ridge Energy LLC obtains an incidental take permit. The Court also invited the parties to confer on whether they could agree on terms for further turbine operation while Beech Ridge Energy LLC pursued an incidental take permit.

Under the terms of a settlement agreement reached between Beech Ridge Energy LLC and plaintiffs (Animal Welfare Institute, Mountain Communities for Responsible Energy, and David G. Cowan) on January 23, 2010, Beech Ridge Energy LLC has agreed not to build 24 of the original 124 turbines that are closest to known bat hibernacula. While the HCP is under development, the plaintiffs agreed that Beech Ridge Energy LLC may construct an additional 27 turbines (in addition to the 40 already under construction) and may operate these 67 turbines during specified times of the day and year when bats normally are not flying about and, thus, would not be at risk of mortality or injury from turbine operation.

The Service's Proposed Action

Consistent with the court order and settlement agreement, Beech Ridge Energy LLC has indicated its intent to pursue an incidental take permit. Section 10(a)(1)(B) of the ESA authorizes the Service to issue incidental take permits to non-Federal land owners for the take of endangered and threatened species, provided that, among other requirements, the take will be incidental to otherwise lawful activities, will not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and will be minimized and mitigated to the maximum extent practicable.

In accordance with section 10(a)(2)(A) of the ESA of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), Beech Ridge Energy LLC is preparing an HCP in support of an application for a permit from the Service to incidentally take endangered Indiana bats (*Myotis sodalist*) and Virginia big-eared bats (*Corynorhinus townsendii virginianus*) (covered species). The proposed permit would authorize take of covered species for the lifespan of the project (anticipated to be at least 20 years) and during project decommissioning. The proposed HCP would be designed to avoid, minimize, and mitigate the impacts of any take that may occur.

Beech Ridge did not seek incidental take coverage for the construction of its first 67 turbines. But it now seeks to develop an HCP and seek a permit for covered activities that include the construction of up to 33 additional turbines (including associated construction and upgrade of access roads, and construction of staging areas and collection line trenches for these turbines), operation of the full array of 100 turbines, maintenance of an existing transmission line, and maintenance and decommissioning of the Beech Ridge

Wind Energy Project. Permit coverage may also include certain off-site mitigation activities such as habitat enhancement and installation of cave gates to benefit listed bats. Construction, operation, and decommissioning of the project, and actions to minimize and mitigate impacts, have the potential to take wildlife species protected under the ESA.

The proposed HCP would describe how the effects of the covered activities would be minimized, mitigated, and monitored under the conservation program. Program components would likely include avoidance and minimization measures (such as studies to test and then implement turbine operational changes that effectively reduce mortality and injury of listed bats and other wildlife), long-term monitoring, adaptive management, and mitigation measures consisting of on-site and/or off-site habitat protection and/or enhancement.

Beech Ridge Wind Power Project Overview

Beech Ridge Energy LLC is developing a wind power project in Greenbrier and Nicholas Counties, West Virginia. The project would be located on approximately 32 kilometers (km) (20 miles (mi)) of ridge lines, approximately 8 km (5 mi) northwest of the town of Trout, about 11 km (7 mi) north-northwest of Williamsburg, and about 14 km (9 mi) northeast of downtown Rupert.

Phase 1 of the Project consists of 67 existing wind turbines and associated collection lines, access road, transmission lines, a substation, an operations and maintenance facility, temporary staging areas, and a concrete batch plant. Beech Ridge Energy LLC constructed 57 of these turbines between June 2009 and March 2010 and plans to construct the remaining 10 Phase 1 wind turbines before August 15, 2010. Beech Ridge Energy LLC proposes to construct an additional 33 turbines upon issuance of an incidental take permit.

Existing wind turbines constructed during Phase 1 of the project consist of 67 General Electric 1.5-Megawatt wind turbines, each with a 77-meter (m) (253-foot (ft)) rotor diameter, and a rotor swept area of 4,654 square m (50,095 square ft). The 33 additional wind turbines would have a maximum 100-m (328-ft) rotor diameter, with a rotor swept area of 7,875 square m (84,454 square ft).

The wind turbine hub height for the existing 67 turbines is 80 m (262 ft). The additional 33 turbines would have a hub height of up to 100 m (328 ft), for an

approximate total height of 117–150 m (389–492 ft) at the rotor apex. Installation of each individual turbine, including access roads, equipment laydown yards, and other supporting infrastructure, will temporarily impact an area of approximately 4.0 acres, while the final footprint of each turbine will be approximately 0.3 acre.

In addition to wind turbines, the project would include the following components:

(1) The project site is accessed using existing county public roadways and privately owned timber roads, plus existing upgraded or newly constructed all-weather access roads. The main access route for the project, including equipment deliveries, will be via County Road 1 North from Rupert to Clearco. An estimated 31,245 ft of existing roads were upgraded and approximately 40,620 ft of new access roads were or will be constructed for the 100-turbine project. Access roads to the turbines will have a temporary width of up to 18.2 m (60 ft) during construction, and a permanent width of 4.9 m (16 ft).

(2) A power collection system delivers power generated by the wind turbines to the project substation. Collector cables placed in trenches and buried underground connect the wind turbines. The underground collection system terminates at the project substation.

(3) A transmission line to connect the project to the existing electric power grid was constructed in 2009. It extends approximately 22.7 km (14.2 mi) northwest from the turbine strings to Allegheny Power's Grassy Falls Substation north of the community of Grassy Falls in Nicholas County, West Virginia. Temporary ground disturbance may be necessary during the life of the project to maintain the transmission line.

(4) An operations and maintenance (O&M) facility is currently being constructed to serve the project, including a main building with the Supervisory Control and Data Acquisition System, offices, spare parts storage, restrooms, a shop area, outdoor parking facilities, a turnaround area for larger vehicles, outdoor lighting, and a gated access with partial or full-perimeter fencing.

Routine maintenance consists primarily of daily travel by technicians that test and maintain the wind turbines. O&M staff travel in pickup or other light-duty trucks. Occasionally, the use of a crane or equipment transport vehicles will be necessary for cleaning, repairing, adjusting, or replacing the rotors or other components of the wind turbines. Cranes used for maintenance activities

are not as large as the large track-mounted cranes needed to erect the wind turbine towers and are likely to be contracted at the time of service and not stored at the facility.

Operations monitoring will be conducted from computers located in the base of each wind turbine tower and from the O&M building and other remote locations using telecommunication links and computer-based monitoring. Over time, it will be necessary to clean or repaint the blades and towers and periodically exchange lubricants and hydraulic fluids in the mechanisms of the wind turbines.

Decommissioning would involve removing the wind turbines, support towers, transformers, substation, and the upper portion of foundations. Site reclamation after decommissioning would be based on site-specific requirements and techniques commonly employed at the time the site is reclaimed. Techniques could include regrading, spot replacement of topsoil, and revegetation of all disturbed areas with an approved native seed mix. Wind turbine tower and substation foundations would be removed to a below-ground depth as agreed upon with landowners.

Approximately 200 workers have been or will be employed over the course of construction. During its year-round operation, there will be 8 to 18 permanent full-time and/or part-time employees on the O&M staff. The project is expected to function for at least 20 years.

The project is located in a rural setting, with the landscape primarily composed of forested areas that are actively cut for timber and coal mining. Several small towns (Trout, Williamsburg, Rupert) occur near the project area, but no homes or residential areas occur within the project.

The HCP and permit will contain provisions to monitor and report on the impacts from the project on birds and bats, as well as the effects of operational changes on wildlife mortality within the wind farm. In addition, any required tree clearing will be conducted during winter when bats are hibernating, unless otherwise authorized by the Service. Other methods to mitigate impacts from the project that may be considered include, but are not limited to, protection and enhancement of Indiana bat habitat outside the project area.

Environmental Impact Statement

We have selected Stantec to prepare the EIS for proposed issuance of an ESA incidental take permit to Beech Ridge LLC. The document will be prepared in accordance with requirements of NEPA,

as amended (42 U.S.C. 4321 *et seq.*), and NEPA implementing regulations (40 CFR parts 1500 through 1508), and in accordance with other applicable Federal laws and regulations, and the policies and procedures of the Service for compliance with those regulations. Stantec will prepare the EIS under the supervision of the Service, which will be responsible for the scope and content of the NEPA document.

The EIS will consider the proposed action, the issuance of a Section 10(a)(1)(B) permit under the ESA, no action (no permit), and a reasonable range of alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS. We are currently in the process of developing alternatives for analysis. The alternatives to be considered for analysis in the EIS may include: Variations in the scope of covered activities; variations in curtailment of wind turbine operations; variations in the location, amount, and type of conservation; variations in permit duration; variations in monitoring the effectiveness of permit conditions; or a combination of these elements. We will consider other reasonable project alternatives recommended during this scoping process in order to develop a full range of alternatives.

The EIS will also identify direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomic, and other environmental issues that could occur with the implementation of the proposed actions and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

Review of the EIS will be conducted in accordance with the requirements of NEPA, Council on the Environmental Quality Regulations (40 CFR 1500–1508), the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), other applicable regulations, and the Service's procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues and alternatives raised by the public, related to the proposed action.

We request data, comments, new information, or suggestions from the public, other concerned governmental

agencies, the scientific community, tribes, industry, or any other interested party on this notice. We will consider all comments we receive in complying with the requirements of NEPA and in the development of an HCP and incidental take permit. We particularly seek comments concerning: (1) Biological information concerning the Indiana bat and Virginia big-eared bat, as well as unlisted bats and birds; (2) relevant data concerning wind power and bat and bird interactions; (3) additional information concerning the range, distribution, population size, and population trends of the Indiana bat and Virginia big-eared bat, as well as unlisted bats and birds; (4) current or planned activities in the subject area and their possible impacts on the environment and resources; (5) the presence of facilities within the project area that are eligible to be listed on the National Register of Historic Places or whether other historical, archeological, or traditional cultural properties may be present; (6) the direct, indirect, and cumulative effects that implementation of any reasonable alternatives could have on endangered and threatened species and their habitats, as well as unlisted bats and birds; (7) adequacy and advisability of proposed minimization and mitigation measures for ESA-listed species and other wildlife; (8) post-construction monitoring techniques; and (9) identification of any other environmental issues that we should consider with regard to the proposed development and permit action.

Written comments from interested parties are welcome to ensure that the full range of issues related to the permit request is identified. Comments will only be accepted in written form. You may submit written comments at the public meeting, or by regular mail, e-mail, or facsimile transmission (*see ADDRESSES*).

All comments and materials we receive, including names and addresses, will become part of the administrative record and may be released to the public. Comments we receive will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8 a.m. to 4 p.m.) at the Service's West Virginia Field Office (*see ADDRESSES*).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold personally identifying

information from public review, we cannot guarantee that we will be able to do so.

Author

The primary author of this notice is Laura Hill, U.S. Fish and Wildlife Service, West Virginia Field Office.

Authority

The authority for this section is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and National Environmental Policy Act, as amended, (42 U.S.C. 4321 *et seq.*)

Dated: July 1, 2010.

Anthony D. Léger,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 2010-17932 Filed 7-21-10; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Denver Museum of Nature & Science, Denver, CO. The human remains and associated funerary objects were removed from Grand County, UT; possibly eastern Utah or western Colorado; Montezuma County, CO; and the American "Southwest."

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects from the Rocky Mountains West was made by Denver Museum of Nature & Science professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Fort Sill Apache Tribe of Oklahoma; Gila River

Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Ysleta del Sur Pueblo of Texas; Zuni Tribe of the Zuni Reservation, New Mexico, and the Southern Paiute Consortium, a non-federally recognized Indian group.

In the 1940s, human remains representing a minimum of four individuals were likely removed during excavations in eastern Utah or western Colorado by H. Marie Wormington, archeologist. In 1993, Wormington donated these remains to the museum (DMNS catalogue (and CUI numbers) A1985.1 (CUI 24), A1985.2 (CUI 25), A1985.3 (CUI 26), and A1985.4 (CUI 27)). Remains include one adult female found with unshaped rocks (not collected), one child of indeterminate sex, and two adults of indeterminate sex. Most of these individuals are

represented by fragmentary remains. Newspaper wrappings around the remains are dated to March 12, 1949. Wormington's field expeditions during this time focused on the area between Utah and Colorado. No known individuals were identified. No associated funerary objects are present.

In 1938, human remains representing a minimum of five individuals were excavated at the Turner-Look Site near Cisco, Grand County, UT, by Wormington. The human remains were removed during legal excavation on private land. The human remains were accessioned into the museum collection (A533.4A (CUI 28), A533.5C (CUI 29), A533.5B (CUI 30), A533.5C (CUI 31), and A533.6A (CUI 32)). Remains include one child, which was reportedly found with seven associated funerary objects, but only three were collected and in the museum's possession. The additional human remains are composed of one infant and three adult males (one with associated pottery sherds). When excavated these remains were defined within the then incipient culture type "Fremont" although this designation as it was then understood is ambiguous in today's archeological lexicon. No known individuals were identified. The four associated funerary objects are one small circular slate plaque (A533.4B), one stone metate (A533.7A), one lot of shell fragments (A533.36), and one lot of pottery sherds (A533.6B).

In 1968, Francis V. Crane and Mary W.A. Crane donated a hair bundle representing one individual to the museum (AC.7653; CUI 33). Documents indicate the hair was taken from the middle of Montezuma County, CO, in Mitchell Canyon, by Ezra Hambelton. In 1964, the Cranes purchased the hair bundle from the Fred Harvey Company. This bundle of hair is wrapped with a fiber around the middle. The hair is cut straight and is black-brown in color. No known individual was identified. No associated funerary objects are present.

In 1981, the cranium of an adult male was accessioned. The accession records indicate the individual is a "Pueblo Indian, Southwest" (A1150.1; CUI 34). In 1983, two individuals, represented by the right arm bone of an adult of indeterminate sex (AC.2874; CUI 35) and two leg bones of an adult of indeterminate sex (AC.4896A-B; CUI 36), were accessioned. These individuals were originally acquired by the Cranes from Gans, Inc. Southwest Arts and Crafts sometime between 1954 and 1959. Documents indicate these individuals are from the "Southwest." In 1986, two individuals were accessioned (A1988.1; CUI 38 and A1989.1; CUI 39).

Both were collected at an unknown location at an unknown time, but accession records indicate "Pueblo" or "Southwest." In 1949, a cranium and mandible removed from an unknown location were donated to the museum by Pierpoint Fuller, Jr. (A159.2; CUI 43). Records suggest a possible "Pueblo" Indian from the "Southwest." No known individuals were identified. No associated funerary objects are present. These six individuals in the museum's collections are only identified as geographically related to the American "Southwest."

Insufficient geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, other information or expert opinion exists to reasonably establish cultural affiliation of the above individuals with any present-day Indian tribe, although non-destructive physical anthropological evidence, contextual information, documentary evidence, and collector and institutional histories support Native American identity.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 16 individuals of Native American ancestry. Officials of the Denver Museum of Nature & Science also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the four objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for the disposition of culturally unidentifiable human remains. The Denver Museum of Nature & Science has determined that the human remains are "culturally unidentifiable" under NAGPRA. In 2009, during a major intertribal consultation meeting and through additional consultation with individual tribes, an intertribal agreement was established, for disposition of the remains and funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico. In the agreement, the Hopi Tribe of Arizona

was designated as the lead in reburying 11 individuals. In addition, the Hopi Tribe of Arizona will rebury five of the individuals (CUIs 28–32) with the assistance of the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. This agreement was presented to the Review Committee on October 30, 2009. Pursuant to this agreement, the Denver Museum of Nature & Science requested that the Review Committee recommend the disposition of the culturally unidentifiable Native American human remains and associated funerary objects to the Hopi Tribe of Arizona. The Review Committee considered the request and recommended the disposition. The Secretary of the Interior agreed with the Review Committee's recommendation. A March 4, 2010, letter from the Designated Federal Officer, writing on behalf of the Secretary of the Interior, transmitted the authorization for the Denver Museum of Nature & Science to effect disposition of the physical remains of the culturally unidentifiable individuals and the associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico, contingent upon the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement. In the same letter, the Secretary recommended the transfer of the associated funerary objects to the Indian tribe listed above to the extent allowed by Federal, state, or local law.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Chip Colwell-Chanthaphonh, Denver Museum of Nature & Science, 2001 Colorado Blvd., Denver, CO 80205, telephone (303) 370-6378, before August 23, 2010. Disposition of the Native American human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona;

Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Ysleta del Sur Pueblo of Texas; Zuni Tribe of the Zuni Reservation, New Mexico; and the Southern Paiute Consortium, a non-federally recognized Indian group, that this notice has been published.

Dated: July 13, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010-17874 Filed 7-21-10; 8:45 am]

BILLING CODE 4312-50-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Colorado Museum, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the University of Colorado Museum, Boulder, CO. The human remains were removed from Grand County, UT, and Mesa County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the University of Colorado Museum professional staff in consultation with representatives of the Apache Tribe of Oklahoma; Bridgeport Paiute Indian Colony of California; Comanche Nation, Oklahoma; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kiowa Indian Tribe of Oklahoma; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Northwestern Band of the Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, and Shivwits Band of Paiutes); Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians, Utah; Southern Ute Indian

Tribe of the Southern Ute Reservation, Colorado; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band); Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; Yomba Shoshone Tribe of the Yomba Reservation, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1951, human remains representing a minimum of two individuals were removed from Luster Cave site, Grand County, UT, with the landowner's permission by a field crew under the direction of Robert H. Lister of the University of Colorado, Boulder, Department of Anthropology, and Herbert W. Dick of the University of Colorado Museum. Luster Cave was on property owned by James J. Luster and located west of the Little Dolores River. No known individuals were identified. The one associated funerary object is a rabbit fur blanket.

The human remains are Native American based on site dates, stratigraphy, and the associated funerary object/burial context. The archeological evidence provides a date range of 1700 B.C. -A.D. 1300 for the Luster Cave site. Based on the stratigraphical evidence, the remains of an infant found wrapped in the rabbit fur blanket that was tied with yucca fiber are reasonably believed to date to A.D. 1300 or later. Based on the stratigraphy at the site, the second individual, represented by a single tooth cap found 48–60" below the surface, is reasonably believed to predate the infant burial.

In 1951, human remains representing two individuals were removed from 5ME449, Roth Cave site, Mesa County, CO, with the landowner's permission by a field crew under the direction of Lister and Dick. Roth Cave was on property owned by J.D. Roth and located north of the Little Dolores River. No known individuals were identified. The one associated funerary object is shredded juniper bark wrapping.

The human remains are Native American based on site dates, stratigraphy, and the associated funerary object/burial context. Roth Cave site dates archeologically to A.D. 500–1100. Based on the stratigraphical evidence, the remains of a child, found wrapped in the shredded juniper bark, are

reasonably believed to date to A.D. 1100 or later. Based on the stratigraphy at the site, the second individual, represented by adult teeth, found below the surface, is reasonably believed to predate the child burial.

In 1951, human remains representing one individual were removed from 5ME453, Arroyo Site C2–2, Mesa County, CO, by a field crew under the direction of Lister and Dick. Arroyo Site C2–2 site was on property owned by J.D. Roth and located just north of the Little Dolores River, on the north side of Sieber Canyon. No known individual was identified. No associated funerary objects are present.

The human remains are Native American based on the site dates, and the orientation and position of the burial. Arroyo Site C2–2 dates archeologically to A.D. 500–1000.

Officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of five individuals of Native American ancestry. Officials of the University of Colorado Museum also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Colorado Museum have determined that, pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot reasonably be traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for the disposition of culturally unidentifiable human remains. In October 2009, the University of Colorado Museum requested that the Review Committee recommend the disposition of the culturally unidentifiable human remains to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, based on Ute aboriginal land claims supported by oral tradition, as well as the support of other Indian tribes that were consulted. The Comanche Nation, Oklahoma; Hopi Tribe of Arizona; and Susanville Indian Rancheria, California, signed the disposition agreement in support of the disposition to the Ute Mountain Tribe. Furthermore, none of the Indian tribes consulted objected to the determination of the "culturally unidentifiable" status

by the University of Colorado Museum and the disposition to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

The Review Committee considered the proposal at its October 30–31, 2009, meeting and recommended the disposition of the human remains and associated funerary objects to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. The Secretary of the Interior agreed with the Review Committee's recommendation. An April 19, 2010, letter from the Designated Federal Officer, writing on behalf of the Secretary of the Interior, transmitted the authorization for the University of Colorado Museum to effect disposition of the physical remains of the culturally unidentifiable individuals to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement. In the same letter, the Secretary recommended the transfer of the associated funerary objects to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, to the extent allowed by Federal, state, or local law.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Steve Lekson, Curator of Anthropology, University of Colorado Museum, in care of Jan Bernstein, Bernstein & Associates, 1041 Lafayette St., Denver, CO 80218, telephone (303) 894-0648, before August 23, 2010. Disposition of the human remains and associated funerary objects to the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, may proceed after that date if no additional claimants come forward.

The University of Colorado Museum is responsible for notifying the Apache Tribe of Oklahoma; Bridgeport Paiute Indian Colony of California; Comanche Nation, Oklahoma; Confederated Tribes of the Goshute Reservation, Nevada and Utah; Death Valley Timbi-Sha Shoshone Band of California; Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Ely Shoshone Tribe of Nevada; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Hopi Tribe of Arizona; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kiowa Indian Tribe of Oklahoma; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada;

Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Northwestern Band of the Shoshoni Nation of Utah (Washakie); Paiute Indian Tribe of Utah; Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; San Juan Southern Paiute Tribe of Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone Paiute Tribes of the Duck Valley Reservation, Nevada; Skull Valley Band of Goshute Indians, Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Summit Lake Paiute Tribe of Nevada; Susanville Indian Rancheria, California; Te-Moak Tribe of Western Shoshone Indians of Nevada; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Winnemucca Indian Colony of Nevada; Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; Yomba Shoshone Tribe of the Yomba Reservation, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: July 13, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FRR Doc. 2010-17876 Filed 7-21-10; 8:45 am]

BILLING CODE 4312-50-S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects in the control of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The associated funerary objects were removed from the Tecolote Pueblo ruin, San Miguel County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the associated funerary objects was made by Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

In 1929, human remains representing 12 individuals and 7 lots of associated funerary objects were removed from the Tecolote Pueblo ruin (LA296), San Miguel County, NM, by Alfred V. Kidder under the auspices of the Phillips Academy, Andover, MA. Kidder acquired the collection for the museum as part of the Andover Pecos Expedition. On October 28, 1936, the human remains were donated to the Peabody Museum of Archaeology and Ethnology at Harvard University, Cambridge, MA (a completely separate institution from the Robert S. Peabody Museum of Archaeology). The Robert S. Peabody Museum of Archaeology retained control of the associated funerary objects, two of which are currently missing. The missing associated funerary objects are a bone awl and one lot of olla sherds. The five associated funerary objects are one shell bead necklace (restrung), one fragmented *Haliotis* shell disc (pendant), an *Olivella* shell bead necklace, one quartzite projectile point, and one clay "cloud-blower" pipe.

Tecolote Pueblo ruin is located near Tecolote Creek, San Miguel County, NM. Similarities in site architecture, including Kivas and material culture, associated funerary objects, and

ceramics found at the site are consistent with Ancestral Puebloan occupation of the southwestern United States. The archeological literature refers to this widespread cultural tradition as "Anasazi," "Ancestral Puebloan," or "Ancient Puebloan."

A relationship of shared group identity can be reasonably traced between the Ancestral Puebloan culture found at Tecolote Pueblo ruin and modern-day Puebloan people represented by the Hopi Tribe, Ohkay Owingeh, Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Isleta, Pueblo of Jemez, Pueblo of Laguna, Pueblo of Nambe, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of San Felipe, Pueblo of San Ildefonso, Pueblo of Sandia, Pueblo of Santa Ana, Pueblo of Santa Clara, Pueblo of Santo Domingo, Pueblo of Taos, Pueblo of Tesuque, Pueblo of Zia, Ysleta del Sur Pueblo, and Zuni Tribe.

There is continuity in architecture from this site to modern-day Pueblos. There is also continuity in the style of the associated funerary objects, including the shell personal adornments, with those made and used by modern-day Puebloan people. Evidence supports continuity in material culture with the Pueblo of Isleta, Pueblos of Picuris, and Pueblo of Taos based on evidence provided during consultation. Based on oral tradition evidence, the Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Picuris, Pueblo of Pojoaque, Pueblo of Santo Domingo, Pueblo of Sandia, Pueblo of Tesuque, and Pueblo of Zia identify Pecos Pueblo and Tecolote Pueblo as a site of occupation, pilgrimage, hunting, and trade.

Jemez Pueblo oral tradition identifies this site as a precursor to Pecos Pueblo, a site closely associated with Jemez Pueblo, which was occupied from approximately A.D. 1100 to 1700. Oral tradition of other Pueblos includes trade expeditions and pilgrimages to the Tecolote Pueblo area. Historic records document Pecos Pueblo occupation from Spanish contact to approximately A.D. 1838 when the last inhabitants left and moved to the Pueblo of Jemez. In 1936, an Act of Congress recognized the Pueblo of Jemez as a "consolidation" and "merger" of the Pecos Pueblo and Pueblo of Jemez. All property, rights, titles, interests, and claims of both Pueblos were consolidated under the Pueblo of Jemez. Additional evidence supporting a shared group identity between the descendants of the Pecos and Jemez Pueblos emerges in numerous aspects of present-day Jemez life and are documented in a 1992–1993

study, entitled "Pecos Ethnographic Project."

Navajo Nation oral history, which includes stories, songs and prayers, supports a relationship with sites of Ancestral Puebloan occupation such as Mesa Verde and Chaco Canyon, as well as some cultural practices shared with modern Pueblo people. But there is not a preponderance of evidence to support a relationship of shared group identity under NAGPRA with the Tecolote Pueblo ruin.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001(3)(A), the five objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the associated funerary objects and the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the associated funerary objects should contact Malinda Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, 175 Main St., Andover, MA 01810, telephone (978) 749–4493, before August 23, 2010. Repatriation of the associated funerary objects to the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa

Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: May 6, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–17877 Filed 7–21–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and were pending through December 31, 2009, and contract actions that have been completed or discontinued since the last publication of this notice on November 6, 2009. From the date of this publication, future notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital

recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Services Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225-0007; telephone 303-445-2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and

conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in this Document

ARRA—American Recovery and Reinvestment Act of 2009
BCP—Boulder Canyon Project Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
FR—**Federal Register**
IDD—Irrigation and Drainage District
ID—Irrigation District

LCWSP—Lower Colorado Water Supply Project

M&I—Municipal and Industrial
NMISC—New Mexico Interstate Stream Commission

O&M—Operation and Maintenance
P-SMBP—Pick-Sloan Missouri Basin Program

PPR—Present Perfected Right
RRA—Reclamation Reform Act of 1982
SOD—Safety of Dams

SRPA—Small Reclamation Projects Act of 1956

USACE—U.S. Army Corps of Engineers
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706-1234, telephone 208-378-5344.

1. *Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming:* Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. *Rogue River Basin Water Users, Rogue River Basin Project, Oregon:* Water service contracts; \$8 per acre-foot per annum.

3. *Willamette Basin Water Users, Willamette Basin Project, Oregon:* Water service contracts; \$8 per acre-foot per annum.

4. *Pioneer Ditch Company, Boise Project Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon:* Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. *Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon:* Irrigation water service contract for approximately 13,000 acre-feet.

6. *Queener Irrigation Improvement District, Willamette Basin Project, Oregon:* Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (a USACE project) for the purpose of irrigation within the District's service area.

7. *West Extension ID, Umatilla Project, Oregon:* Contract for long-term boundary expansion to include lands outside Federally recognized District boundaries.

8. *Greenberry ID, Willamette Basin Project, Oregon:* Irrigation water service

contract for approximately 14,000 acre-feet of project water.

9. *Six water user entities of the Arrowrock Division, Boise Project, Idaho*: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of the reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

10. *Five irrigation water user entities, Rogue River Basin Project, Oregon*: Long-term contracts for exchange of water service with five entities for the provision of up to 1,163 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

11. *Cowiche Creek Water Users Association and Yakima-Tieton ID, Yakima Project, Washington*: Warren Act contract to allow the use of excess capacity in Yakima Project facilities to convey up to 1,583.4 acre-feet of nonproject water for irrigation of approximately 396 acres of nonproject land.

12. *State of Washington, Columbia Basin Project, Washington*: Long-term contract for up to 25,000 acre-feet of project water to substitute for State-issued permits for M&I purposes with an additional 12,500 acre-feet of project water to be made available to benefit stream flows and fish in the Columbia River under this contract or a separate operating agreement.

13. *East Columbia Basin ID, Columbia Basin Project, Washington*: Supplement No. 3 to the 1976 Master Water Service Contract providing for the delivery of up to 30,000 acre-feet of project water for irrigation of 10,000 acres located within the Odessa Subarea with an additional 15,000 acre-feet of project water to be made available to benefit stream flows and fish in the Columbia River under this contract or a separate operating agreement.

14. *Willow Creek Group, Willow Creek Project, Oregon*: Irrigation water service contract for up to 2,500 acre-feet of project water.

15. *Prineville Reservoir water users, Crooked River Project, Oregon*: Repayment agreements with spaceholder contractors for reimbursable cost of SOD modifications to Arthur R. Bowman Dam.

16. *Burley and Minidoka IDs, Minidoka Project, Idaho*: Contracts for the repayment of extraordinary O&M work on the spillway structure and canal headworks of Minidoka Dam pursuant to Public Law 111-11.

17. *Water user entities responsible for payment of O&M costs for Reclamation projects in Idaho, Montana, Oregon, Washington, and Wyoming*: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

18. *Water user entities responsible for payment of O&M costs for Reclamation projects in Idaho, Montana, Oregon, Washington, and Wyoming*: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111-11.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, telephone 916-978-5250.

1. *Irrigation water districts, individual irrigators, M&I and miscellaneous water users; California, Nevada, and Oregon*: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually.

2. *Contractors from the American River Division, Cross Valley Canal, San Felipe Division, West San Joaquin Division, and Elk Creek Community Services District, CVP, California*: Renewal of 29 long-term water service contracts; water quantities for these contracts total in excess of 2.1M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102-575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts. Execution of long-term renewal contracts have been completed for the Friant, Delta, Shasta, and Trinity River Divisions. Long-term renewal contract execution is continuing for the other contractors.

3. *Redwood Valley County WD, SRPA, California*: Restructuring the repayment schedule pursuant to Public Law 100-516.

4. *El Dorado County Water Agency, CVP, California*: M&I water service contract to supplement existing water supply. Contract will provide for an amount not to exceed 15,000 acre-feet annually authorized by Public Law 101-514 for El Dorado County Water Agency. The supply will be subcontracted to El Dorado ID and Georgetown Divide Public Utility District.

5. *Sutter Extension WD, Delano-Earlimart ID, and the State of California Department of Water Resources, CVP, California*: Pursuant to Public Law 102-575, cooperative agreements with non-Federal entities for the purpose of providing funding for CVP refuge water wheeling facility improvements to provide water for refuge and private wetlands.

6. *CVP Service Area, California*: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Public Law 102-575 for terms of up to 3 years.

7. *El Dorado ID, CVP, California*: Execution of long-term Warren Act contracts for conveyance of nonproject water (one contract for Weber Reservoir and pre-1914 ditch rights in the amount of 4,560 acre-feet annually, and one contract for Project 184 water in the amount of 17,000 acre-feet annually). The contracts will allow CVP facilities to be used to deliver nonproject water to the District for use within its service area.

8. *Horsefly, Klamath, Langell Valley, and Tulelake IDs, Klamath Project, Oregon*: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

9. *Casitas Municipal WD, Ventura Project, California*: Repayment contract for SOD work on Casitas Dam.

10. *Warren Act Contracts, CVP, California*: Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the Delta and Friant Divisions and San Luis Unit facilities.

11. *Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California*: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly long-term contract for storage of nonproject water in New Melones Reservoir.

12. *Banta Carbona ID, CVP, California*: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

13. *Byron-Bethany ID, CVP, California*: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

14. *Madera-Chowchilla Water and Power Authority, CVP, California*: Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

15. *Montecito WD, Cachuma Project, California*: Contract to transfer title of

the distribution system to the District. Title transfer authorized by Public Law 108–315, “Carpinteria and Montecito Water Distribution Conveyance Act of 2004.”

16. *Sacramento Suburban WD, CVP, California*: Execution of long-term Warren Act contract for conveyance of 29,000 acre-feet of nonproject water. The contract will allow CVP facilities to be used to deliver nonproject water provided from the Placer County Water Agency to the District for use within its service area.

17. *Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest who may have negotiated rights under Public Law 101–618; Nevada and California*: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the Truckee River Operating Agreement.

18. *San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California*: Renewal of the long-term water service contract for up to 850 acre-feet. The contract was executed February 28, 2005. The wheeling agreement for conveyance through the California State Aqueduct is pending.

19. *A Canal Fish Screens, Klamath Project, Oregon*: Negotiation of an O&M contract for the A Canal Fish Screens with Klamath ID.

20. *Ady Canal Headgates, Klamath Project, Oregon*: Transfer of operational control to Klamath Drainage District of the headgates located at the railroad. Reclamation does not own the land at the headgates, only operational control pursuant to a railroad agreement.

21. *Delta Lands Reclamation District No. 770, CVP, California*: Long-term Warren Act contract for conveying up to 300,000 acre-feet acre of nonproject flood flows via the Friant-Kern Canal for flood control purposes.

22. *Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada; Humboldt Project; Nevada*: Title transfer of lands and features of the Humboldt Project.

23. *Mendota Wildlife Area, CVP, California*: Reimbursement agreement between the California Department of Fish and Game and Reclamation for conveyance service costs to deliver Level 2 water to the Mendota Wildlife Area during infrequent periods when

the Mendota Pool is down due to unexpected but needed maintenance. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1), to meet full Level 2 water needs of the Mendota Wildlife Area.

24. *Mercy Springs WD, CVP, California*: Proposed partial assignment of 2,825 acre-feet of the District’s CVP supply to San Luis WD for irrigation M&I use.

25. *Oro Loma WD, CVP, California*: Proposed partial assignment of 4,000 acre-feet of the District’s CVP supply to Westlands WD for irrigation and M&I use.

26. *San Luis WD, CVP, California*: Proposed partial assignment of 2,400 acre-feet of the District’s CVP supply to Santa Nella County WD for M&I use.

27. *Placer County Water Agency, CVP, California*: Proposed exchange agreement under section 14 of the 1939 Act to exchange up to 71,000 acre-feet annually of the Agency’s American River Middle Fork Project water for use by Reclamation, for a like amount of CVP water from the Sacramento River for use by the Agency.

28. *Eighteen contractors in the Klamath Project, Oregon*: Amendment of 18 repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs to the Klamath Project. These contract actions will be accomplished through amendments to the existing repayment contracts or negotiation of new contracts.

29. *Orland Unit Water User’s Association, Orland Project, California*: Repayment contract for the SOD costs assigned to the irrigation of Stony Gorge Dam.

30. *Goleta WD, Cachuma Project, California*: An agreement to transfer title of the Federally owned distribution system to the District subject to approved legislation.

31. *Ivanhoe ID, CVP, California*: Proposed partial assignment of 1,200 acre-feet of class 1 and 7,400 acre-feet of class 2 of the District’s CVP water supply to Kaweah Delta Conservation District, a non-CVP contractor, for irrigation purposes.

32. *Cawelo WD, CVP, California*: Long-term Warren Act contract for conveying up to 20,000 acre-feet annually of previously banked nonproject water in the Friant-Kern Canal.

33. *Colusa County WD, CVP, California*: Execution of a long-term Warren Act contract for conveyance of up to 40,000 acre-feet of groundwater per year through the use of the Tehama-Colusa Canal.

34. *County of Tulare, CVP, California*: Proposed assignment of the County’s

Cross Valley Canal water supply in the amount of 5,308 acre-feet to its various subcontractors. Water will be used for both irrigation and M&I purposes.

35. *City of Santa Barbara, Cachuma Project, California*: Execution of a temporary contract and execution of a long-term Warren Act contract with the City for conveyance of nonproject water in Cachuma Project facilities.

36. *Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon*: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

37. *Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon*: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

38. *California Department of Fish and Game, CVP, California*: Proposed renewal of a water service contract for the Department’s San Joaquin Fish Hatchery. The contract would allow 35 cubic feet per second of continuous flow to pass through the Hatchery prior to it returning to the San Joaquin River.

39. *Cachuma Operation and Maintenance Board, Cachuma Project, California*: Amendment to SOD Contract No. 01–WC–20–2030 to provide for increased SOD costs associated with Bradbury Dam.

40. *Contractors from the Friant Division, CVP, California*: Contracts to be negotiated and executed with existing Friant long-term contractors for the conversion from water service contracts entered into pursuant to subsections 9(c) and 9(e) of the Reclamation Projects Act of 1939 to repayment contracts pursuant to subsection 9(d) of the Reclamation Projects Act of 1939. This action is intended to satisfy the mandate set forth in section 10010 of Title X of the Omnibus Public Land Management Act of 2009.

41. Reclamation will become signatory to a three-party wheeling agreement with the Cross Valley Contractors and the California State Department of Water Resources for conveyance of Cross Valley Contractors’ CVP water supplies that are made available pursuant to long-term water service contracts.

42. *California Department of Water Resources, CVP, California*: Proposed operation, maintenance, repair, and replacement agreement with the Department for the Delta-Mendota Canal-California Aqueduct Intertie, as authorized by Public Law 108–361.

43. *Westlands WD, CVP, California*: Negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities. This action is being undertaken to satisfy the Federal Government's obligation to provide drainage service to Westlands located within the San Luis Unit of the CVP.

The following action has been discontinued since the last publication of this notice on November 6, 2009:

1. (23) *PacifiCorp, Klamath Project, Oregon*: Execution of long-term agreement for lease of power privilege and the O&M of Link River Dam. This agreement will provide for operations of Link River Dam, coordinated operations with the non-Federal Keno Dam, and provision of power by PacifiCorp for Klamath Project purposes to ensure project water deliveries and to meet Endangered Species Act requirements.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006-1470, telephone 702-293-8192.

1. *Milton and Jean Phillips, BCP, Arizona*: Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. *John J. Peach, BCP, Arizona*: Colorado River water delivery contracts for 456 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

3. *Gila Project Works, Gila Project, Arizona*: Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

4. *System Conservation Agreements, BCP, Arizona and California*: Develop and execute short-term agreements to implement a demonstration system conservation program to evaluate the feasibility of acquiring water through a voluntary land fallowing program to replace drainage water currently being bypassed to the Cienega de Santa Clara.

5. *City of Yuma, BCP, Arizona*: Supplemental and amendatory contract to provide for additional point of delivery for a new pump station to be constructed on the Gila Gravity Main Canal, with initial intake capacity of 20 million gallons per day, building up to 40 million gallons per day at full design capacity.

6. *White Mountain Apache Tribe, Miner Flat Project, Arizona*: Execution of a contract to repay any amounts loaned to the Tribe pursuant to Section 3 of Public Law 110-390.

7. *Gila Monster Farms, Inc., BCP, Arizona*: Request for partial assignment and transfer of third-priority water entitlement for domestic use to Aursa, AZ I, LLC.

8. *Gila Monster Farms, Inc., BCP, Arizona*: Amend contract to decrease Gila Monster Farms' third-priority water entitlement.

9. *Aursa, AZ I, LLC, BCP, Arizona*: Enter into a new Section 5 contract with Aursa for 2,126 acre-feet per year of third-priority water being assigned to Aursa from Gila Monster Farms.

10. *Arizona State Lands Department, BCP, Arizona*: Amend Contract No. 4-07-30-W0317 to decrease the Department's fourth-priority agricultural water entitlement that is being assigned to the Department's fourth-priority domestic water entitlement Contract No. 7-07-30-W0358 to change the type of use from agricultural to domestic use.

11. *Arizona State Lands Department, BCP, Arizona*: Amend the Department's Contract No. 7-07-30-W0358 to increase the Department's fourth-priority water entitlement for domestic use.

12. *Clark County, BCP, Nevada*: Agreement with Clark County for an annual diversion of up to 50 acre-feet of Colorado River water from Reclamation's Secretarial Reservation Entitlement for use on Reclamation land that is managed by Clark County and is part of the Laughlin Regional Heritage Greenway Train Project. Specifically, the water will be used for a natural bathing area (lagoon), construction, dust control, and riparian re-vegetation, which are all features of the Reclamation-approved project.

13. *ChaCha, LLC, Arizona, BCP*: Partial assignment of the water delivery contract with ChaCha, LLC for transfer of ownership of 50 percent of the land within ChaCha LLC's contract service area. ChaCha LLC's 50 percent ownership will transfer to the following entities (undivided interest): Befra Farming, LLC, a California limited liability company; R&R Almond Orchards, Inc., a California corporation; and XLNT, LLC, a California limited liability company.

14. *City of Needles and the Metropolitan Water District of Southern California, LCWSP, California*: Proposed amendment No. 1 to Contract No. 06-XX-30-W0452 to extend the timeframe for completion of a study that is required by the contract and to address the deposits to be made by the District into the trust fund account.

15. *Sherrill Ventures, LLLP and Green Acres Mohave, LLC; BCP; Arizona*: Draft contracts for PPR No. 14 for 1,080 acre-feet of water per year as follows: Sherrill

Ventures, LLLP, a draft contract for 954.3 acre-feet per year and Green Acres Mohave, LLC, a draft contract for 125.7 acre-feet per year.

16. *Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah*: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

17. *Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah*: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111-11.

18. *Arizona-American Water Company, BCP, Arizona*: Amend Exhibit C to Contract No. 00-XX-30-W0391 to include an emergency interconnection with Lake Havasu City as a point of delivery.

19. *Mohave County Water Authority, BCP, Arizona*: Amend Exhibit D to Contract No. 5-07-30-W0320 to (1) delete the reference to a subcontract dated August 12, 2004, with Arizona-American Water Company for 950 acre-feet of fifth- and/or sixth-priority water because that subcontract has been terminated; (2) recognize that an additional 1,000 acre-feet of fourth-priority water was added under a subcontract with Bullhead City from 6,000 acre-feet of fourth-priority water to 7,000 acre-feet of fourth-priority water; (3) recognize that an additional 1,000 acre-feet of fourth-priority water was added under a subcontract with Lake Havasu City from 6,000 acre-feet of fourth-priority water to 7,000 acre-feet of fourth-priority water; and (4) recognize that a new subcontract has been entered into between the Authority and Mohave Valley IDD for 1,000 acre-feet of fourth-priority water.

20. *Mohave County Water Authority, BCP, Arizona*: Amend Exhibit E to Contract No. 5-07-30-W0320 to (1) supersede and replace the "Procedures for Obtaining a Subcontract From the Mohave County Water Authority" dated December 12, 1995, with "Mohave County Water Authority—Operating Procedure No. 04-01" amended October 21, 2009, and (2) include a copy of "Mohave County Water Authority—Operating Procedure No. 09-01" adopted October 21, 2009.

21. *Water Utility of Greater Buckeye, CAP, Arizona*: Proposed assignment of the Utility's CAP entitlement of 43 acre-feet annually to the Valencia Water Company per the Utility's request and as recommended by the Arizona Department of Water Resources.

22. *Tonto Hills Utility Company, CAP, Arizona*: Proposed assignment of the

Company's CAP entitlement of 71 acre-feet annually to the Tonto Hills Domestic Water Improvement District per the District's request pending recommendation by the Arizona Department of Water Resources.

23. *Bureau of Land Management, LCWSP, California*: Amend Contract No. 8-07-30-W0375 to add a new point of diversion and place of use; San Bernardino County's Park Moabi, a Bureau of Land Management-leased site.

24. *Imperial ID, Colorado River Front Work and Levee System/BCP, California*: Proposed agreement for the operation, maintenance, repair and replacement of the Lower Colorado River Drop 2 Storage Reservoir Project.

The following actions have been completed since the last publication of this notice on November 6, 2009:

1. (6) *Basic Water Company, BCP, Nevada*: Approve the assignment and transfer of 400 acre-feet per year of Colorado River water from Basic's contract to the Southern Nevada Water Authority's contract. Contract executed December 29, 2009.

2. (7) *Basic Water Company, BCP, Nevada*: Amend Basic's contract to conform to the assignment and transfer of 400 acre-feet per year of Colorado River water from Basic's contract to the Southern Nevada Water Authority's contract. Contract executed December 29, 2009.

3. (8) *Southern Nevada Water Authority, BCP, Nevada*: Amend contract to conform to the assignment and transfer of 400 acre-feet per year of Colorado River water from Basic Water Company's contract to Southern Nevada Water Authority's contract. Contract executed December 28, 2009.

4. (9) *Flowing Wells ID, CAP, Arizona*: Partial assignment of the District's CAP entitlement, 1,481 acre-feet to the Town of Marana, per the District's request and as recommended by the Arizona Department of Water Resources. Contract executed December 28, 2009.

5. (15) *Queen Creek Water Company, CAP, Arizona*: Assignment of Queen Creek Water Company's 348 acre-feet entitlement to the Town of Queen Creek, per Queen Creek Water Company's request and as recommended by the Arizona Department of Water Resources. Contract executed on November 2, 2009.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, telephone 801-524-3864.

1. *Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico*: Temporary (interim) water service contracts for surplus project

water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) *Dick Morfitt, Aspinall Storage Unit, CRSP*: Mr. Morfitt has requested a 40-year water service contract for 35 acre-feet of M&I water out of the Blue Mesa Reservoir, which requires Mr. Morfitt to present a Plan of Augmentation to the Division 4 Water Court.

(b) *Western Gravel, Aspinall Storage Unit, CRSP*: Western Gravel has requested a 40-year water service contract for 3 acre-feet of M&I water out of the Blue Mesa Reservoir, which requires them to present a Plan of Augmentation to the Division 4 Water Court.

2. *San Juan-Chama Project, New Mexico*: The United States, pending passage of The Taos Indian Water Rights Settlement legislation by the Congress, expects to enter into a new repayment contract with the Taos Pueblo, New Mexico for 2,215 acre-feet annually of project water. The Town of Taos and the United States are expected to execute a new contract, or amend an existing repayment contract, for an additional 366 acre-feet annually of project water. The settlement legislation is expected to provide for a third repayment contract for 40 acre-feet of project water to be delivered to the El Prado Water Sanitation District. The United States is holding the remaining 369 acre-feet of project water for potential use in Indian water rights settlements in New Mexico.

3. *Various Contractors, San Juan-Chama Project, New Mexico*: The United States proposes to lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

4. *Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, and the Colorado River Water Conservation District; Uncompahgre Project; Colorado*: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

5. *Southern Ute Indian Tribe, Florida Project, Colorado*: Supplement to Contract No. 14-06-400-3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of project water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

6. *Individual Irrigators, Carlsbad Project, New Mexico*: The United States proposes to enter into long-term forbearance lease agreements with

individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Sumner Dam which were made to improve conditions for a threatened species, the Pecos bluntnose shiner.

7. *L. Skip Vernon and Lee Ann Vernon, Tucumcari Project, New Mexico*: The Vernons have requested a Warren Act contract to convey up to 25 acre-feet of nonproject water through Tucumcari Project facilities. The Arch Hurley Conservancy District, which operates the project, concurs with this request. The proposed contract would have a 40-year maximum term.

8. *Mancos Water Conservancy District, Mancos Project, Colorado*: The Congress has authorized funding, not to exceed \$8.25 million, for the Jackson Gulch Rehabilitation Project to include the inlet and outlet canals, and operations facilities. The District will enter into a contract for repayment of 35 percent of the cost of the project or \$2.9 million, whichever is less.

9. *Provo River Water Users Association, Central Utah Water Conservancy District, Jordan Valley Water Conservancy District, Provo Reservoir Water Users Company, and Bureau of Reclamation*: Contributed funds contract to enclose the Provo Reservoir Canal. The contract would have a term of 5 years or completion of enclosure, whichever comes first. This contract is pursuant to the Contributed Funds Act of May 4, 1921 (43 Stat. 1404, 43 U.S.C. 395).

10. *LeChee Chapter of the Navajo Nation, Glen Canyon Unit, CRSP, Arizona*: Long-term contract for 950 acre-feet of water for municipal purposes.

11. *City of Page, Arizona, Glen Canyon Unit, CRSP, Arizona*: Long-term contract for 975 acre-feet of water for municipal purposes.

12. *El Paso County Water Improvement District No. 1 and Isleta del Sur Pueblo, Rio Grande Project, Texas*: Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for tradition and religious purposes.

13. *Provo River Water Users Association, Central Utah Water Conservancy District, Jordan Valley Water Conservancy District, Provo Reservoir Water Users Company, and Bureau of Reclamation*: Carriage contract for up to 358 cfs in the enclosed Provo Reservoir Canal. This contract is pursuant to the Warren Act;

section 4 of the Provo River Project Transfer Act (Pub. L. 108–719); and section 2 of the Act of December 19, 2002 (Pub. L. 107–366).

14. *Huntington-Cleveland Irrigation Company, Emery County Water Conservancy District, and Reclamation: Amendment to Contract No. 14–06–400–3818* dated November 23, 1964. This contract will include an addition delivery route for Emery County Project water to be delivered to Huntington North Reservoir.

15. *Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000* (Title III of Pub. L. 106–554).

16. *Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000* (Title III of Pub. L. 106–554).

17. *State of Colorado, Animas-La Plata Project, Colorado and New Mexico: Cost-sharing/repayment contract for up to 10,440 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000* (Title III of Pub. L. 106–554).

18. *Public Service Company of New Mexico, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Public Service Company's site pursuant to Public Law 106–392, dated October 30, 2000* (114 Stat. 1602).

19. *Central Utah Project, Utah: Petition for project water among the United States, the Central Utah Water Conservancy District, and the Duchesne County Water Conservancy District for use of 2,500 acre-feet of irrigation water from the Bonneville Unit of the Central Utah Project.*

20. *Navajo Nation, San Juan River Dineh Water Users, Reclamation, and U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Hogback Diversion Dam, pursuant to Public Law 106–392 dated October 30, 2000* (114 Stat. 1602).

21. *Jensen Unit, Central Utah Project, Utah: The Uintah Water Conservancy District has requested a contract with*

provision to prepay at a discounted rate the remaining 3,300 acre-feet of unmarketed project M&I water.

22. *Aaron Million, Million Conservation Resource Group, Flaming Gorge Storage Unit, CRSP: Mr. Million has requested a Standby Contract to secure the first right to contract for up to 165,000 acre-feet annually of M&I water service from Flaming Gorge Reservoir for a proposed privately financed and constructed transbasin diversion project.*

23. *Cottonwood Creek Consolidated Company, Emery County Project, Utah: Cottonwood Creek Consolidated Irrigation Company has requested a contract for carriage of up to 5,600 acre-feet of nonproject water through Cottonwood Creek-Huntington Canal.*

24. *Albuquerque Bernalillo County Water Utility Authority and Reclamation, San Juan-Chama Project, New Mexico: Contract to store up to 50,000 acre-feet of project water in Elephant Butte Reservoir. The proposed contract would have a 40-year maximum term and would replace existing Contract No. 3–CS–53–01510 which expired on January 26, 2008. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract.*

25. *Dolores Water Conservancy District, Dolores Project, Colorado: The District has requested a water service contract for 1,402 acre-feet of newly identified project water for irrigation. The proposed water service contract will provide 417 acre-feet of project water for irrigation of the Ute Enterprise and 985 acre-feet for use by the District's full-service irrigators.*

26. *Florida Water Conservancy District, Florida Project, Colorado: The District has requested a long-term water service contract for 114 acre-feet of water for project purposes to be used in Plan of Augmentation and Substitute Water Supply Plans for the project,*

27. *Elkhead Reservoir Enlargement: This contract will supersede Contract No. 05–WC–40–420. The proposed contract will include the Recovery Program's pro-rata share of the actual construction cost plus fish screen costs. Also identified in this proposed contract is the pro-rata share of the actual construction costs for the other signatory parties. Upon payment by Recovery Program, this proposed contract will ensure a permanent water supply for the endangered fish.*

28. *Bridger Valley Water Conservancy District, Lyman Project, Wyoming: The District has requested that their Meeks Cabin repayment contract be amended from two 25-year contracts to one 40-year contract.*

29. *City of Santa Fe and Reclamation, San Juan-Chama, New Mexico: Contract to store up to 50,000 acre-feet of project Water in Elephant Butte Reservoir. The proposed contract would have a 25- to 40-year maximum term. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract.*

30. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

31. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

32. *Pine Glen, LLC, Mancos Project, Colorado: Pine Glen LLC has requested a new carriage contract to replace existing Contract No. 14–06–400–4901, Assignment No. 6. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.56 cubic feet per second of nonproject water to be carried through Mancos Project facilities.*

33. *Navajo-Gallup Water Supply Project, New Mexico: Repayment contract with the City of Gallup for up to 7,500 acre-feet per year of M&I water. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).*

34. *Navajo-Gallup Water Supply Project, New Mexico: Repayment contract with the Jicarilla Apache Nation for up to 1,200 acre-feet per year of M&I water. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).*

35. *Northwestern New Mexico Rural Water Projects Act, New Mexico: Settlement contract with the Navajo Nation for up to 530,650 acre-feet per year of irrigation and M&I water. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).*

36. *Navajo-Gallup Water Supply Project, New Mexico: Cost-sharing agreement with the State of New Mexico. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).*

The following actions have been completed or discontinued since the last publication of this notice on November 6, 2009:

1. (7) *La Plata Conservancy District, Animas-La Plata Project, New Mexico:*

Cost-sharing/repayment contract for up to 1,560 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106-554). Contract executed September 8, 2009.

2. (11) *Project Operator, Animas-La Plata Project, Colorado*: Contract to transfer the operation, maintenance, and replacement responsibilities of most project facilities to the project operator, pursuant to section 6 of the Reclamation Act of June 17, 1902, and other Federal reclamation laws. Contract executed December 30, 2009.

3. (15) *Navajo Nation, Animas-La Plata Project, Colorado and New Mexico*: Water delivery contract for 4,680 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106-554). Action discontinued.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406-247-7752.

1. *Individual irrigators, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming*: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year or up to 1,000 acre-feet of water annually for a term of up to 5 years.

2. *Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming*: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

3. *Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming*: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111-11.

4. *Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado*: Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

5. *Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado*: Second round water sales from the regulatory capacity of Ruedi Reservoir. Water

service and repayment contracts for up to 17,000 acre-feet annually for M&I use.

6. *Garrison Diversion Unit, P-SMBP, North Dakota*: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Dakota Water Resources Act of 2000; negotiation of repayment contracts with irrigators and M&I users.

7. *Fryingpan-Arkansas Project, Colorado*: Consideration of temporary excess capacity contracting in the Fryingpan-Arkansas Project.

8. *Municipal Subdistrict of the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado*: Consideration of a new long-term contract or amendment of contract No. 4-07-70-W0107 with the Municipal Subdistrict and the Northern Colorado Water Conservancy District for the proposed Windy Gap Firming Project.

9. *Northern Integrated Supply Project, Colorado-Big Thompson Project, Colorado*: Consideration of a new long-term contract with approximately 15 regional water suppliers and the Northern Colorado Water Conservancy District for the Northern Integrated Supply Project.

10. *Stutsman County Park Board, Jamestown Unit, P-SMBP, North Dakota*: The Board is requesting a contract for minor amounts of water under a long-term contract to serve domestic needs for cabin owners at Jamestown Reservoir, North Dakota.

11. *Security Water and Sanitation District, Fryingpan-Arkansas Project, Colorado*: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

12. *City of Fountain, Fryingpan-Arkansas Project, Colorado*: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

13. *Colorado Springs Utilities, Colorado-Big Thompson Project, Colorado Springs, Colorado*: Consideration of a request for a long-term agreement for water substitution and power interference in the Colorado-Big Thompson Project.

14. *LeClair ID, Boysen Unit, P-SMBP, Wyoming*: Contract renewal of long-term water service contract.

15. *Riverton Valley ID, Boysen Unit, P-SMBP, Wyoming*: Contract renewal of long-term water service contract.

16. *ExxonMobil Corporation, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado*: Consideration of ExxonMobil Corporation's request to amend its

Ruedi Round I contract to include additional uses for the water.

17. *Pueblo West Metropolitan District, Pueblo West, Fryingpan-Arkansas Project, Colorado*: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

18. *Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado*: Long-term exchange, conveyance, and storage contract to implement the Exhibit B Agreement of the Settlement Agreement on Operating Procedures for Green Mountain Reservoir Concerning Operating Limitations and in Resolution of the Petition Filed August 7, 2003, in Case No. 49-CV-2782 (*The United States v. Northern Colorado Water Conservancy District, et al.*, U.S. District Court for the District of Colorado, Case No. 2782 and Consolidated Case Nos. 5016 and 5017).

19. *Glendo Unit, P-SMBP, Wyoming*: Contract renewal for long-term water storage contract with Pacificorp.

20. *Roger W. Evans (Individual), Boysen Unit, P-SMBP, Wyoming*: Renewal of long-term water service contract.

21. *Big Horn Canal ID, Boysen Unit, P-SMBP, Wyoming*: The District has requested the renewal of their long-term water service contract.

22. *Hanover ID, Boysen Unit, P-SMBP, Wyoming*: The District has requested the renewal of their long-term water service contract.

23. *Helena Sand & Gravel, Helena Valley Unit, P-SMBP, Montana*: Request for a long-term water service contract for M&I purposes up to 1,000 acre-feet per year.

24. *Busk-Ivanhoe, Inc., Fryingpan-Arkansas Project, Colorado*: Contract renewal of their long-term carriage and storage contract.

25. *State of Colorado, Department of Corrections, Fryingpan-Arkansas Project, Colorado*: Consideration of a request for long-term excess capacity storage out of Pueblo Reservoir.

26. *Southeastern Water Conservancy District, Fryingpan-Arkansas Project, Colorado*: Consideration of a master storage contract.

27. *Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado*: Consideration of a request for a long-term contract for the use of excess capacity.

28. *Municipal Recreation Contract out of Granby Reservoir, Colorado-Big Thompson Project, Colorado*: Water service contract for delivery of 5,412.5 acre-feet of water annually out of Lake Granby to the 15-Mile Reach.

29. *Glen Elder ID, Glen Elder Unit, P-SMBP, Kansas*: Intent to enter into a contract for repayment of extraordinary maintenance work on the spillway structure in accordance with ARRA.

30. *Glen Elder ID, Glen Elder Unit, P-SMBP, Kansas*: Amendment to extend the expiration date of the water service contract and renewal of long-term water service contract.

31. *State of Kansas Department of Wildlife and Parks, Glen Elder Unit, P-SMBP, Kansas*: Reclamation is contemplating a contract for the remaining conservation storage in Waconda Lake.

32. *Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado*: Consideration of a repayment contract for the Arkansas Valley Conduit.

33. *North Havre County WD, Milk River Project, Montana*: Reclamation is contemplating a contract amendment for a change in the point of delivery of a portion of the District's water under contract.

34. *Milk River Irrigation Project Joint Board of Control, Milk River Project, Montana*: Reclamation is contemplating a new contract for transferring O&M responsibilities of Fresno Dam and Reservoir and Nelson Dikes and Reservoir.

35. *State of Wyoming, Pathfinder Dam and Reservoir, North Platte Project, Wyoming*: The State of Wyoming has requested a water service contract for water to be stored in Pathfinder Reservoir associated with the implementation of the Pathfinder Modification Project.

36. *Loup Valley's Rural Public Power District, North Loup Division, P-SMBP, Nebraska*: Proposed sale of Reclamation's share in joint-owned power line to the co-owner of the line.

37. *Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado*: Intent to enter into a contract for repayment of extraordinary maintenance work on the Pole Hill Canal in accordance with ARRA.

38. *Frenchman Valley ID, Frenchman-Cambridge Division, P-SMBP, Nebraska*: Consideration of a request for a repayment of extraordinary maintenance work on stilling basin outlet works at Enders Dam, in accordance with Subtitle G of Public Law 111-11.

39. *H & RW ID, Frenchman-Cambridge Division, P-SMBP, Nebraska*: Consideration of a request for a repayment contract for outlet works modification at Enders Dam, in accordance with the Omnibus Public Lands Management Act of 2009.

40. *Individual irrigators, Cambridge Unit, Frenchman-Cambridge Division, P-SMBP, Nebraska*: Consideration of a request for a long-term excess capacity conveyance contract for transporting nonproject irrigation water.

41. *Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado*: Consideration of a request to amend the existing water service contract to adjust the annual project water payments.

42. *Scotty Phillip Cemetery, Mni-Wiconi Project, South Dakota*: Consideration of a new long-term M&I water service contract.

43. *Barretts Minerals, East Bench Unit, P-SMBP, Montana*: Renewal of long-term water service contract.

44. *George A. Stevens, Lower Marias Unit, P-SMBP, Montana*: Renewal of long-term water service contract.

45. *Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado*: Amend or supplement the repayment contract to include the Carter Lake Dam Additional Outlet Works and Flatiron Power Plant Bypass facilities.

46. *Colorado Springs Utilities, Fryingpan-Arkansas Project, Colorado*: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project and annual repayment for the operation, maintenance, and replacement costs of the single-purpose municipal works.

47. *Garrison Diversion Conservancy District, Garrison Diversion Project, North Dakota*: Intent to enter into temporary or interim irrigation or miscellaneous use water service contracts to provide up to 1,000 acre-feet of water annually for terms of up to 5 years.

48. *Garrison Diversion Conservancy District, Garrison Diversion Unit, P-SMBP, North Dakota*: Intent to enter into a project pumping power contract with the District to pump project water to authorized areas in conformance with the Dakota Water Resources Act of 2000.

The following actions have been completed since the last publication of this notice on November 26, 2009:

1. (27) *Individual Irrigations, Lower Marias Unit, P-SMBP, Montana*: Execute long-term water service contracts for commercial irrigation from Lake Elwell and the Marias River below Tiber Dam. Contract was executed on December 4, 2009.

2. (42) *Individual contractors; Canyon Ferry Unit, P-SMBP; Montana*: Replace temporary 1-year contracts with short-term water service contracts for minor amounts of less than 1,000 acre-feet of M&I water annually from the Missouri

River, Canyon Ferry Dam. Contract was executed on December 4, 2009.

3. (43) *Keyhole Country Club; Keyhole Unit, P-SMBP; South Dakota*: Reclamation is contemplating a contract reassignment from the Shattuck Hills Homeowner's Association to the Keyhole Country Club. The proposed action will involve a change in the point of delivery for the 50 acre-feet of water under the existing contract. Contract was executed on November 16, 2009.

4. (47) *Rocky Mountain National Park, Colorado—Big Thompson Project, Colorado*: Amendment to the existing memorandum of understanding for project water. Contract was executed on October 20, 2009.

5. (49) *Mirage Flats ID, Mirage Flats Project, Nebraska*: Request to amend contract to change billing date from May to July. Contract was executed on October 30, 2009.

Dated: June 11, 2010.

Roseann Gonzales,

Director, Policy and Administration, Denver Office.

[FR Doc. 2010-17933 Filed 7-21-10; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-384 and 731-TA-806-808 (Second Review)]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty order on certain hot-rolled flat-rolled carbon-quality steel products ("hot-rolled steel") from Brazil, the antidumping duty orders on hot-rolled steel from Brazil and Japan, and the suspended investigation on hot-rolled steel from Russia.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on hot-rolled steel from Brazil, the antidumping duty orders on hot-rolled steel from Brazil and Japan, and the suspended investigation on hot-rolled steel from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later

date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 6, 2010.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 6, 2010, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that with respect to each of the subject reviews both the domestic and respondent interested party group responses to its notice of institution (75 FR 16504, April 1, 2010) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: July 15, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17857 Filed 7–21–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–473 and 731–TA–1173 (Final)]

Certain Potassium Phosphate Salts From China

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 735(b) and 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of certain potassium phosphate salts, specifically anhydrous dipotassium phosphate (“DKP”) and tetrapotassium pyrophosphate (“TKPP”), provided for in subheadings 2835.24.00 (DKP) and 2835.39.10 (TKPP) of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.

The Commission also determines that an industry producing anhydrous monopotassium phosphate (“MKP”), provided for in subheading 2835.24.00 of the Harmonized Tariff Schedule of the United States, is not materially injured or threatened with material injury, nor that the establishment of an industry is materially retarded, by reason of imports from China, that have been found by Commerce to be sold in the United States at LTFV and subsidized by the Government of China.

Background

On September 24, 2009, a petition was filed with the Commission and Commerce by ICL Performance Products LP, St. Louis, MO, and Prayon, Inc., Augusta, GA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of DKP, MKP, sodium tripolyphosphate (“STPP”), and TKPP from China.² The final phase of the investigations was scheduled by the Commission following notification of a

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² The Commission unanimously determined that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of subject imports of STPP from China alleged to be sold at less than fair value and subsidized by the Government of China. *Certain Sodium and Potassium Phosphate Salts from China: Determinations*, 74 FR 61173, November 23, 2009.

preliminary determination by Commerce that imports of DKP, MKP, and TKPP from China were being sold at LTFV and subsidized within the meaning of sections 733(b) and 703(b) of the Act (19 U.S.C. § 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 1, 2010 (*Certain Potassium Phosphate Salts from China*, 75 FR 16509). The hearing was held in Washington, DC, on June 2, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on July 15, 2010. The views of the Commission are contained in USITC Publication 4171 (July 2010), entitled *Certain Potassium Phosphate Salts From China: Investigation Nos. 701–TA–473 and 731–TA–1173 (Final)*.

By order of the Commission.
Issued: July 15, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17863 Filed 7–21–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled “In Re Certain Flat Panel Digital Televisions and Components Thereof”; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT:

Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Vizio, Inc. on July 16, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flat panel digital televisions and components thereof. The complaint names as respondents LG Electronics, Inc. of Seoul, South Korea and LG Electronics U.S.A., Inc., of Englewood Cliffs, NJ.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five

business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2746") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by § 201.8 of the rules (see Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: July 16, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-17878 Filed 7-21-10; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-101 (Third Review)]

Greige Polyester/Cotton Printcloth From China

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in May 2010 to determine

whether revocation of the antidumping duty order on greige polyester/cotton printcloth from China would be likely to lead to continuation or recurrence of material injury. On July 2, 2010, the Department of Commerce published notice that it was revoking the order effective June 27, 2010, "because the domestic interested parties did not participate in this sunset review * * *" (75 FR 38463, July 2, 2010). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: *Effective Date:* June 27, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: July 15, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010-17862 Filed 7-21-10; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on July 19, 2010, a proposed Consent Decree (the "Decree") in *United States v. Vanguard Car Rental USA, LLC, et al.*, Civil Action No. 1:10-cv-11199, was lodged with the United States District Court for the District of Massachusetts.

In a complaint, filed simultaneously with the Decree, the United States alleges that Vanguard Car Rental USA, LLC, Enterprises Rent-a-Car of Boston, LLC, and Camrac, LLC (collectively "Vanguard") violated the Clean Air Act, 42 U.S.C. 7401 *et seq.*, at its rental car facilities at Bradley Field International Airport in Connecticut and at the Logan

International Airport in Massachusetts. At those facilities, the United States alleges that Vanguard allowed its diesel shuttle buses to idle in excess of five minutes, as prescribed by 310 CMR 7.11(b), a regulation included in the Massachusetts State Implementation Plan, or to idle in excess of three minutes, as prescribed by RCSA § 19-508-18(a)(5), a regulation included in the Connecticut State Implementation Plan.

Pursuant to the Decree, Vanguard will implement a number of compliance measures, including: requiring a supervisor to walk through the facilities twice a day to identify and rectify illegal idling; the implementation of a driver training program that highlights Vanguard's anti-idling policy; the posting of "No Idling" signs at the facilities; and the certification by Vanguard that all its shuttle buses equipped with automatic engine shut-offs are working and set so that the vehicle engine will not idle longer than permitted under the applicable Massachusetts or Connecticut idling standard. Vanguard will also pay a \$475,000 civil monetary penalty to the United States pursuant to the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Vanguard Car Rental USA, LLC, et al.*, D.J. Ref. 90-5-2-1-08930.

During the public comment period, the Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the

Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010-17895 Filed 7-21-10; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on July 7, 2010, a proposed Consent Decree in *United States of America, et al. v. Wise Alloys, LLC*, Civil Action No. CV-10-TMP-1811-NW, was lodged with the United States District Court for the Northern District of Alabama, Northwestern Division ("the Court").

In this federal action, the United States sought civil penalties and injunctive relief against Wise Alloys, LLC ("Wise Alloys"), an aluminum scrap recycler, for civil penalties and injunctive relief resulting from violations of Section 112 of the Clean Air Act, 42 U.S.C. 7412, and implementing regulations establishing maximum achievable control technology emission standards for the secondary aluminum industry, 40 CFR 63 Subpart RRR ("the Secondary Aluminum MACT"). Wise Alloys owns and operates an aluminum recycling facility in Muscle Shoals, Alabama which contains two affected sources, the Alabama Reclamation Operations and the Alloys Cast House. The alleged violations include non-compliance with the testing, operational, monitoring, and record keeping requirements of the Secondary Aluminum MACT.

The Alabama Department of Environmental Management ("ADEM") has filed a complaint in intervention against Wise Alloys, regarding similar claims under Alabama law, and has joined in the settlement set forth in the proposed Consent Decree.

The United States and ADEM have agreed to resolve their respective claims against Wise Alloys under the proposed Consent Decree wherein Wise Alloys has agreed to perform injunctive relief as set forth in the Decree (Section VI. Compliance Requirements). Wise Alloys has also agreed to pay, within thirty days of Consent Decree entry, a civil penalty of \$133,500 to the United States, and \$133,500 to ADEM for a total civil penalty payment of \$267,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044-7611, and should refer to *United States of America, et al. v. Wise Alloys, LLC*, Civil Action No. CV-10-TMP-1811-NW, DOJ # 90-5-2-1-09058.

The Consent Decree may be examined at U.S. EPA Region 4, 61 Forsyth Street, SE., Atlanta, GA, 30303, ATTN: Ellen Rouch. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$10.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010-18066 Filed 7-21-10; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 14, 2010, a proposed Settlement Agreement in the bankruptcy matter, *Old Carco LLC (f/k/a Chrysler LLC), et al.*, Jointly Administered Case No. 09-50002 (AJG), was lodged with the United States Bankruptcy Court for the Southern District of New York. The Settlement Agreement resolves claims of the Environmental Protection Agency ("EPA") against the Old Carco Liquidation Trust ("Old Carco"), as successor in interest to Old Carco LLC (formerly known as Chrysler LLC), for response costs and civil penalties under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601-9675,

with respect to Behr Dayton Thermal Systems VOC Plume Superfund Site ("Behr Dayton").

Under the Settlement Agreement, EPA will receive an allowed general unsecured claim with respect to response costs incurred by the EPA with respect to Behr Dayton in the amount of \$26,000,000. The EPA will receive an allowed general unsecured claim with respect to civil penalties in the amount of \$5,000,000. Accordingly, the total amount of the EPA's allowed general unsecured claim will be \$31,000,000. The allowed general unsecured claim with respect to civil penalties, however, shall be subordinated under the plan of confirmation to other allowed general unsecured claims.

Upon the effective date of the settlement agreement, the United States will also receive a cash payment of \$500,000, which will be applied to Behr Dayton. In the event that certain funds reserved for funding environmental cleanup at sites owned by the Liquidation Trust are not needed for their intended purpose because such owned property is transferred or sold to a third party purchaser, the United States would receive additional cash payments in the maximum aggregate amount of \$1,500,000 million (which, together with the \$500,000 in cash that the United States would receive on the effective date of the settlement agreement, would total \$2,000,000), which amount(s) will also be applied to Behr Dayton.

The Department of Justice will receive, for a period of thirty days from the date of this publication, comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *In re Old Carco LLC, et al.*, D.J. Ref. 90-11-3-09743. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreement may be examined at the Office of the United States Attorney, 86 Chambers Street, 3rd Floor, New York, New York 10007, and at the U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, <http://www.usdoj.gov/enrd/>

Consent_Decrees.html. Copies of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010-18065 Filed 7-21-10; 8:45 am]

BILLING CODE 4410-15-P

LEGAL SERVICES CORPORATION

Accounting Guide for LSC Recipients (2010 Edition)

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) is revising the Accounting Guide for LSC Recipients to reflect changes that have occurred since the last publication of the Accounting Guide (the "Guide") in 1997. Notice was published in the **Federal Register** on February 2, 2010, requesting public comments to proposed revisions to the Guide. Following the receipt of comments from the public, the LSC Office of the Inspector General and members of the LSC Board of Directors, and making changes as deemed appropriate in response to those comments, the LSC Board of Directors approved revisions to the Guide at a meeting held on June 15, 2010.

The revisions incorporate: (1) New internal control provisions for electronic banking transactions and contracting; (2) financial oversight concepts from the Sarbanes Oxley Act of 2002; (3) references to the accounting standards codification by the Financial Standards Accounting Board (FASB) released on July 1, 2009; (4) key practices to enhance fraud prevention; (5) provisions in other LSC regulations and policies, including the LSC Property Acquisition and Management Manual and LSC Program Letters; (6) revisions to accounting procedures and internal controls to reflect current best practices; (7) updated and new

references to other sources of information; and (8) other changes to clarify existing provisions. The Accounting Guide for LSC Recipients (2010 edition) can be located by accessing LSC's Web site at http://www.lsc.gov/pdfs/accounting_guide_for_lsc_recipients_2010_edition.pdf.

DATES: *Effective Date:* August 23, 2010.

FOR FURTHER INFORMATION CONTACT:

Chuck Greenfield, Program Counsel, Legal Services Corporation, 3333 K St., NW., Washington DC 20007; greenfieldc@lsc.gov (e-mail), (212) 295-1549 (phone) or (212) 337-6813 (fax).

SUPPLEMENTARY INFORMATION:

Background

Under the Legal Services Corporation Act, as amended, LSC "is authorized to require such reports as it deems necessary from any recipient, contractor or person or entity receiving assistance" 42 U.S.C. 2996g(a). LSC is also "authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records" 42 U.S.C. 2996g(b). Further, LSC "shall conduct or require each recipient, contractor, person or entity receiving financial assistance * * * to provide for an annual financial audit." 42 U.S.C. 2996h(c)(1). In addition, "funds received by any recipient from a source other than the Corporation * * * shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds" 42 U.S.C. 2996i(c).

Under authority of the Legal Services Corporation Act, LSC published the Accounting Guide for LSC Recipients. The Guide sets forth LSC's accounting, financial management and reporting guidelines. In general, LSC requires recipients and subrecipients of its funding to: (1) Manage LSC and non-LSC funds in a stewardship manner and pursuant to the cost standards and procedures of 45 CFR Part 1630; and (2) record transactions in accounting records and prepare annual financial statements in accordance with generally accepted accounting principles (GAAP). The current version of the Guide was last updated in 1997.

In an effort to update the Guide to reflect more current accounting and financial oversight practices, as well as to respond to grantee financial issues mentioned in a Government Accountability Office (GAO) report, and as a result of the recommendations of the LSC Fiscal Advisory Group, LSC developed a number of revisions to the Guide. The revisions are in the following eight categories:

(1) *New internal control provisions for electronic banking transactions and contracting.* The current Guide does not discuss in detail electronic banking. Electronic banking arrangements and transactions are now common. Many recipients of LSC funding conduct a significant portion of their financial transactions electronically. LSC itself transmits funds electronically to all recipients. The revisions add a new section on electronic banking to the Fundamental Criteria and include sections on the authorization process for electronic banking activities, the authorization process for employees that initiate and transmit electronic fund transactions, review and approval procedures for electronic banking transactions, supporting documentation for electronic banking transactions, recording electronic banking transactions in the general ledger, bank reconciliations and safeguards. Section 3–5.15. New sections on electronic transactions have also been added to the Accounting Procedures and Internal Control Checklist in Appendix VII. Sections G2, G3, and M of Appendix VII. In addition, a new section was added in the Fundamental Criteria on contracting and includes sections on types of contracts, documenting, competition and approvals. Section 3–5.16.

(2) *Financial oversight concepts from the Sarbanes Oxley Act of 2002.* While only limited provisions of the Sarbanes Oxley Act of 2002 are required of non profit corporations, LSC has determined that certain financial oversight concepts found in Sarbanes Oxley are appropriate for recipients of LSC funds. An example is the current Accounting Guide requirement that recipients of LSC funds have a financial oversight committee of their board of directors, but not a separate audit committee. The revisions require that recipients must have a financial oversight committee(s) that engages in all the activities of an audit committee, including: Hiring the auditor; setting the auditor's compensation; overseeing the auditor's activities; setting rules and processes for complaints about accounting practices and internal control practices; reviewing the annual IRS Form 990 for completeness, accuracy, and on-time filing and providing assurances of compliance to the full board; ensuring the recipient's operations are conducted and managed in an ethical manner that complies with all applicable laws, regulations and policies; ensuring effective management of the recipient's resources and risks; and ensuring accountability of persons within the

organization. Section 1–7. In addition, the revisions consider it a *best practice* for the board of directors to have an audit committee separate from the finance committee and for the board to have at least one member who is a financial expert or for the board to have access to a financial expert. Section 1–7.

(3) *References to the accounting standards codification by the Financial Standards Accounting Board (FASB).* FASB released a new codification of its accounting standards on July 1, 2009. The standards, an authoritative listing of generally accepted accounting principles (GAAP), are referred to in numerous sections of the Guide. All references to the accounting standards in the Accounting Guide have been updated and new references have been inserted to reflect new section numbers in the FASB accounting standards codification.

(4) *Key practices to enhance fraud prevention.* While the current Guide lists the elements of an adequate accounting and financial reporting system, including the use of specific internal controls and risk assessment, there is no separate section on fraud prevention. The revisions add a fraud prevention section that details key practices to help prevent fraud. Section 3–6.

(5) *Provisions in LSC regulations and policies, including the LSC Property Acquisition and Management Manual and LSC Program Letters.* The regulation on attorneys' fees (45 CFR Part 1642) was eliminated in a final rule change effective April 26, 2010, to reflect changes contained in the Consolidated Appropriations Act of 2010, Public Law 111–117. Accordingly, section 2–2.6 (Court-Awarded Attorney Fees) of the Guide was modified. Further, subsequent to the publication of the Guide in 1997, LSC issued other guidelines for recipients of LSC funds that impact on the Guide. For example, the LSC Property Acquisition and Management Manual (PAMM), issued in 2001, requires recipients to capitalize and depreciate all nonexpendable property with a cost in excess of \$5,000 and a useful life of more than one year. However, the current Guide uses \$1,000 as the capitalization and depreciation threshold. The revisions to the Guide change the threshold to \$5,000 to be consistent with the PAAM. Appendix IV, Section 1. In addition, LSC has issued Program Letters 08–2 (March 20, 2008), 08–3 (December 18, 2008) and 09–3 (December 17, 2009) that contain guidance to recipients on compliance and fiscal management issues. Those Program Letters have been referenced in

the revisions to the Guide. Section 2–3.1.

(6) *Revisions to accounting procedures and internal controls to reflect current best practices.* Appendix VII of the current Guide contains a checklist of accounting procedures and internal controls. The revisions update the checklist to reflect current best practices.

(7) *Updated and new references to other sources of information.* The Guide contains numerous references to other sources of information. The revisions update and make new references where appropriate.

(8) *Other changes to clarify existing provisions.* The revisions clarify existing sections to make the provisions easier to understand.

Comments Received to Proposed Revisions to Accounting Guide

Following the publication of notice of proposed revisions to the Guide in the **Federal Register** on February 2, 2010, LSC received comments from the public, the LSC Office of the Inspector General, and from members of the LSC Board of Directors. The following is a summary of comments received and LSC's response to those comments.

Responsibilities of the Financial Oversight Committee of Committees (Section 1–7)

Section 1–7 sets forth the duties and responsibilities of financial oversight committees, including the finance and audit committees. The Georgia Legal Services Program raised a concern about the prospect of being required to have separate board finance and audit committees. *Response:* The proposed revisions do not require separate finance and audit committees. Section 1–7 provides that “it generally is considered a best practice for governing bodies to have both a finance committee and a separate audit committee.” However, the proposed revisions do provide that “[t]he critical point is that all of the finance and audit committee duties * * * must be performed by a financial oversight committee(s).”

The Georgia Legal Services Program also expressed concern over the use of the term “financial statements” in one of the specified roles of the finance committee. The Georgia program mentions that the review of full financial statements monthly would be time-consuming, burdensome for the program, and potentially confusing. *Response:* In response to this comment we have revised this section to use the term “management reports” rather than “financial statements” in role No. 2 of the finance committee, with a reference

to budgeted and actual expenses and income, variances, and a statement of cash on hand. We have added sample management reports as Appendix IB and a section entitled "Statement of Cash on Hand" to section 3-5.9 of the Fundamental Criteria (Management Reports).

The final comment from the Georgia Legal Services Program is that the provision of financial reports on a quarterly basis, rather than monthly as set forth in the proposed revision, has worked well for their program.

Response: While it is recognized that a number of programs provide financial reports to the finance committee and/or the board on a quarterly basis, it is the preferred practice to have these reports produced and reviewed monthly thereby providing the finance committee with as up-to-date information as possible on the financial condition of the program. It should be noted that this provision does not require monthly meetings of the finance committee, but that the reports be reviewed monthly with the chief financial officer, controller, and/or CPA. This review may occur by email or in some other manner.

In addition, there were comments from several members of the LSC Board of Directors that this section needs to have more focus on the need for the duties of audit committees to be performed even if a recipient does not have a separate audit committee and on the need of having a financial expert on the financial oversight committee(s) or access to a financial expert. One board member also mentioned that there were too many "or" options in the language. *Response:* In response to these comments, a new paragraph has been drafted which more clearly emphasizes the critical points that all of the listed duties of a finance and an audit committee must be performed by a financial oversight committee(s) and that the financial oversight committee(s) needs to have a financial expert or access to a financial expert.

LSC Board members recommended an expansion of the language in Section 1-7 under role No. 6 of the Audit Committee. *Response:* Role No. 6 of the Audit Committee in Section 1-7 was expanded to more fully describe the committee's duties in ensuring compliance with ethical requirements, applicable laws, regulations and policies, effective management of the recipient's resources and risks, and accountability of persons within the organization.

Property (Section 2-2.4)

Section 2-2.4 sets forth certain principles for the treatment of property, including the requirement that recipients capitalize and depreciate all nonexpendable property with a cost in excess of \$5,000 and a useful life of more than one year. A comment was received from the LSC Office of the Inspector General (OIG) suggesting that it might be necessary to include accounting for sensitive assets even when those assets are valued at less than \$5,000, as the program may want to track them for other reasons.

Response: A new sentence has been added to Section 2-2.4 incorporating this suggestion.

Court-Awarded Attorneys Fees (Section 2-2.6)

Section 2-2.6 discusses court-awarded attorneys' fees. A comment was received from the Chair of the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association, suggesting that, given the elimination of the restriction on the claiming, collection and retention of attorneys' fees, it would be helpful if there would be an explanation of what attorneys' fees are permitted. *Response:* It is correctly noted that the restriction on claiming, collection and retention of attorneys' fees (former 45 CFR 1642) has been eliminated in a final rule change effective April 26, 2010, to reflect changes contained in the Consolidated Appropriations Act of 2010, Public Law 111-117, and that there is no language in the change to 2-2.6 stating in what situations attorneys' fees are permitted. The question of when attorneys' fees are permitted to be collected from the opposing party is generally a matter of state and federal law, as interpreted by the judge deciding the case. LSC does not have a regulation that sets forth when attorneys' fees are available. It is noted that the recipients of LSC funds are subject to restrictions regarding accepting fee-generating cases, as set forth in 45 CFR 1609. No change to 2-2.6 was made in response to this comment.

There was also a comment from the Center on Law and Social Policy recommending a reference in 2-2.6 to the provision on accounting for attorneys' fees, now set forth in 45 CFR 1609.4. *Response:* In response to this comment, 2.2-6 has been amended to include this reference.

Grant and Contract Costs (Section 2-3.1)

Section 2-3.1 addresses grant and contract costs. A comment received

from the LSC OIG questioned whether the Program Letter on Compliance Guidance and Interim Guidance on Attorneys' Fees dated December 17, 2009, was superseded by an interim final rule on attorneys' fees issued by the LSC on March 15, 2010. *Response:* The purpose of the reference to Program Letters in 2-3.1 is to let grantees know that the letters themselves contain additional cost allocation and financial management information. The Compliance Guidance and Interim Guidance on Attorneys' Fees issued on December 17, 2009 as Program Letter 09-03 mostly discusses issues unrelated to attorneys' fees. The attorneys' fees discussion is limited to interim guidance and by its terms applies only until LSC Board action on the issue. The interim guidance remains applicable during the period until the Board acted. After reviewing the Program Letter, there appears to be nothing inconsistent between the interim guidance and the Board's later action.

Internal Control/Fundamental Criteria of an Accounting and Financial Reporting System (Chapter 3)

The introduction to Chapter 3 discusses the responsibilities of a recipient to maintain adequate accounting records and internal control procedures. An LSC OIG comment recommended the addition of language making clear that internal control is specifically a management responsibility. *Response:* The first paragraph of Chapter 3 has been modified to add that internal control is "managed and maintained by the recipient's board of directors and management."

Fundamental Criteria (Section 3-5)

Section 3-5 contains the LSC Fundamental Criteria, which is a listing of the elements of an adequate accounting and financial reporting system. A comment from the LSC OIG noted that the discussion on Enterprise Risk Management seemed to be misplaced and not fully developed.

Response: As a result of this comment, we have revised section 3-5 to include a fuller discussion of Enterprise Risk Management in the background section. An additional comment from the OIG suggested that a section on contracting should be included in the fundamental criteria. *Response:* In response to this comment a new section on contracting has been added to the Fundamental Criteria. See Section 3-5.16.

A further OIG comment stated that while allocation is covered in Section 3-5.9(c) of the Fundamental Criteria, there is no specific mention of

documenting the methodology.

Response: New language has been added to Section 3–5.9(c), under Criteria for Allocations to require adequate written documentation of the allocation formula.

A follow-up comment from the OIG recommended that the OIG be specifically mentioned in the new allocation formula language. *Response:* The OIG has been added to Section 3–5.9(c), under Criteria for Allocations.

An OIG comment recommended the addition of “a sufficient level of fidelity coverage” in Section 3–5.13 (Bonding.) *Response:* In response to the comment Section 3–5.13 has been changed to make specific reference to the fidelity coverage requirements of 45 CFR 1629.1(a).

An OIG comment suggested adding a provision specifying that documents to support competition should be retained and kept with the contract files in Section 3.5.16 (Contracting.) *Response:* In response to this comment language has been added to the competition section, under criteria, to Section 3.5.16, that incorporates the suggestion.

Fraud Prevention (Section 3–6)

Section 3–6 contains a list of key practices that can help prevent fraud. An LSC OIG comment suggested that there should be an addition to No. 19 to address protection against retaliation for board members and volunteers who report suspected fraud. *Response:* In response to this comment the recommended language has been added to No. 19.

An LSC OIG comment recommended that board members should be reminded that applicable federal and state laws also apply to them. *Response:* In response to this comment new No. 22 has been added incorporating this language.

A comment from the LSC OIG noted that item No. 23 was the only key practice that did not start with a verb. *Response:* New No. 24 has been changed to start with “involve.”

A comment made by an LSC Board member recommended that more specific guidance be given to recipients in the event fraud is discovered. *Response:* In response to this comment language has been added to provide more specific instructions to grantees in the event fraud is discovered. See Section 3–6, No. 26. This same language is found in LSC Grant Assurance No. 15 for 2010 grants, which is signed by both the recipient’s board chair and executive director.

Illustrative Financial Statements and Notes to the Financial Statements (Appendix IA)

Appendix IA.1 provides a description of illustrative financial statements. A comment from the LSC OIG suggests that the OIG be listed in the first paragraph so that the OIG, as well as LSC, would be able “to make comparison with budgeted amounts as well as accumulate regional or national data for the legal services network.” *Response:* The suggested language has been added to the first paragraph in Appendix IA.1.

Description of Accounting Records—Retention Times for Nonprofit Records (Appendix II)

Appendix II contains a section on the retention times for nonprofit records. A comment from a nominee to the LSC Board suggested that we add a provision recognizing that state law may provide a longer retention period for certain types of records. *Response:* In response to this comment we have added a new sentence recognizing the possibility that state law may require a longer retention period for particular types of records.

A comment was also received from the LSC OIG recommending that all financial and financial related information be retained for at least five years, given the fact that questioned costs under 45 CFR 1630 can go back five years. *Response:* In response to this comment we have changed the retention period for the mentioned financial and financial related information to seven years, to make this section consistent with 45 CFR 1630 and the Grant Assurances.

Accounting for Property (Appendix IV)

Appendix IV sets forth procedures for accounting for property, including the capitalization and depreciation of property and equipment. We received comments from JAA & Associates, Hawaii, that the proposed revisions to the illustrations of journal entries for capitalization and depreciation are confusing, incomplete or inaccurate. JAA & Associates also suggested changing the title of Illustration 1.1 under Capitalization from “To record equipment purchased with cash” to “To record equipment purchased with cash or credit.” *Response:* We are also concerned that the proposed revisions in the illustrations in the capitalization and depreciation sections may be confusing. Further, the flow of journal entries can vary somewhat depending on the accounting system used by each LSC grantee. It was determined that while the recommended changes make

sense if journal entries are made in a certain way, there are other valid ways to make entries and the proposed changes could cause confusion. Thus, we have reverted to the 1997 language for the illustrations, which is more easily understandable.

Other Regulatory Financial Requirements (Appendix VI)

Appendix VI contains provisions on other regulatory financial requirements, including tax reporting. An LSC OIG comment recommended that the language be altered to reflect that form 990 is required to be filed and the failure to file for three consecutive years will automatically result in the loss of a non profit’s tax exempt status. *Response:* In response to this comment the language has been changed in Appendix VI.1 to specifically mention the mandatory requirement of filing the 990 form and the automatic loss of tax-exempt status for the failure to file a 990 for three consecutive years.

Accounting Procedures and Internal Control Checklist (Appendix VII)

Appendix VII provides a checklist for a grantee’s internal controls. An LSC OIG comment suggests requiring employees and officers handling assets to be “sufficiently bonded” under Appendix VII A (General.), No. 6. *Response:* In response to this comment Appendix VII A, No. 6 has been changed to add a reference to the bonding requirements found in 45 CFR 1629.

A comment from the LSC OIG questioned whether it was intended in Appendix VII A (General) to have a monthly reporting requirement of a cash flow statement to the finance committee of a recipient’s board of directors. *Response:* Monthly reporting to the finance committee was intended and is consistent with the section 1–7 discussion about role No. 2 of the finance committee. We have changed the second sentence in No. 18 to add “statement of cash on hand,” which is also mentioned in sections 1–7, 3–5.9(b), and Appendix IB.

We also received a comment from a nominee to the LSC Board that Appendix VII B (Personnel and Payroll) should mention that it is a best practice to include both a nondiscrimination policy and a signed statement from every employee that they understand their roles in terms of nondiscrimination. *Response:* In response to this comment a new No. 14 has been added to Appendix VII B incorporating this comment.

An LSC OIG comment suggested that Appendix VII D (Procurement) contain

a requirement that each procurement action, above a reasonable level, be fully documented by maintaining the bids received and the approvals given. This would include written justification for sole source purchases above a certain level. *Response:* In response to this comment a new No. 12 has been added to Appendix D, incorporating the suggestion.

Another LSC OIG comment questioned what “properly executed” means in Appendix VII E (Legal Consultants/Contract Services.) *Response:* In response to this comment we have changed No. 2. in Legal Consultants/Contract Services from “Are contracts written so that the services to be rendered are clearly defined and properly executed?” to the following three sentences: “Are contracts written so that the services to be rendered are clearly defined?”; “Are contracts properly signed by authorized persons?” and “Have all contract terms and modifications been complied with?”

An LSC OIG comment suggested adding to Appendix VII G1 No. 7 that the check should be marked as void or defaced in a manner that would prevent future use of the check. *Response:* In response to this comment Appendix VII G1 No. 7 has been changed to include the recommended language.

An LSC OIG comment pointed out that there was no reference in Appendix VII H (Controls Over Cash Receipts) to cash received from an individual while in the office, as opposed to receiving money through the mail. *Response:* In response to this comment, we have added new Nos. 8–12 in Appendix VII H, to include the questions addressing cash received from an individual while in the office.

The LSC OIG also commented that No. 15 should provide that the client is entitled to a receipt for cash provided and that if a receipt is not provided that the client should see a supervisor. *Response:* In response to this comment Appendix VII H No. 15 was changed to include the recommended language.

A comment received from the Legal Aid and Defender Association, Detroit, Michigan, questions the segregation of duties guidelines found in Appendix VII, Section J (Segregation of Duties). There is a fear that if duties were assigned to staff outside the accounting department, this staff person may have access to confidential information. *Response:* Appendix VII J contains guidelines for the management of a recipient’s financial systems. The objective of Section J is to provide the maximum safeguards possible under the circumstances. Accounting duties should be segregated to ensure that no

individual simultaneously has both the physical control and the record keeping responsibility for any asset, including, but not limited to, cash, client deposits, supplies and property. Duties must be segregated so that no individual can initiate, execute, and record a transaction without a second independent individual being involved in the process. In response to this comment and to clarify the inquiry, we have changed the question to: “Are checks, after being signed, controlled and mailed out by an individual who does not have any other payables duties?”

An LSC OIG comment suggested that Appendix VII K (Petty Cash Controls) be changed to add procedures regarding access to and physical control over the petty cash box during and after work hours. *Response:* In response to this comment a new No. 14 has been added to Appendix VII K to include language regarding access to and physical control over the petty cash box during and after work hours.

Dated: July 13, 2010.

Victor M. Fortuno,

President, Legal Services Corporation.

[FR Doc. 2010-17737 Filed 7-21-10; 8:45 am]

BILLING CODE 7050-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Library-Foundation Partnerships.

AGENCY: National Archives and Records Administration.

ACTION: Renewal of Advisory Committee on Presidential Library-Foundation Partnerships.

SUMMARY: This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration’s (NARA) Advisory Committee on Presidential Library-Foundation Partnerships. In accordance with Office of Management and Budget (OMB) Circular A-135, OMB approved the inclusion of the Advisory Committee on Presidential Library-Foundation Partnerships in NARA’s ceiling of discretionary advisory committees.

NARA has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on issues affecting the functioning of existing Presidential

libraries and library programs and the development of future Presidential libraries. NARA will use the Committee’s recommendations in its implementation of strategies for the efficient operation of the Presidential libraries.

FOR FURTHER INFORMATION CONTACT: NARA’s Committee Management Officer is Mary Ann Hadyka. She can be reached at 301-837-1782.

Dated: July 16, 2010.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2010-17997 Filed 7-21-10; 8:45 am]

BILLING CODE 7515-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461; NRC-2010-0252]

Exelon Generation Company, LLC; Clinton Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering changes to the Emergency Plan, pursuant to 10 CFR 50.54, “Conditions of licenses,” paragraph (q), for Facility Operating License No. NPF-62, issued to Exelon Generation Company, LLC (the licensee), for operation of the Clinton Power Station, located in Clinton, Illinois. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed action will have no significant environmental impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action is NRC approval of a licensee’s request to revise the staffing requirements for the Exelon Nuclear Radiological Emergency Plan Annex for Clinton Station, Table B-1, “Minimum Staffing Requirements for the On-Shift Clinton Station Emergency Response Organization (ERO),” to allow an increase in the Non-Licensed Operator (NLO) staffing from two to four, allow in-plant protective actions to be performed by personnel assigned other functions, and replace a Mechanical Maintenance person with a NLO. The regulation at 10 CFR 50.54(q) states that, “The nuclear power reactor licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans.” The licensee concluded that the proposed action constituted a decrease in the plant’s

effectiveness and has requested NRC's approval of the proposed action.

The Need for the Proposed Action

The proposed action is needed to allow an increase in NLO staffing from two to four, allow in-plant protective actions to be performed by personnel assigned other functions, and replace a Mechanical Maintenance person with a NLO. According to the licensee, increasing the number of NLO staffing improves the response of site personnel whose emergency plan role is to assist with operator and maintenance response to the emergency event and provides an increased number of personnel for repair and corrective actions.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed changes to the Clinton Power Station Emergency Plan. The staff has concluded that the changes would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring. The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the updated safety analysis report. There will be no change to radioactive effluents that effect radiation exposures to plant workers and members of the public. The proposed action is an administrative change related to plant personnel work assignments. No changes will be made to plant buildings or the site property. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed action.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed action. Accordingly, the NRC concludes that there are no significant

environmental impacts associated with the proposed action.

The details of the staff's safety evaluation will be provided as part of the letter to the licensee approving issuance of the license amendment.

Environmental Impacts of the Alternatives to the Purposed Action

As an alternative to the proposed actions, the staff considered denial of the proposed actions (i.e., the "no-action" alternative). Denial of the license amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed license amendment and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the Clinton Power Station, Docket No. 50-461, issued in May, 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on July 7, 2010, the staff consulted with the Illinois State official, Mr. Frank Niziolek of the Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 2, 2010 (ML100950124). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 1555 Rockville Pike, Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 14th day of July 2010.

For the Nuclear Regulatory Commission.

Nicholas DiFrancesco,

Project Manager, Plant Licensing Branch III-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010-17992 Filed 7-21-10; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2010-0255]

Office of New Reactors; Proposed Revision 1 to Standard Review Plan; Section 13.5.1.1 on Administrative Procedures—General

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," on a proposed Revision 1 to Standard Review Plan (SRP), Section 13.5.1.1 on "Administrative Procedures—General," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML101340264). The Office of New Reactors (NRO) is revising SRP Section 13.5.1.1 (Enclosure 1), which updates the initial issuance of this section, dated March 2007, to reflect the changes as shown in the description of changes (ADAMS Accession No. ML101340272). The previous version of this SRP section was published in March 2007 as initial issuance (ADAMS Accession No. ML070550029).

The NRC staff issues notices to facilitate timely implementation of the current staff guidance and to facilitate activities associated with the review of amendment applications and review of design certification and combined license applications for NRO. The NRC staff intends to incorporate the final approved guidance into the next revision of NUREG-0800, SRP Section 13.5.1.1, Revision 1 and Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants (LWR Edition)," June 2007.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

Please include Docket ID NRC-2010-0255 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0255. Address questions about NRC dockets to Carol Gallagher at 301-492-3668; e-mail at Carol.Gallagher@nrc.gov.

Mail comments to: Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RADB at 301-492-3446.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room reference staff at 1-800-397-4209, 301-415-4737, or by e-mail at pdr.resources@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone at 301-415-6332 or e-mail at william.burton@nrc.gov.

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Section 13.5.1.1, Revision 1. After the NRC staff considers any public comments, it will make a determination regarding the proposed SRP Section 13.5.1.1, Revision 1.

Dated at Rockville, Maryland, this 19th day of July 2010.

For the Nuclear Regulatory Commission,
William F. Burton,
Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactor.

[FR Doc. 2010-17995 Filed 7-21-10; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, August 4, 2010 at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The public session will be podcast.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC:

1. Review of postal-related congressional activity.
2. Report on international activities.
3. Review of active cases.
4. Report on recent activities of the Joint Periodicals Task Force and status of the report to the Congress pursuant to section 708 of the PAEA.
5. Report on public comments and rate and service inquiries.
6. Report on vacancies and positions recently filled.

PORTIONS CLOSED TO THE PUBLIC:

7. Discussion of pending litigation.
8. Discussion of confidential personnel issues involving recruitment.
9. Discussion of contracts involving confidential commercial information.

CONTACT PERSON FOR FURTHER INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, at 202-789-6820 or stephen.sharfman@prc.gov (for questions concerning the agenda) and Shoshana M. Grove at 202-789-6842 or shoshana.grove@prc.gov (for questions concerning podcasting).

Dated: July 20, 2010.

Shoshana M. Grove,
Secretary.

[FR Doc. 2010-18032 Filed 7-20-10; 11:15 am]

BILLING CODE 7710-FW-S

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: Wednesday, August 4, 2010, at 10 a.m.; Thursday, August 5, at 8:30 a.m. and 10:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: Wednesday, August 4 at 10 a.m.—Closed; Thursday, August 5 at 8:30 a.m.—Open; and at 10:30 a.m.—Closed.

MATTERS TO BE CONSIDERED:

Wednesday, August 4 at 10 a.m. (Closed)

1. Strategic Issues.
2. Pricing.
3. Financial Matters.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Thursday, August 5 at 8:30 a.m. (Open)

1. Approval of Minutes of Previous Meetings.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Committee Reports.
5. Quarterly Report on Financial Performance.
6. Quarterly Report on Service Performance.
7. Tentative Agenda for the September 21–22, 2010, meeting in Washington, DC.

Thursday, August 5 at 10:30 a.m. (Closed—if Needed)

1. Continuation of Wednesday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION:

Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

Julie S. Moore,
Secretary.

[FR Doc. 2010-18124 Filed 7-20-10; 4:15 pm]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62505; File No. SR-BX-2010-047]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Short Term Option Program

July 15, 2010.

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 July 14, 2010, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule 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 Rules of the Boston Options Exchange Group, LLC (“BOX”) to permit the listing and trading of options series that expire one week after being opened for trading (“Short Term Option Program” or “STO Program”). The text of the proposed rule change is available from the Exchange’s Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>, the principal office of the Exchange, on the Commission’s Web site at <http://www.sec.gov>, 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 proposal is to amend the BOX Rules to establish a Short Term Option Program on the Exchange by proposing to add new Supplementary Material .07 to Chapter IV, Section 6 (Series of Options Open

for Trading) and Supplementary Material .02 to Chapter XIV, Section 10 (Terms of Index Options Contracts) in order to list option series that expire one (1) week after being opened for trading. The Exchange also proposes to add the definition of Short Term Option Series to Chapter 1, Section 1(a) and Chapter XIV, Section 2.⁵ In addition, the Exchange proposes to make non-substantive changes to conform the language of Chapter IV, Section 6 and to renumber and reletter definitions in Chapter 1, Section 1(a) and Chapter XIV, Section 2.

The Commission approved the Short Term Option Program on behalf of the Chicago Board Options Exchange (“CBOE”) on a pilot basis in 2005 and for permanent establishment in 2009.⁶ Thereafter, CBOE amended Rules 5.5 and 24.9 to permit opening Short Term Option Series not just on Friday but also on Thursday.⁷ Recently, the Commission approved⁸ a permanent Short Term Option Program on behalf of the NASDAQ OMX PHLX (“PHLX”); NASDAQ Options Market (“NOM”); NYSE Arca, Inc. (“NYSE Arca”); and NYSE Amex LLC (“NYSE Amex”).⁹ The

⁵ Short Term Option Series is defined as: a series in an option class that is approved for listing and trading on BOX in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the next business week. If a Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Thursday or Friday, respectively.

⁶ CBOE refers to its short term option program as the “Weeklys Program.” See Securities Exchange Act Release Nos. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR–CBOE–2004–63) (Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To List and Trade Short Term Option Series); 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR–CBOE–2009–018) (Order Approving Proposed Rule Change To Permanently Establish the Short Term Option Series Pilot Program).

⁷ See Securities Exchange Act Release No. 62170 (May 25, 2010), 75 FR 30889 (June 2, 2010) (SR–CBOE–2010–048) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit CBOE To Open Short Term Option Series on Thursdays).

⁸ As noted above, all the text of Items I and II of this notice was prepared by the Exchange. The Commission notes, however, that it did not approve the proposed rule changes cited by the Exchange in this sentence. These proposals were filed under Section 19(b)(3)(A) of the Act for immediate effectiveness and thus were not approved by the Commission.

⁹ See Securities Exchange Act Release Nos. 62296 (June 15, 2010), 75 FR 35115 (June 21, 2010) (SR–PHLX–2010–084) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. To Establish a Short Term Option Program); 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–NOM–2010–073) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by The NASDAQ Stock Market LLC To Establish a Short Term Option Program); 62296 (June 15, 2010), 75 FR 35111 (June

Exchange’s proposal is based directly on the Short Term Option Program in CBOE Rules 5.5 and 24.9; PHLX Rules 1012 and Rule 1101A; NOM Rules Chapter IV, Section 6 and Chapter XIV, Section 11; NYSE Arca Rules 5.19 and 6.4; NYSE Amex Rules 903C and 903 and ISE Rules 504 and 2009.

Specifically, the Exchange proposes to establish a Short Term Option Program for non-index options (e.g., equity options and ETF options) in new Supplementary Material .07 to Chapter IV, Section 6; and for index options in new Supplementary Material .02 to Chapter XIV, Section 10. The Short Term Option Program will allow BOX to list and trade Short Term Option Series. Thus, after an option class has been approved for listing and trading on BOX, BOX may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on that class that expire on the Friday of the following business week that is a business day (“Short Term Option Expiration Date”). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.¹⁰

Under the STO Program, BOX may select up to five (5) approved option classes on which Short Term Option Series could be opened. BOX also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.¹¹

For each class selected for the STO Program, BOX may open up to twenty Short Term Option Series for each expiration date in that class, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the

21, 2010) (SR–Arca–2010–059) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. to make permanent the One Week Option Series Pilot Program); 62296 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR–Amex–2010–062) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex, LLC to make permanent the One Week Option Series Pilot Program).

¹⁰ See proposed Supplementary Material .07 to Chapter IV, Section 6 and Supplementary Material .02 to Chapter XIV, Section 10.

¹¹ See proposed Supplementary Material .07(a) to Chapter IV, Section 6 and Supplementary Material .02(a) to Chapter XIV, Section 10.

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).

Short Term Option Series is opened. The interval between strike prices on Short Term Option Series shall be the same as the strike prices for series in that same option class that expire in accordance with the normal monthly expiration cycle.¹² Any strike prices listed by BOX shall be within thirty percent (30%) above or below the current value of the underlying index.¹³

If BOX opens less than twenty Short Term Option Series for a given expiration date, additional series may be opened for trading on BOX when deemed necessary to maintain an orderly market, to meet customer demand, or when the current value of the underlying security or index moves substantially from the previously listed exercise prices. The total number of series for a given expiration date, however, will not exceed twenty series. Any additional strike prices listed by the Exchange shall be within 30% above or below the current price of the underlying security. BOX may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market Makers trading for their own account shall not be considered when determining customer interest under this provision. Moreover, the opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened.¹⁴

The Short Term Option Program provides that no Short Term Option Series may expire in the same week in which monthly option series on the same class expire or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Options Series on the same class.¹⁵

With regard to the impact of this proposal on system capacity, BOX has analyzed its capacity and has represented to the Exchange that it and

the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of options pursuant to the Short Term Option Program.

Finally, the Exchange is proposing to make non-substantive changes to conform the language of Chapter IV, Section 6 (Series of Options Open for Trading). Specifically, the Exchange proposes to add language to clarify that Short Term Options Series procedures are similar to Quarterly Options Series procedures and will be treated differently than standard Options Series.

The Exchange believes that the Short Term Option Program will provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie options contracts. The Exchange also believes that providing the flexibility to list all Short Term Option series (equity and index) on any Thursday or Friday will help implement the program more effectively and avoid investor confusion.

The Commission has requested, and BOX has agreed for the purposes of this filing, to submit one (1) report to the Commission providing an analysis of the BOX Short Term Option Program (the "Report").¹⁶ The Report will cover the period from the date of effectiveness of the STO Program through the first quarter of 2011, and will describe the experience of BOX with the STO Program in respect of the options classes included by BOX in such program. The Report will be submitted by May 1, 2011, under separate cover and will seek confidential treatment under the Freedom of Information Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁷ in general, and Section 6(b)(5) of

the Act,¹⁸ in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, establishing a Short Term Option Program will provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie options contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

¹² See proposed Supplementary Material .07(e) to Chapter IV, Section 6 and Supplementary Material .02(e) to Chapter XIV, Section 10.

¹³ See proposed Supplementary Material .07(c) to Chapter IV, Section 6 and Supplementary Material .02(c) to Chapter XIV, Section 10.

¹⁴ See proposed Supplementary Material .07(d) to Chapter IV, Section 6 and Supplementary Material .02(d) to Chapter XIV, Section 10.

¹⁵ See proposed Supplementary Material .07(b) to Chapter IV, Section 6 and Supplementary Material .02(b) to Chapter XIV, Section 10. Moreover, the Exchange expects that Short Term Options Series will settle (e.g., in terms of A.M. or P.M.) in the same manner as do the monthly expiration series in the same option class.

¹⁶ The Report would include the following: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the option classes selected for the STO Program; (3) an assessment of the impact of the STO Program on the capacity of BOX, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the STO Program and how BOX addressed such problems; (5) any complaints that the BOX or the Exchange received during the operation of the STO Program and how they were addressed; and (6) any additional information that would assist in assessing the operation of the STO Program.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that was approved by the Commission.²³ Therefore, the Commission designates the proposal operative upon filing.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2010-047 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-BX-2010-047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2010-047 and should be submitted on or before August 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-17851 Filed 7-21-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62521; File No. SR-FINRA-2010-006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Codes of Arbitration Procedure To Provide for Attorney Representation of Non-Party Witnesses in Arbitration

July 16, 2010.

I. Introduction

On January 22, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "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 amend Rule 12602 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13602 of the Code of Arbitration Procedure for

Industry Disputes ("Industry Code") (collectively, the "Codes") to provide that a non-party witness may be represented by an attorney at an arbitration hearing while the witness is testifying. The proposed rule change was published for comment in the **Federal Register** on February 23, 2010.³ The Commission received three comments in response to the proposed rule change.⁴ FINRA responded to the comments and on June 14, 2010 filed Amendment No. 1 to the proposed rule change.⁵ The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

FINRA proposed to amend Rules 12602 and 13602 of the Codes to provide that a non-party witness has the right to be represented by an attorney at an arbitration proceeding held in a United States hearing location while the witness is testifying. The attorney would have to be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation. Under the proposal, the panel would have the authority to determine the extent to which the attorney could participate at the hearing.

While the Codes expressly allow a party in an arbitration proceeding to be represented by an attorney at any stage in the proceeding,⁶ they do not address attorney representation of a non-party witness. As stated in the notice, FINRA

³ See Securities Exchange Act Release No. 61517 (February 16, 2010), 75 FR 8169 (February 23, 2010), (SR-FINRA-2010-006) ("Notice").

⁴ See letter from William A. Jacobson, Director, Cornell Securities Law Clinic and Rubina Ali, Cornell Law School, dated March 16, 2010 ("Cornell Letter"), letter from Richard P. Ryder, dated April 16, 2010 ("Ryder Letter") and letter from Scott R. Shewan, President, Public Investors Arbitration Bar Association, dated April 28, 2010 ("PIABA Letter"). The Ryder Letter and the PIABA Letter were submitted several weeks after the expiration of the comment period.

⁵ See Amendment No. 1 dated June 14, 2010 ("Amendment No. 1"). The text of Amendment No. 1 is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, and on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.html>).

⁶ Rules 12208 and 13208 of the Codes (Representation of Parties) provide that parties have the right to be represented by an attorney at any stage in an arbitration proceeding. They also allow parties to be represented by a person who is not an attorney subject to certain limitations.

²³ See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018).

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

believes that a non-party witness should be entitled to representation by an attorney while he or she is testifying. Currently, under the Codes, the arbitration panel determines whether a non-party witness' attorney may attend a hearing.⁷ A non-party witness may testify at a hearing: (1) Voluntarily; (2) pursuant to a subpoena;⁸ or (3) in compliance with an arbitrator's order for an associated person to appear and give testimony.⁹

Under the current Codes, arbitrators determine whether non-party witnesses can bring an attorney to a hearing. As indicated in the Notice, FINRA does not believe that arbitrators have been denying requests by non-party witnesses, including non-party associated persons,¹⁰ to be represented by attorneys while testifying; nevertheless, to assure due process in its dispute resolution forum, FINRA believes that the Codes should expressly provide that a non-party witness is entitled to be represented by an attorney while testifying.

III. Summary of Comment Letters and FINRA's Response

The Commission received three comments on the proposed rule change.¹¹ Two commenters suggested revisions to the proposed rule change.¹² The other commenter generally opposed the proposal and urged FINRA to withdraw it.¹³ The Commission also received FINRA's response to comments, which is discussed below.¹⁴

⁷ Rules 12602 and 13602 of the Codes (Attendance at Hearings) provide that parties and their representatives are entitled to attend all hearings and that, absent persuasive reasons to the contrary, expert witnesses should also be permitted to attend all hearings. The panel determines who else may attend any or all hearings.

⁸ Rules 12512 and 13512 of the Codes (Subpoenas) provide that arbitrators have the authority to issue subpoenas for the production of documents or the appearance of witnesses. The rules permit a party to make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party.

⁹ Rules 12513 and 13513 of the Codes (Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas) provide that the panel may order the appearance of any employee or associated person of a FINRA member.

¹⁰ The proposed rule change would apply to all non-party witnesses testifying at a FINRA arbitration hearing, including an associated person who handled the customer claimant's account but was not named as a respondent in the case.

¹¹ See note 4, *supra*.

¹² Cornell Letter; PIABA Letter. The Cornell Letter expressed support for the proposed rule change subject to modification. The PIABA Letter indicated that it did not support the proposed rule in its current form.

¹³ Ryder Letter.

¹⁴ Letter from Margo A. Hassan, FINRA, dated April 1, 2010 (addressing the Cornell Letter) ("FINRA Letter I"). Because the Ryder and PIABA

One commenter supported FINRA's efforts to consider due process protections for non-party witnesses.¹⁵ However, the commenter also expressed concern that unless FINRA adopts guidelines for arbitrators, the arbitration process could be impeded by attorneys for non-party witnesses using scheduling conflicts to delay an arbitration or "overstepping" their role with inappropriate objections not necessarily tied to their clients' testimony. This commenter suggested amending the proposal to limit the role of a non-party witness' attorney, absent extraordinary circumstances, to matters concerning privilege and conflicts arising under Fifth Amendment protections against self-incrimination.¹⁶

Another commenter did not support the proposal and suggested an amending it to limit the role of a non-party witness' attorney.¹⁷ Specifically, this commenter suggested that attorneys for non-party witnesses should not be permitted to participate in an arbitration hearing or advocate on behalf of any particular party (*e.g.*, interjecting argument in the case or offering input or assistance to counsel for any other party) other than to raise an objection on behalf of a non-party witnesses based on privileges that have been well-accepted at the federal and state court level.¹⁸

The third commenter did not support the proposal stating that: (1) The proposal is unnecessary because arbitrators have apparently not been denying requests for representation from non-party witnesses; (2) FINRA's references to "due process" are inappropriate because arbitration proceedings are not designed to be structured as judicial proceedings; (3) the proposal would reduce control by arbitrators, add confusion and protract the process (*e.g.*, by adding time for developing bar qualifications for eligibility of counsel to participate in each respective arbitration forum); and (4) FINRA has not adequately justified its basis for the proposal.¹⁹

Letters were submitted after the expiration of the comment period, FINRA responded to these comments in a separate letter. See letter from Margo Hassan, FINRA, dated June 14, 2010 ("FINRA Letter II") (collectively with FINRA Letter I, "FINRA's Response").

¹⁵ Cornell Letter.

¹⁶ *Id.* The commenter also indicated that attorneys for non-party witnesses should not be able to participate generally in the proceedings or cross-examine witnesses.

¹⁷ PIABA Letter

¹⁸ The commenter listed the following non-exclusive privileges from state and federal courts: attorney-client privilege, work product doctrine, spousal privilege, clergy privilege and accountant-client privilege. See PIABA Letter.

¹⁹ Ryder Letter.

FINRA submitted Amendment No. 1 in response to comments.²⁰ Amendment No. 1 generally provides that unless otherwise authorized by the arbitration panel, the role of the attorney for a non-party witness would be limited to asserting recognized privileges such as the attorney-client and work product privileges and the privilege against self-incrimination.²¹ FINRA indicated that Amendment No. 1 would provide additional guidance to parties and arbitrators about the role of a non-party witnesses' attorney while maintaining an arbitrator's authority and ability to determine the appropriate level of attorney representation at a hearing.²² FINRA reiterated that it continually reviews the Codes to enhance its case administration processes and ensure that its forum is fair to all participants.²³ In addition, FINRA indicated that it strives to improve the Codes before problems arise and to this end the proposal would close a gap in the Codes relating to non-party witness representation.

IV. Discussion and Commission Findings

After carefully considering the proposal, as amended by Amendment No. 1, the comments, and FINRA's Response, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.²⁴ In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁵ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because it would enhance the fairness in the arbitration process by clarifying that a non-party witness may be represented by counsel during his or her testimony.

The Commission believes that FINRA has adequately addressed the concerns raised by the commenters. With respect

²⁰ FINRA Letter II.

²¹ *Id.*

²² FINRA's Response.

²³ *Id.*

²⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 17c(f).

²⁵ 15 U.S.C. 78o-3(b)(6).

to the concern that the proposal is unnecessary because abuses have not been witnessed, the Commission notes that its oversight of the securities arbitration process is directed at ensuring that it is fair and efficient. The Commission believes that FINRA's proactive approach in proposing this rule change is consistent with ensuring a fair and efficient arbitration process for all persons involved in arbitration, including non-party witnesses.

Moreover, the Commission believes the concern that the proposal would reduce control by arbitrators, add confusion and protract the process will be mitigated by Amendment No. 1. Under the proposal, as modified by Amendment No. 1, the role of attorneys for non-party witnesses will generally be limited to asserting recognized privileges on behalf of the non-party witness; however, the arbitration panel will maintain overall control over the proceeding, including the ability to determine the appropriate level of attorney representation at a hearing. Further, FINRA has committed to alerting arbitrators to concerns regarding delayed or protracted proceedings.

Finally, the Commission does not agree that FINRA has not adequately justified its basis for the proposal. The Commission believes that FINRA's justification of enhancing fairness in the arbitration process by ensuring that a non-party witness may be represented by counsel during his or her testimony is consistent with the requirements of the Act.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁶ for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The changes proposed in Amendment No. 1 respond to specific concerns raised by commenters. In particular, Amendment No. 1 proposes to limit the role of a non-party witness attorney, unless otherwise authorized by the arbitration panel, to the assertion of recognized privileges such as the attorney-client and work product privilege and the privilege against self-incrimination.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2010-006 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2010-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2010-006 and should be submitted on or before August 12, 2010.

VII. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-FINRA-2010-006), as modified by Amendment

No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62504; File No. SR-Phlx-2010-93]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Delta Hedge Exemptions

July 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 30, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) expand the delta hedging exemption available for equity options positions limits, (ii) amend the reporting requirements applicable to members relying on the delta hedging exemption and (iii) adopt a delta hedging exemption from certain index options position limits.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 15 U.S.C. 78s(b)(2).

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

I. Expansion of Delta-Based Equity Hedge Exemption

On December 14, 2007,³ the Commission approved a proposed rule change establishing an exemption from equity options position and exercise limits for positions held by the Chicago Board Options Exchange ("CBOE") members, and certain of their affiliates, that are "delta neutral"⁴ under a "permitted pricing model", subject to certain conditions ("Exemption"). NASDAQ OMX PHLX filed a rule filing to establish an exemption similar to CBOE's filing.⁵ CBOE expanded its exemption from equity options position and exercise limits, amended reporting requirements and adopted a delta hedging exemption from certain index options position limits.⁶ The Exchange is proposing to amend Exchange Rules 1001, and 1001A as well as Option Floor Procedure Advice F-15 to make similar amendments.⁷

The "options contract equivalent of the net delta" of a hedged equity option position is subject to the position limits under Exchange Rule 1001, subject to the availability of other exemptions.⁸

³ See Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR-CBOE-2007-99). The exemption was extended to certain customers whose accounts are carried by a member. See Securities Exchange Act Release No. 60555 (August 21, 2009), 74 FR 43741 (August 27, 2009) (SR-CBOE-2009-039).

⁴ The term "delta neutral" is defined in Commentary .09(a) to Exchange Rule 1001 as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

⁵ See Securities Exchange Act Release No. 57359 (February 20, 2008), 73 FR 11178 (February 29, 2008) (SR-Phlx-2008-07).

⁶ See Securities Exchange Act Release No. 62190 (May 27, 2010), 75 FR 31826 (June 4, 2010) (SR-CBOE-2010-021).

⁷ This proposed rule filing is being done pursuant to an industry-wide initiative, under the auspices of the Intermarket Surveillance Group ("ISG"), to establish comparable delta-hedge exemption rules among exchanges.

⁸ The term "options contract equivalent of the net delta" is defined in Commentary .09 (b)(1) of

Currently, the Exemption only is available for securities that directly underlie the applicable option position. This means that with respect to options on exchange-traded funds ("ETF options"), index options overlying the same index on which the ETF is based currently cannot be combined with the ETF options to calculate a net delta for purposes of the Exemption.

Many ETF options overlie exchange-traded funds that track the performance of an index. For example, options on Standard & Poor's Depository Receipts ("SPY") track the performance of the S&P 500 index. Market participants often hedge SPY options with options on the S&P 500 Index ("SPX options") or with other financial instruments based on the S&P 500 Index for risk management purposes. The Exchange believes that in order for eligible market participants to more fully benefit from the Exemption as it relates to ETF options, securities and other instruments that are based on the same underlying ETF or the same index on which the ETF is based should also be included in any determination of an ETF option position's net delta or whether the options position is hedged delta neutral.⁹

Accordingly, the Exchange proposes to expand the Exemption by amending Exchange Rule 1001 to permit equity option positions for which the underlying security is an ETF that is based on the same index as an index option to be combined with an index option position for calculation of the delta-based equity hedge exemption. The proposed rule would allow financial products such as securities index options, index futures, and options on index futures to be included along with the ETF in an equity option's net delta calculation. So for example, the proposed rule would allow SPY options to be hedged not only with SPY shares, but with S&P 500 options, S&P 500 futures, options on S&P 500 futures or any other instrument that tracks the performance of or is based on the S&P 500 index. This would be accomplished by including such positions with a related index option position in accordance with the Delta-Based Index Hedge Exemption rule proposed below.

Exchange Rule 1001 as the net delta divided by the number of shares underlying the option contract. The term "net delta" is defined at Commentary .09(b)(2) of the Exchange Rule 1001 to mean, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

⁹ However, this would not include baskets of securities for purposes of the Exemption.

Index options and equity options (*i.e.*, ETF options) that are eligible to be combined for computing a delta-based hedge exemption, along with all securities and/or other instruments that are based on or track the performance of the same underlying security or index, will be grouped and the net delta and options contract equivalent of the net delta will be calculated for each respective option class based on offsets realized from the grouping as a whole.

The Exchange proposes to amend the definition of "net delta" at Commentary .09(b)(2) of Exchange Rule 1001 to mean, at any time, the number of shares and/or other units of trade¹⁰ (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model. The Exchange proposes to amend the definition of the "option contract equivalent of the net delta" at Commentary .09(b)(1) of Exchange Rule 1001 to mean the net delta divided by the number of shares that equate to one option contract on a delta basis.

II. Reporting Requirements

Exchange Rule 1001 Commentary .09(f) sets forth the reporting requirements applicable to Exchange members who rely on the Exemption. The Exchange proposes to amend Exchange Rule 1001 Commentary .09(f) to exempt from the reporting requirements Exchange market-makers¹¹ relying on the Exemption who use the Options Clearing Corporation ("OCC") pricing model, because market-maker positions and delta information can be accessed through the Exchange's market surveillance systems. This proposed exemption is consistent with similar exemptions from the reporting

¹⁰ Other units of trade would include, for example, options or futures contracts hedging the relevant option position. When determining whether an ETF option hedged with other instruments such as ETF or index options is delta neutral, the relative size of the ETF option when compared to the other product is taken into consideration. For example, SPX options are ten (10) times larger than SPY options thus 1 SPX delta is equivalent to .10 SPY deltas.

¹¹ Exchange market-makers include Registered Option Traders and Specialists. A Registered Option Trader ("ROT") is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes a Streaming Quote Trader ("SQT") as defined in 1014(b)(ii)(A), a Remote Streaming Quote Trader ("RSQT") as defined in 1014(b)(ii)(B) and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014 (b)(i) and (ii). A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

requirements under Exchange Rule 1001A(c) applicable to broad-based (market) index options and narrow-based (industry) index options.

III. Delta-Based Index Hedge Exemption

Index options traded on the Exchange are subject to position and exercise limits, as provided under Exchange Rules 1001A and 1002A.¹² Position limits are imposed, generally, to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the holder of the options position.

Index options are often used by market participants such as institutional investors to hedge large portfolios. Exchange rules include hedge exemptions to allow certain positions in index options in excess of the applicable standard position limit if hedged with an Exchange-approved qualified portfolio. Under Rule 1001A Commentary .01, Index Hedge Exemption, a qualified portfolio must be previously established and the options must be carried in an account with an Exchange member. Securities used as a hedge pursuant to this provision may not be used to hedge other option positions.¹³

The Exchange believes that any limit on the ability of market participants to use index options to hedge their portfolios exposes market participants to unnecessary risk on the unhedged portion of their portfolios. The Exchange proposes to adopt a delta-based exemption from index option position and exercise limits that are substantially similar to the delta-based equity hedge exemption under Exchange Rule 1001. A delta-based index hedge exemption would provide market participants the ability to accumulate an unlimited number of index options contracts provided that such contracts are properly delta hedged in accordance with the requirements of the exemption.

Proposed Exemption. The Exchange proposes to adopt an exemption from index options position and exercise limits¹⁴ for positions held by Exchange members and certain of their affiliates that are “delta neutral” (as defined below) under a “permitted pricing

model” (as defined below), subject to certain conditions (“Index Exemption”).

The term “delta neutral” is defined in proposed Commentary .04(A) of Exchange Rule 1001A as referring to an index option position that is hedged, in accordance with a permitted pricing model, by a position in one or more correlated instruments for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the value of the underlying index. Correlated instruments would be defined to mean securities and/or other instruments that track the performance of or are based on the same underlying index as the index underlying the option position. These definitions would allow financial products such as ETF options, index futures, options on index futures and ETFs that track the performance of or are based on the same underlying index to be included in an index option’s net delta calculation.

Any index option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the “options contract equivalent of the net delta” of such position would be subject to the appropriate position limit.¹⁵

In addition, members could not use the same positions in correlated instruments in connection with more than one hedge exemption. Therefore, a position in correlated instruments used as part of a delta hedging strategy could not also serve as the basis for any other index hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any index option position, and the determination of whether a particular index option position is hedged delta neutral, must be made using a permitted pricing model. A “permitted pricing model” is defined in proposed Exchange Rule 1001A to have the same meaning as defined in Exchange Rule 1001, namely, the pricing model maintained and operated by OCC and the pricing models used by (i) a member or its affiliate subject to consolidated supervision by the SEC pursuant to Appendix E of SEC Rule 15c3–1; (ii) a financial holding company

(“FHC”) or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision;¹⁶ (iii) an SEC registered OTC derivatives dealer;¹⁷ and (iv) a national bank.¹⁸

Aggregation of Accounts. Members and non-member affiliates relying on the Index Exemption would be required to ensure that the permitted pricing model is applied to all positions in correlated instruments hedging the relevant option position that are owned or controlled by the member, or its affiliates.

However, the net delta of an index option position held by an entity entitled to rely on the Index Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in correlated instruments held by an affiliated entity or by another trading unit within the same entity, provided that: (i) The entity demonstrates to the Exchange’s satisfaction that no control relationship,

¹⁶ The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) The requirements of the Board of Governors of the Federal Reserve System (“Fed”), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Fed, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company’s consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company’s principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where “principal regulator” means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company’s consolidated supervised holding company group. See Commentary .09(c)(3), Exchange Rule 1001.

¹⁷ The pricing model of an SEC registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to SEC Rule 15c3–1 and SEC Rule 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. See Commentary .09(c)(4), Exchange Rule 1001.

¹⁸ The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. See Commentary .09(c)(5), Exchange Rule 1001.

¹² See Exchange Rule 1001A, which provides position limits for broad-based index options and narrow-based index options.

¹³ See Commentary .01(b), Exchange Rule 1001A.

¹⁴ Exchange Rule 1002A establishes exercise limits for an index option at the same level as the index option’s position limit under index options position limit rules in Exchange Rules 1001A, therefore no changes are proposed to Exchange Rule 1002A.

¹⁵ Under proposed Commentary .04(B) of Exchange Rule 1001A, the term “options contract equivalent of the net delta” is defined as the net delta divided by units of trade that equate to one option contract on a delta basis, and the term “net delta” is defined as, at any time, the number of shares and/or other units of trade (either long or short) required to offset the risk that the value of an index option position will change with incremental changes in the value of the underlying index, as determined in accordance with a permitted pricing model.

as defined in Commentary .06 to Exchange Rule 1001, exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Index Exemption.¹⁹ Any member or non-member affiliate relying on the Index Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Index Exemption for purposes of compliance with Exchange position or exercise limits.²⁰

The Exchange previously issued a Memorandum to the membership which discussed, among other things, control relationships.²¹

Obligations of Members and Affiliates. Any member relying on the Index Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Index Exemption.²² In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in a correlated instrument hedging the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption.²³

The index option positions of a non-member affiliate relying on the Index Exemption must be carried by a member with which it is affiliated.²⁴ A member carrying an account that includes an index option position for a non-member affiliate that intends to rely on the Index Exemption would be required to obtain from such non-member affiliate a written certification that it is using a

permitted pricing model as defined in the rule for purposes of the Index Exemption.²⁵

Reporting. Under proposed Exchange Rule 1001A each member (other than an Exchange market-maker using the OCC Model) relying on the Index Exemption would be required to report, in accordance with Exchange Rule 1003:²⁶ (i) All index option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to Commentary .04(D) to Exchange Rule 1001A for each such account that holds an index option position subject to the Index Exemption in excess of the levels specified in Exchange Rule 1001A the net delta and the options contract equivalent of the net delta of such position.

Records. Under proposed Commentary .04(G), Exchange Rule 1001A each member relying on the Index Exemption would be required to (i) retain, and would be required to undertake reasonable efforts to ensure that any non-member affiliate of the member relying on the Index Exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.²⁷

Reliance on Federal Oversight. As provided under proposed Exchange Rule Commentary .04(C), Exchange Rule 1001A a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the SEC, the Fed

²⁵ In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) Is relying on the Index Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Index Exemption; (c) will promptly notify the member if it ceases to rely on the Index Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Index Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. See proposed Commentary .04(E)(3), Exchange Rule 1001A.

²⁶ Exchange Rule 1003 requires, among other things, that members report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

²⁷ A member would be authorized to report position information of its non-member affiliate pursuant to the written statement required under proposed Commentary .04(E)(3)(ii)(d), Exchange Rule 1001A.

or another Federal financial regulator. In adopting the proposed Index Exemption the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a Federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

The Exchange also proposes to amend Option Floor Procedure Advice ("OFPA") F-15, Minor Infractions of Position/Exercise Limits and Hedge Exemptions, to clarify the application of Exchange Rule 1001A, Position Limits, and Exchange Rule 1002A, Exercise Limits to OFPA F-15.

The Exchange will issue a regulatory circular upon publication of the notice of this filing regarding the proposal herein.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁹ in particular, in that it 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 Exchange believes that allowing correlated instruments to be included in the calculation of an equity option's net delta would enable eligible market participants to more fully realize the benefit of the delta based equity hedge exemption. The proposed delta-based index hedge exemption would be substantially similar to the delta-based equity hedge exemption under Exchange Rule 1001. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.³⁰

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

¹⁹ See proposed Commentary .04(D)(2), Exchange Rule 1001A.

²⁰ See proposed Commentary .04(D)(3), Exchange Rule 1001A.

²¹ See Memorandum No. 0025-08 dated January 7, 2008.

²² See proposed Commentary .04(E)(1)(i), Exchange Rule 1001A.

²³ See proposed Commentary .04(E)(1)(ii), Exchange Rule 1001A.

²⁴ See proposed Commentary .04(E)(2), Exchange Rule 1001A.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³¹ and Rule 19b-4(f)(6) thereunder.³²

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.³³ However, Rule 19b-4(f)(6)(iii)³⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated,³⁵ and therefore believes that no significant purpose is served by a 30-day operative delay. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.³⁶

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2010-93 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-Phlx-2010-93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,³⁷ 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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-

2010-93 and should be submitted on or before August 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-17926 Filed 7-21-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62506; File No. SR-ISE-2010-67]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes With Respect to Foreign Currency Options Orders

July 15, 2010.

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 25, 2010, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend 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

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(6).

³³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁴ *Id.*

³⁵ See Securities Exchange Act Release No. 62190 (May 27, 2010), 75 FR 31826 (June 4, 2010) (SR-CBOE-2010-21).

³⁶ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁷ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

³⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend the Exchange's Schedule of Fees. The Exchange currently has a fee cap for large-size foreign currency ("FX") options orders. This fee discount applies for orders of 5,000 contracts or more and waives fees on incremental volume above 5,000 contracts. Contracts at or under the threshold are charged the constituent's prescribed execution fee. This waiver applies to customer³ orders and Firm Proprietary orders. ISE adopted this fee discount to encourage members to execute large-sized FX options orders on the Exchange in a manner that is cost effective. The current pilot program is set to expire on June 30, 2010.⁴ The Exchange now proposes to extend this fee discount through June 30, 2011 in a continuing effort to attract more activity in its FX options.

Additionally, the Exchange proposes to make one change to the current fee discount, namely to lower the threshold from 5,000 contracts to 250 contracts. When ISE initially adopted this fee discount, the Exchange believed that the 5,000 contract threshold was adequate. The Exchange's experience, however, shows that only a limited number of trades have been executed at this level. The Exchange believes lowering the threshold will provide a greater opportunity for members to avail themselves of the fee discount.

2. Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposed rule change would extend a current fee discount, thus effectively maintaining low fees.

³ The fee waiver applies to both professional and priority customer orders. 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). A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

⁴ See Securities Exchange Act Release No. 60192 (June 30, 2009), 74 FR 32211 (July 7, 2009) (SR-ISE-2009-42).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2010-67 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-2010-67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2010-67 and should be submitted on or before August 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62507; File No. SR-ISE-2010-68]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Qualification Standards for Market Makers To Receive a Rebate for Adding Liquidity

July 15, 2010.

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 28, 2010, 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, II, and III below, which items have been prepared by the self-regulatory

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

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 is proposing to amend the qualification standards for market makers to receive a rebate under the Exchange's maker/taker pricing program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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 amend the qualification standards for market makers to receive a rebate under the Exchange's maker/taker pricing program. The Exchange recently adopted transaction fees and rebates for adding and removing liquidity ("maker/taker fees").³ The maker/taker fees currently apply to trading in a select number of options classes⁴ to the following categories of

market participants: (i) Market Maker; (ii) Market Maker Plus; (iii) Non-ISE Market Maker;⁵ (iv) Firm Proprietary; (v) Customer (Professional);⁶ (vi) Priority Customer;⁷ 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.

In order to promote and encourage liquidity in options classes that are subject to maker/taker fees, the Exchange currently offers a \$0.10 per contract rebate for Market Maker Plus orders sent to the Exchange.⁸ A Market Maker Plus is currently defined by the Exchange as a 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 in premium in each of the front two expiration months and 80% of the time for all series trading between \$0.03 and \$5.00 in premium for all expiration months for that symbol during the current trading month.⁹

The Exchange now proposes to amend the qualification standards in order for a market maker to qualify for the \$0.10 per contract rebate. Specifically, the Exchange proposes to define a Market Maker Plus as a 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

SMH, SNDK, TBT, USO, V, VALE, WFT, XLI, XRT, and YHOO.

⁵ 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.

⁶ A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

⁷ 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).

⁸ The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a \$0.20 per contract rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. See Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60%. See Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

⁹ See Securities Exchange Act Release No. 62282 (June 11, 2010), 75 FR 34499 (June 17, 2010).

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 for that symbol during the current trading month.

The Exchange currently 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. If at the end of the month, a market maker meets the Exchange's current stated criteria, the Exchange rebates \$0.10 per contract for transactions executed by that market maker during that month. The Exchange will continue to monitor each market maker's quoting statistics to determine whether a market maker qualifies for a rebate under the standards proposed herein.

The Exchange also currently 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 current stated criteria. Again, the Exchange will continue to provide market makers a daily report so that market makers can determine whether or not they are meeting the Exchange's new quoting requirement to qualify for a rebate.

The Exchange believes the proposed rule change will encourage market makers to post tighter markets in the options classes that are subject to maker/taker fees and thereby increase liquidity and attract order flow to the Exchange.

The Exchange has designated this proposal to be operative on July 1, 2010.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its 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 add or remove liquidity in the options classes that are subject to the Exchange's maker/taker fees. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that

³ See Securities Exchange Act Release Nos. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010); 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010); and 62319 (June 17, 2010), 75 FR 36134 (June 24, 2010).

⁴ As of June 1, 2010, the following options classes were subject to maker/taker fees: QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN, X, AA, AIG, AXP, BBY, CAT, CHK, DNDN, EEM, EFA, EWZ, F, FAS, FAZ, FSLR, GDV, GLD, IYR, MGM, MS, MSFT, MU, PALM, PBR, PG, POT, RIG, SDS, SLV, XLE, and XOM. On June 28, 2010, the Exchange submitted a proposed rule change, SR-ISE-2010-65, to be effective on July 1, 2010, to add the following 30 options classes to be included in the Exchange's maker/taker fee schedule: ABX, BMY, BP, COP, DELL, DRYX, FXI, HAL, IBM, KO, LVS, MCD, MO, MON, NOK, ORCL, PFE, QCOM, S, SLB,

the fees it charges for options classes that are subject to the Exchange's maker/taker fees 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 believes that amending the qualification standards for market makers to qualify for a rebate will encourage these market participants to post tighter markets in the options classes that are subject to the Exchange's maker/taker fees and thereby increase liquidity and attract order flow to 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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

Number SR-ISE-2010-68 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-ISE-2010-68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-ISE-2010-68 and should be submitted on or before August 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-17928 Filed 7-21-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62509; File No. SR-Phlx-2010-91]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc., as Modified by Amendment No. 1 Thereto, Relating to Registration and Qualification Requirements for PSX

July 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on June 29, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On July 13, 2010, Phlx filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Rule 604 to adopt several new provisions governing the registration and qualification of members and persons associated with member organizations that are registered with the Exchange for the purpose of trading NMS Stocks⁵ through the facilities of the Exchange. Specifically, the Exchange proposes to adopt Rule 604(h) to govern the registration of representatives and Supplementary Material .04 to Rule 604 regarding the category of such registration. In addition, with respect to principal registration, the Exchange proposes to adopt Rule 604(g), Principal Registration, and Supplementary Material .01—.03 governing the specific categories of principal registration, to require that every member organization covered by these rules has at least two registered Principals as well as a Financial/Operations Principal. The Exchange also proposes to adopt Rule 604(i) to establish which persons are exempt from registration.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ See Rule 1(t).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, on the Commission's Web site at <http://www.sec.gov>, 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 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 the proposed rule change is to adopt new registration provisions applicable to member organizations that are registered with the Exchange for the purpose of trading NMS Stocks through the facilities of the Exchange. Thus, these new provisions would cover members that trade on the Exchange's proposed new equity trading platform for NMS Stocks, NASDAQ OMX PSX ("PSX").⁶ The proposed rules are substantially similar to the rules of The NASDAQ Stock Market, FINRA and NASDAQ OMX BX. As a result of the change, PSX users will be required to register representatives and principals with the Exchange in accordance with such rules. All such registered persons will be required to pass an appropriate qualification examination, as outlined below, all of which will be recorded in WebCRD. In sum, these new rules are intended to strengthen the Exchange's requirements to help ensure an effective supervisory structure for those conducting business on PSX.⁷

⁶ See SR-Phlx-2010-79. PSX will not be used for trading any securities other than NMS Stocks. Existing rules would continue to govern registration of associated persons of member organizations that trade options but not cash equities through Phlx. Phlx will, at a later date, amend these rules to reflect consistent registration standards being developed by Phlx and other self-regulatory organizations in consultation with the Commission.

⁷ Currently, Rule 748, Supervision, establishes the supervisory requirement for member organizations, including that all locations and activities of a member organization be supervised by a qualified

Representative Registration

New Rule 604(h) will govern the registration of representatives⁸ with the Exchange. Specifically, new Rule 604(h)(1) will require that all persons engaged or to be engaged in the investment banking or securities business⁹ of a member organization who are to function as representatives shall be registered as such with the Exchange through WebCRD in the category of registration appropriate to the function to be performed as specified in Supplementary Material .04. Before their registration can become effective, they shall pass the Series 7 examination.

The rule also provides that a member organization shall not maintain a representative registration with the Exchange for any person (1) who is no longer active in the member organization's investment banking or securities business, (2) who is no longer functioning as a representative, or (3) where the sole purpose is to avoid the examination requirement. A member organization shall not make application for the registration of any person as representative where there is no intent to employ such person in the member organization's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member organization, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary

supervisor. Accordingly, the new principal registration requirement in proposed Rule 604(g) supplements this rule.

⁸ The term "representative" will now be defined in Rule 1 as a member or an associated person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member organization including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions. To the extent provided in Rule 604, all representatives are required to be registered with the Exchange, and representatives that are so registered are referred to herein as "Registered Representatives." See proposed Rule 1(uu).

⁹ The term "investment banking or securities business" means the business, carried on by a broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others. See proposed Rule 1(ww). Of course, the federal securities laws may require broker-dealers to become members of the Financial Industry Regulatory Authority ("FINRA") in order to perform some of these functions. See e.g., 15 U.S.C. 78o(b)(8).

of the member organization. This provision is intended to ensure that firms register only those persons to whom the requirement is pertinent.

Pursuant to new paragraph (h)(2) of Rule 604, any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration as a Representative or Principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass the Series 7 examination. This provision is intended to ensure that, in these situations, persons are subject to retesting to assure proper qualification.

Furthermore, new Rule 604(h)(3), Qualification Requirements, states that no member organization shall permit any member or person associated with it¹⁰ to engage in the investment banking or securities business unless the member organization determines that such person satisfies the qualification requirements established by the Board and is not subject to statutory disqualification as defined in Section 3(a)(39) of the Act. Thus, firms are responsible for compliance with this registration requirement for their relevant employees.

New Supplementary Material .04 to Rule 604 contains the basic requirement¹¹ that each member and each person associated with a member organization who is included within the definition of a representative in Rule 1(uu) shall be required to register with the Exchange as a General Securities Representative and shall pass the Series 7 examination before such registration may become effective.¹² The appropriate registration category on WebCRD is "GS."

This provision is intended to capture traditional securities personnel in a rule similar to that of several other SROs.¹³

¹⁰ The term "associated person" or "person associated with" a member organization means any partner, officer, director, or branch manager of an Exchange member organization or applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member organization or applicant, or any employee of such member or applicant, except that any person associated with a member organization or applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Exchange Rules. See proposed Rule 1(vv).

¹¹ This provision is the same as NASDAQ OMX BX Rule 1032.

¹² The Exchange is not currently adopting any limited registration provisions, but may determine to do so in the future.

¹³ See e.g., NASDQ [sic] OMX BX Rules 1031 and 1032, NASDAQ Rules 1031 and 1032, and NASD Rules 1031 and 1032.

The Exchange believes that the requirement is broad and should not generate gaps that permit a member organization to operate differently than under the registration rules of NASDAQ OMX BX, The NASDAQ Stock Market or FINRA.

Principal Registration

In summary, new Rule 604(g)¹⁴ will provide that every member organization must register two Principals with the Exchange,¹⁵ unless an exception applies. As a result, each Principal must successfully complete the General Securities Principal Examination (“Series 24”) and submit a Form U4 via WebCRD reflecting registration as such, using the category “GP,” unless a different category of Principal registration applies to such person.

Specifically, Rule 604(g)(1) provides that all persons engaged or to be engaged in the investment banking or securities business of a member organization who are to function as Principals shall be registered as such with the Exchange through WebCRD in the category of registration appropriate to the function to be performed as specified in new Supplementary Material .01–.03 of Rule 604. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Board, which is further explained below, in proposed Supplementary Material .01–.03 to Rule 604.

Rule 604(g)(1) further provides that a member organization shall not maintain a Principal registration with the Exchange for any person (1) who is no longer active in the member organization’s investment banking or securities business, (2) who is no longer functioning as a Principal, or (3) where the sole purpose is to avoid the examination requirement of this rule. A member organization shall not make application for the registration of any person as Principal where there is no intent to employ such person in the member organization’s investment banking or securities business. A member organization may, however, maintain or make application for the registration as a Principal of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member organization or a person engaged in the

investment banking or securities business of a foreign securities affiliate or subsidiary of the member organization. Similar to a provision in proposed Rule 604(h)(1) above applicable to registered representatives, this provision is intended to ensure that firms register only those persons to whom the requirement is pertinent.

New Rule 604(g)(2) states that persons associated with a member organization who are actively engaged in the management of the member organization’s investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member organization for any of these functions are designated as Principals. Such persons shall include: Sole proprietors, officers, partners, managers of offices of supervisory jurisdiction,¹⁶ and directors of corporations.

New Rule 604(g)(3), Requirements for Examination on Lapse of Registration, states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration as a Principal has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a Qualification Examination for Principals appropriate to such person’s category of registration. This is similar to the provision applicable to registered representatives and is intended to ensure that persons’ qualifications are properly tested.

Pursuant to new Rule 604(g)(4), Application for Principal Status, any person associated with a member organization as a Registered Representative whose duties are changed by the member organization so as to require registration in any Principal classification shall be allowed

¹⁶ The Exchange is defining this term to mean any office of a member organization at which any one or more of the following functions take [sic] place: Order execution and/or market making; structuring of public offerings or private placements; maintaining custody of customers’ funds and/or securities; final acceptance (approval) of new accounts on behalf of the member organization; review and endorsement of customer orders; final approval of advertising or sales literature for use by persons associated with the member organization, pursuant to Rule 605, except for an office that solely conducts final approval of research reports; or responsibility for supervising the activities of persons associated with the member organization at one or more other branch offices of the member organization. This definition is drawn from NASD Rule 3010. The Exchange is adopting the reference to this term in order to cover these managers in the new principal registration requirement. The Exchange is not, at this time, adopting a comprehensive program with regard to such offices, such as that found in NASD Rule 3010.

a period of 90 calendar days following the change in his or her duties during which to pass the appropriate Qualification Examination for Principals. Upon elevation, the member organization shall submit to the Exchange an amended “Uniform Application for Securities Industry Registration or Transfer” and any applicable fees. In no event may a person function as a Principal beyond the initial 90 calendar day period following the change in his or her duties without having successfully passed the appropriate Qualification Examination. This provision shall apply to a person: (i) Associated with a member organization of another registered national securities exchange or association who is required to register in a Principal classification under Exchange Rules but who is not required to be so registered under the rules of the other exchange or association; and (ii) associated with a member organization who was not required to register with the Exchange as a Principal prior to the adoption of this Rule 604(g) by the Exchange. This provision is intended to be a catch-all to cover persons who become subject to Principal registration rules for different reasons, whether a job change or a change in exchange rules.

Further, any person not presently associated with a member organization as a Registered Representative seeking registration as a Principal shall submit the appropriate application for registration and any required registration and examination fees, pursuant to new Rule 604(g)(4)(B). Such person shall be allowed a period of 90 days after all applicable prerequisites¹⁷ are fulfilled to pass the appropriate Qualification Examination for Principals. In no event may a person previously unregistered in any capacity applying for Principal status function as a Principal until fully qualified.

New Rule 604(g)(5) contains a requirement of at least two Registered Principals.¹⁸ Specifically, an Exchange member organization, except a sole proprietorship, shall have at least two officers or partners who are registered as Principals with respect to each aspect of the member organization’s investment banking and securities business pursuant to the applicable provisions of Rule 604(g); provided, however, that a proprietary trading firm with 25 or fewer registered representatives shall only be required to have one officer or

¹⁷ Principals are subject to prerequisite registration and qualification requirements pursuant to proposed Rule 604(h).

¹⁸ All persons who engage in specified supervisory functions must be registered as Principals.

¹⁴ This new rule is similar to NASDAQ Rule 1021, NASDAQ OMX BX Rule 1021 and NASD Rule 1021.

¹⁵ All persons who engage in specified supervisory functions will be registered as Principals.

partner who is registered as a Principal. This exception to the two Principal requirement is similar to that of several other exchanges and reflects that such firms do not necessitate the same level of supervisory structure as firms who have customers or larger firms.

The term “proprietary trading firm” means a member organization or applicant with the following characteristics: (A) The applicant is not required by Section 15(b)(8) of the Exchange Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Exchange Act; (B) all funds used or proposed to be used by the applicant for trading are the applicant’s own capital, traded through the applicant’s own accounts; (C) the applicant does not, and will not have customers; and (D) all Principals and Representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.

The rule also provides that the Exchange may waive the two Principal requirement in situations that indicate conclusively that only one person should be required to register as a Principal. This provision is identical to that of several other exchanges, and the Exchange believes that such waiver is appropriate in certain situations, but should be carefully applied; for example, the Exchange may determine to apply this provision to a very small firm, with only a few employees in one location.

In addition, the Exchange proposes to adopt a requirement that certain member organizations register a Limited Principal—Financial and Operations, or FINOP, as described below. Specifically, pursuant to new Rule 604(g)(5)(C), an applicant for membership shall have at least one person qualified for registration as a FINOP, which is described in detail below.

To help determine how specifically a person should register as a Principal, the Exchange is proposing to adopt Supplementary Material .01–.03 to Rule 604 to enumerate the three categories of Principal registration. First, Rule 604.01 provides that each member or person associated with a member organization to which Rule 604(g) applies and who is included within the definition of Principal in Rule 604(g), and each person designated as a Chief Compliance Officer on Schedule A of Form BD of a member organization to which Rule 604(g) applies shall be required to register with the Exchange as a General Securities Principal and shall pass the Series 24 examination

before such registration may become effective unless such person’s activities are so limited as to qualify such person for one or more of the limited categories of Principal registration specified hereafter.¹⁹ A person whose activities in the investment banking or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Principal, and if qualified, may become so registered. The Exchange believes that offering these categories of Principal registration, including limited Principal registration, should help ensure that Principals are properly qualified.

Each person seeking to register and qualify as a General Securities Principal must, prior to or concurrent with such registration, become registered either as a General Securities Representative or as a Limited Representative—Corporate Securities. A person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding, shall be required to register as a General Securities Principal, but shall be exempt from the requirement to pass the Series 24 examination.²⁰

Secondly, in addition to the basic Principal requirement, the Exchange also proposes to adopt as new Rule 604.02 a requirement that each member organization of the Exchange that is subject to Rule 604(g) and that is operating pursuant to the provisions of SEC Rule 15c3–1(a)(1)(ii), (a)(2)(i) or (a)(8), designate as Limited Principal—Financial and Operations (“FINOP”) those persons associated with it, at least one of whom shall be its chief financial officer, who perform the following

duties: Final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; final preparation of such reports; supervision of individuals who assist in the preparation of such reports; supervision of and responsibility for individuals who are involved in the actual maintenance of the member organization’s books and records from which such reports are derived; supervision and/or performance of the member organization’s responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member organization’s back office operations; or any other matter involving the financial and operational management of the member organization. Each FINOP must register with the Exchange and pass the Series 27 examination. This provision is intended to ensure that persons handling the financial affairs of a firm are properly registered and qualified.

Third, the Exchange also proposes to adopt a limited Principal requirement in new Rule 604.03, Limited Principal—General Securities Sales Supervisor, to provide that each person associated with a member organization who is included in the definition of Principal in Rule 604(g) may register with the Exchange as a Limited Principal—General Securities Sales Supervisor, or “SU,” if: (A) His or her supervisory responsibilities in the investment banking and securities business are limited to the securities sales activities of a member organization, including the training of sales and sales supervisory personnel and the maintenance of records of original entry and/or ledger accounts of the member organization required to be maintained in branch offices by SEC recordkeeping rules; (B) he or she is registered pursuant to Exchange Rules as a General Securities Representative; and (C) he or she is qualified to be so registered by passing an appropriate examination, which is the Series 9 or 10. Nevertheless, Rule 604.03(b) provides that a person registered in this category solely on the basis of having passed the Series 9 or 10 examination shall *not* be qualified to: Function in a Principal capacity with responsibility over any area of business activity not described above; be included for purposes of the Principal numerical requirements of Rule 604(g)(5); or perform for a member organization any or all of the following

¹⁹ However, pursuant to proposed Rule 604.01(c), a person registered solely as a General Securities Principal shall not be qualified to function as a FINOP or a Limited Principal—General Securities Sales Supervisor unless that person is also qualified and registered as such.

²⁰ In addition, except as provided in Rule 604(g)(3), a person who was registered with FINRA as a Principal, shall not be required to pass the Series 24 examination and shall be qualified as a General Securities Principal. See proposed Rule 604.01(b).

activities: (i) Supervision of the origination and structuring of underwritings; (ii) supervision of market making commitments; (iii) final approval of advertisements as these are defined in Rule 605; (iv) supervision of the custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3-3; or (v) supervision of overall compliance with financial responsibility rules for broker/dealers promulgated pursuant to the provisions of the Act.

In order to make clear how this category of limited Principal registration operates, the Exchange proposes to adopt an explanation in subparagraph (c) to Supplementary Material .03 to state that the Limited Principal—General Securities Sales Supervisor is an alternate category of registration designed to lessen the qualification burdens on principals of general securities firms who supervise sales. Without this category of limited registration, such principals could be required to separately qualify pursuant to the rules of multiple exchanges. While persons may continue to separately qualify with all relevant SROs, the Limited Principal—General Securities Sales Supervisor Examination permits qualification as a supervisor of sales of all securities by one examination. Persons registered as Limited Principals—General Securities Sales Supervisor may also qualify in any other category of principal registration. Persons who are already qualified in one or more categories of principal registration may supervise sales activities of all securities by also qualifying as Limited Principals—General Securities Sales Supervisor.²¹

The explanation in subparagraph (c) further spells out the functions that may be performed by Limited Principals—General Securities Sales Supervisors, as well as the functions that may not,²² emphasizing that such Principal may supervise only sales activities. The commentary also states that qualification as a General Securities Representative is a prerequisite for registration as a Limited Principal—General Securities Sales Supervisor, and

that persons qualified only as Limited Principals—General Securities Sales Supervisor are not included for purposes of the two principals requirements of Rule 604(g)(5). The Exchange believes that this category of principal registration should be useful to persons whose supervisory functions are limited in this way and should help ensure that such persons are properly qualified for those functions.

In total, these principal registration requirements are new to the Exchange, although various other supervisory rules currently operate, such as Phlx Rule 748. The Exchange believes that the proposed new principal registration requirement, particularly the General Securities Principal category, should strengthen the framework of supervisory rules that will apply to Exchange member organizations doing business on PSX.

Other Rules

The Exchange proposes to adopt new Rule 604(i), Persons Exempt from Registration, to state that the following persons associated with a member organization are not required to be registered with the Exchange: (1) Persons associated with a member organization whose functions are solely and exclusively clerical or ministerial; (2) persons associated with a member organization who are not actively engaged in the investment banking or securities business; (3) persons associated with a member organization whose functions are related solely and exclusively to the member organization's need for nominal corporate officers or for capital participation; and (4) persons associated with a member organization whose functions are related solely and exclusively to: (A) Effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange; (B) transactions in municipal securities; (C) transactions in commodities; (D) transactions in security futures, provided that any such person is registered with FINRA or a registered futures association; (E) transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company; (F) transactions in direct participation programs; (G) transactions in government securities; or (H) effecting sales as part of a primary offering of securities not involving a public offering pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder. These registration exemptions are intended to make clear

that registration of certain, specific persons is not necessary and is based on exemptions contained in, for example, NASDAQ Rule 1060 and NASDAQ OMX BX Rule 1060. Furthermore, the persons described in (E) through (H) immediately above²³ are covered within the proposed new definitions in Rule 1(uu)–(ww) thereby triggering the Series 7/Registered Representative requirement in proposed new Rule 604(h); the registration of such persons would inadvertently result in a Series 7/Registered Representative requirement on the Phlx for persons who, under FINRA rules, rather than the Series 7/Registered Representative category, register in that specific, limited capacity in categories not available in WebCRD for Phlx registrants.²⁴ Of course, the federal securities laws may require broker-dealers to become members of FINRA in order to perform these functions.²⁵ Thus, the Exchange believes that these registration exemptions are appropriate and any applicable FINRA registration requirements would continue to apply to firms that are members/member organizations of both Phlx and FINRA.

Rule 604(i)(2) provides that member organizations, and persons associated with a member organization, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member organizations under certain conditions detailed in the rule. This provision is intended to cover the payment of fees to finders.²⁶

Rule 604(j) provides that the Exchange may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a Qualification Examination. Experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive a Qualification Examination. The rule is based on corresponding rules of FINRA, NASDAQ and NASDAQ OMX BX.

Lastly, the Exchange proposes to amend Rule 640, Continuing Education For Registered Persons, to delete

²³ This correlates to proposed Rule 604(i)(D)(v)–(viii).

²⁴ Specifically, the IR/Series 6, DR/Series 22, RG/Series 72 and PR/Series 82 categories are not available to Phlx, as well as many other exchanges, through WebCRD.

²⁵ See e.g., 15 U.S.C. 78o(b)(8).

²⁶ This provision is identical to NASDAQ Rule 1060(b) and NASDAQ OMX BX Rule 1060(b).

²¹ As stated above, a person registered solely as a General Securities Principal shall not be qualified to function as a Limited Principal—Financial and Operations or Limited Principal—General Securities Sales Supervisor unless that person is also qualified and registered as such. See proposed Rule 604.01(c).

²² These include supervisory responsibility for the origination and structuring of underwritings, market-making, final approval of advertising, custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3-3 and overall compliance with financial responsibility rules for broker/dealers.

reference to “XLE” from Commentary .01. Currently, Commentary .01 provides that, for purposes of this Rule, the term “registered person” means any member, registered representative or other person registered or required to be registered under Exchange rules, but does not include such person whose activities are limited solely to the transaction of business on the floor or XLE, with members or registered broker-dealers. XLE was the Exchange’s old trading system for NMS Stocks, which ceased operations in 2008.²⁷

Accordingly, the Exchange is removing reference to that system; any new trading system for NMS Stocks, such as the Exchange’s proposed PSX System, would not be exempt, such that registered persons would be subject to the continuing education requirements of Rule 640.

Conclusion

The Exchange believes that these proposed new rules should form a solid framework for registration with respect to PSX.²⁸ As a result of the new registration requirements, additional persons will become subject to the Exchange’s continuing education requirement in Rule 640. The Exchange believes that the new requirements will cover the scope of persons who do business on PSX and should provide a solid framework for Representative and Principal registration and qualification. The proposal specifies which qualification examinations are required for each category of registration.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²⁹ in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,³⁰ pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,³¹ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to

²⁷ See Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR-Phlx-2008-65).

²⁸ The Exchange intends to separately revise its registration and qualification rules related to activity other than business conducted on PSX, including its options business. The Exchange understands that other self-regulatory organizations are expected to adopt a framework that requires more fulsome registration and qualification requirements clearly spelled out in rules. The Exchange supports the Commission’s commitment to ensure that such rules are adopted by all self-regulatory organizations on a consistent basis.

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(c)(3)(B).

³¹ 15 U.S.C. 78f(b)(5).

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, by adopting provisions requiring principals to register and pass qualification examinations and by enhancing the registration requirements covering persons trading NMS Stocks through the facilities of the Exchange.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2010-91 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-Phlx-2010-91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. 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-Phlx-2010-91 and should be submitted on or before August 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-17930 Filed 7-21-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62508; File No. SR-ISE-2010-65]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

July 15, 2010.

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 28, 2010, the International Securities

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees in order to increase the number of options classes to be included in the Exchange's current schedule of transaction fees and rebates for adding and removing liquidity. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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 proposes to increase liquidity and attract order flow by amending its transaction fees and rebates for adding and removing liquidity ("maker/taker fees").³ The

³ These fees are similar to the "maker/taker" fees currently assessed by NASDAQ OMX PHLX ("PHLX"). PHLX currently charges a fee for removing liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, (iv) Firm, (v) Broker-Dealer, and (vi) Professional. PHLX also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, and (iv) Professional. See Securities Exchange Act Release Nos. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010); 61932 (April 16, 2010), 75 FR 21375 (April 23, 2010); and 61961 (April 22, 2010), 75 FR 22881 (April 30, 2010).

Exchange's maker/taker fees currently apply to the following categories of market participants: (i) Market Maker; (ii) Market Maker Plus;⁴ (iii) Non-ISE Market Maker;⁵ (iv) Firm Proprietary; (v) Customer (Professional);⁶ (vi) Priority Customer;⁷ 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.⁸

Current Transaction Charges for Adding and Removing Liquidity

The Exchange currently assesses a per contract transaction charge to market participants that remove, or "take," liquidity from the Exchange in the

⁴ A Market Maker Plus is a 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 in premium in each of the front two expiration months and 80% of the time for all series trading between \$0.03 and \$5.00 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. 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. On June 28, 2010, the Exchange submitted a proposed rule change, SR-ISE-2010-68, to be effective on July 1, 2010, to amend the qualification standards for market makers to receive the \$0.10 per contract rebate. Pursuant to that proposed rule change, a market maker must be 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.

⁵ 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.

⁶ A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

⁷ 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).

⁸ The Chicago Board Options Exchange ("CBOE") currently makes a similar distinction between large size customer orders that are fee liable and small size customer orders whose fees are waived. CBOE currently waives fees for customer orders of 99 contracts or less in options on exchange-traded funds ("ETFs") and Holding Company Depository Receipts ("HOLDERS") and charges a transaction fee for customer orders that exceed 99 contracts. See Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009).

following 50 options classes: PowerShares QQQ trust ("QQQQ"), Bank of America Corporation ("BAC"), Citigroup, Inc. ("C"), Standard and Poor's Depository Receipts/SPDRs ("SPY"), iShares Russell 2000 ("IWM"), Financial Select Sector SPDR ("XLF"), Apple, Inc. ("AAPL"), General Electric Company ("GE"), JPMorgan Chase & Co. ("JPM"), Intel Corporation ("INTC"), Goldman Sachs Group, Inc. ("GS"), Research in Motion Limited ("RIMM"), AT&T, Inc. ("T"), Verizon Communications, Inc. ("VZ"), United States Natural Gas Fund ("UNG"), Freeport-McMoRan Copper & Gold, Inc. ("FCX"), Cisco Systems, Inc. ("CSCO"), Diamonds Trust, Series 1 ("DIA"), Amazon.com, Inc. ("AMZN"), United States Steel Corporation ("X"), Alcoa Inc. ("AA"), American International Group, Inc. ("AIG"), American Express Company ("AXP"), Best Buy Company ("BBY"), Caterpillar, Inc. ("CAT"), Chesapeake Energy Corporation ("CHK"), Dendreon Corporation ("DNDN"), iShares MSCI Emerging Markets Index Fund ("EEM"), iShares MSCI EAFE Index Fund ("EFA"), iShares MSCI Brazil Index Fund ("EWZ"), Ford Motor Company ("F"), Direxion Shares Financial Bull ("FAS"), Direxion Shares Financial Bear ("FAZ"), First Solar, Inc. ("FSLR"), Market Vectors ETF Gold Miners ("GDX"), SPDR Gold Trust ("GLD"), iShares DJ US Real Estate Index Fund ("IYR"), MGM Mirage ("MGM"), Morgan Stanley ("MS"), Microsoft Corporation ("MSFT"), Micron Technology, Inc. ("MU"), Palm, Inc. ("PALM"), Petroleo Brasileiro S.A. ("PBR"), The Procter & Gamble Company ("PG"), Potash Corporation of Saskatchewan ("POT"), Transocean Ltd. ("RIG"), ProShares UltraShort S&P 500 ("SDS"), iShares Silver Trust ("SLV"), Energy Select Sector SPDR Fund ("XLE"), and Exxon Mobil Corporation ("XOM") (the "Select Symbols"). The per contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.⁹ Priority Customer Complex orders, regardless of size, are not assessed a fee for removing liquidity.

The Exchange also currently assesses transaction charges for adding liquidity in options on the Select Symbols. Priority Customer orders, regardless of size, and Market Maker Plus orders are not assessed a fee for adding liquidity.

⁹ Although these options classes will no longer be subject to the tiered market maker transaction fees, the volume from these options classes will continue to be used in the calculation of the tiers so that this new pricing does not affect a market maker's fee in all other names.

Current Rebates

In order to promote and encourage liquidity in options classes that are subject to maker/taker fees, the Exchange currently offers a \$0.10 per contract rebate for Market Maker Plus orders sent to the Exchange.¹⁰ Further, in order to incentivize members to direct retail orders to the Exchange, Priority Customer Complex orders, regardless of size, currently receive a rebate of \$0.15 per contract on all legs when these orders trade with non-customer orders in the Exchange's Complex Orderbook. Additionally, the Exchange's Facilitation Mechanism has an auction which allows for participation in a trade by members other than the member who entered the trade. To incentivize members, the Exchange currently offers a rebate of \$0.15 per contract to contracts that do not trade with the contra order in the Facilitation Mechanism.¹¹

Fee Changes

The Exchange proposes to add the following 30 options classes to be included in the Exchange's maker/taker fee schedule: Barrick Gold Corporation ("ABX"), Bristol-Myers Squibb Company ("BMY"), BP p.l.c. ("BP"), ConocoPhillips ("COP"), Dell Computer Corporation ("DELL"), Dryships Inc. ("DRYS"), iShares Trust FTSE/Xinhua China 25 Index Fund ("FXI"), Halliburton Company ("HAL"), International Business Machines Corporation ("IBM"), The Coca-Cola Company ("KO"), Las Vegas Sands Corp. ("LVS"), McDonald's Corporation ("MCD"), Altria Group Inc. ("MO"), Monsanto Company ("MON"), Nokia Oyj ("NOK"), Oracle Corporation ("ORCL"), Pfizer Inc. ("PFE"), QUALCOMM Inc ("QCOM"), Sprint Corporation ("S"), Schlumberger Limited ("SLB"), Semiconductor HOLDERS Trust ("SMH"), SanDisk Corporation ("SNDK"), Proshares Ultrashort Lehman ("TBT"), United States Oil Fund ("USO"), Visa Inc ("V"), Companhia Vale Do Rio Doce ("VALE"), Weatherford International Inc. ("WFT"), Industrial Select Sector

¹⁰ The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a \$0.20 per contract rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. See Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60%. See Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

¹¹ The Commission notes that this rebate is also offered to contracts that do not trade with the contra order in the Price Improvement Mechanism.

SPDR ("XLI"), SPDR S&P Retail ETF ("XRT"), and Yahoo! Inc. ("YHOO") (the "Additional Select Symbols").

Other Fees

- Fees for orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.

- Complex orders executed in the Facilitation and Solicited Order Mechanisms are charged fees only for the leg of the trade consisting of the most contracts.

- Payment for Order Flow fees will not be collected on transactions in options overlying the Select Symbols and the Additional Select Symbols.¹²

- The Cancellation Fee will continue to apply to options overlying the Select Symbols and the Additional Select Symbols.¹³

- The Exchange has a \$0.20 per contract fee credit for members who, pursuant to Supplementary Material .02 to Rule 803, execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers.¹⁴ For options overlying the Select Symbols and the Additional Select Symbols, the Exchange proposes to lower the per contract fee credit for members who execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers to \$0.10 per contract.

- The Exchange has a \$0.20 per contract fee for market maker orders sent to the Exchange by EAMs.¹⁵ Market maker orders sent to the Exchange by EAMs will be assessed a fee of \$0.25 per contract for removing liquidity in options overlying the Select Symbols and the Additional Select Symbols and

¹² ISE currently has a payment-for-order-flow ("PFOF") program that helps the Exchange's market makers establish PFOF arrangements with an Electronic Access Member ("EAM") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM") and Competitive Market Makers ("CMM"), depending to whom the order is preferenced.

¹³ The Exchange assesses a Cancellation Fee of \$2.00 to EAMs that cancel at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. All orders from the same clearing EAM executed in the same underlying symbol at the same price within a 300 second period are aggregated and counted as one executed order for purposes of this fee. This fee is charged only to customer orders.

¹⁴ See Securities Exchange Act Release No. 61731 (March 18, 2010), 75 FR 14233 (March 24, 2010).

¹⁵ See Securities Exchange Act Release No. 60817 (October 13, 2009), 74 FR 54111 (October 21, 2009).

\$0.10 per contract for adding liquidity in options overlying the Select Symbols and the Additional Select Symbols.

The Exchange has designated this proposal to be operative on July 1, 2010.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its 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 add or remove liquidity in options overlying the Select Symbols and the Additional Select Symbols. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fees it charges for options overlying the Select Symbols and the Additional Select 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act¹⁶ and Rule 19b-4(f)(2)¹⁷ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2010-65 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-ISE-2010-65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-ISE-2010-65 and should be submitted on or before August 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-17929 Filed 7-21-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62503; File No. SR-ISE-2010-71]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Market Maker Incentive Plan for Foreign Currency Options

July 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 30, 2010, International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 extend an incentive plan for market makers in four foreign currency options ("FX Options"). The text of the proposed rule change is available on ISE's Web site at <http://www.ise.com>, on the Commission's Web site at <http://www.sec.gov>, 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 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 extend an incentive plan for market makers in options on the New Zealand dollar ("NZD"), the Mexican peso ("PZO"), the Swedish krona ("SKA") and the Brazilian real ("BRB").³ On August 3, 2009, the Exchange adopted an incentive plan applicable to market makers in NZD, PZO and SKA,⁴ and on January 19, 2010, added BRB to the incentive plan.⁵ The Exchange subsequently extended the date by which market makers may join the incentive plan.⁶ The Exchange proposes to again extend the date by which market makers may join the incentive plan.

In order to promote trading in these FX Options, the Exchange has an incentive plan pursuant to which the Exchange waives the transaction fees for the Early Adopter⁷ FXPMM⁸ and all Early Adopter FXCMMs⁹ that make a market in NZD, PZO SKA and BRB for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in NZD, PZO SKA and BRB and pays up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in

³ The Commission previously approved the trading of options on NZD, PZO, SKA and BRB. See Exchange Act Release No. 34-55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59).

⁴ See Exchange Act Release No. 34-60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR-ISE-2009-59).

⁵ See Exchange Act Release No. 34-61459 (February 1, 2010), 75 FR 6248 (February 8, 2010) (SR-ISE-2010-07).

⁶ See Exchange Act Release Nos. 34-60810 (October 9, 2009), 74 FR 53527 (October 19, 2009) (SR-ISE-2009-80), 34-61334 (January 12, 2010), 75 FR 2913 (January 19, 2010) (SR-ISE-2009-115), and 61851 (April 6, 2010), 75 FR 18565 (April 12, 2010) (SR-ISE-2010-27).

⁷ Participants in the incentive plan are known on the Exchange's Schedule of Fees as Early Adopter Market Makers.

⁸ A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

⁹ A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the incentive plan are charged regular transaction fees for trades in these products. In order to participate in the incentive plan, market makers are required to enter into the incentive plan no later than June 30, 2010. The Exchange now proposes to extend the date by which market makers may enter into the incentive plan to September 30, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4),¹¹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the proposed rule change will permit additional market makers to join the incentive plan which in turn will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act¹² and Rule 19b-4(f)(2)¹³ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2010-71 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-2010-71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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-ISE-2010-71 and should be submitted on or before August 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010-17925 Filed 7-21-10; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice: 7092]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Thursday, August 12, 2010, at the U.S. Department of State, 2201 C Street, NW., Room 1107, Washington, DC. The meeting will be hosted by the Assistant Secretary of State for Economic, Energy, and Business Affairs Jose W. Fernandez and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on a discussion about the role of new agricultural technologies in addressing global challenges. Subcommittee reports and discussions will be led by the Economic Sanctions Subcommittee and the Investment Subcommittee.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Monday, August 9, their name, professional affiliation, valid government-issued ID number (*i.e.*, U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647-5936, e-mail (Boothsl@state.gov), or telephone (202) 647-0847.

One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U.S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins. Requests for reasonable accommodation should be made to Sherry Booth prior to Wednesday, August 4th. Requests made after that date will be considered, but might not be possible to fulfill.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3).

¹³ 17 CFR 240.19b-4(f)(2).

Personal data is requested pursuant to Pub. L. 99-399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107-56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS-D) database. Please see the Privacy Impact Assessment for VACS-D at <http://www.state.gov/documents/organization/100305.pdf> for additional information.

For additional information, contact Outreach Coordinator Tiffany Enoch, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647-2231 or EnochT@state.gov.

Dated: July 14, 2010.

Sandra Clark,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, U.S. Department of State.

[FR Doc. 2010-17959 Filed 7-21-10; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 32 (Sub-No. 71X)]

Boston & Maine Corporation— Abandonment Exemption—in Essex, Middlesex, and Suffolk Counties, MA

Boston & Maine Corporation (B&M) filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon a 9.74-mile portion of a line of railroad known as the Saugus Branch, extending from milepost 2.69 to milepost 12.43, in Saugus, Essex, Middlesex, and Suffolk Counties, Mass. The line traverses United States Postal Service Zip Codes 02149, 02151, 02148, 01905, and 01906.¹

B&M has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (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 (environmental report), 49 CFR 1105.8

(historic 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 August 21, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 2, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 11, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.⁴

A copy of any petition filed with the Board should be sent to B&M's representative: Robert B. Burns, Esq., Boston & Maine Corporation, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

B&M has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 27, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) 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.

³ Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

⁴ B&M states that it is unsure about the suitability of the line for public non-rail purposes. Upon the effective date of the abandonment, B&M notes that its easement interests will terminate and title to the line will vest solely in the Massachusetts Bay Transportation Authority.

20423-0001) or by calling SEA, 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), B&M 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 B&M's filing of a notice of consummation by July 22, 2011, 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 <http://www.stb.dot.gov>.

Decided: July 16, 2010.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010-17920 Filed 7-21-10; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 511 (Sub-No. 5X)]

Central Railroad Company of Indianapolis—Abandonment Exemption—in Howard County, IN

Central Railroad Company of Indianapolis (CERA) filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 2.84 miles of rail line on CERA's Tipton Industrial Lead between milepost 55.66 and milepost 58.5, in Howard County, Ind. The line traverses United States Postal Service Zip Code 46901.¹

CERA has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can 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

¹ On July 8, 2010, CERA filed a correction to its notice of exemption.

¹ On July 6, 2010, B&M amended its notice of exemption. On July 14, 2010, B&M amended and corrected its notice.

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 (environmental report), 49 CFR 1105.8 (historic 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 & The Union Pacific 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 August 21, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 2, 2010.⁴ Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 11, 2010, 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 CERA's representative: Melanie B. Yasbin, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CERA has filed a combined environmental and historic report

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) 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.

³ Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

⁴ CERA notes that the property proposed for abandonment is suitable for other public purposes. However, CERA states that CERA and the Indiana Department of Transportation (INDOT) have entered into an agreement where, upon receipt of abandonment authority, CERA proposes to convey 4.671 acres of land to INDOT to further a highway construction project.

which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 27, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, 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), CERA 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 CERA's filing of a notice of consummation by July 22, 2011, 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 <http://www.stb.dot.gov>.

Decided: July 16, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2010-17973 Filed 7-21-10; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1064X]

Fulton County, LLC—Abandonment Exemption—in Fulton County, IN

Fulton County, LLC (FC), filed a verified notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost 96.9, a point 200 feet north of East 18th Street, and milepost 95.6, the end of track at the northwest property line of Wabash Road, a distance of 1.3 miles, in Rochester, Fulton County, Ind. The line traverses United States Postal Service Zip Code 46975.

FC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (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 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 (environmental report), 49 CFR 1105.8 (historic 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 August 21, 2010, 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 August 2, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 11, 2010, 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 FC's representative: Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

FC has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) 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).

environmental assessment (EA) by July 27, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, 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), FC 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 FC's filing of a notice of consummation by July 22, 2011, 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 <http://www.stb.dot.gov>.

Decided: July 16, 2010.

By the Board.

Rachel D. Campbell,
Director, Office of Proceedings.
Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2010-17972 Filed 7-21-10; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2010-0087]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under

SUPPLEMENTARY INFORMATION. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 20, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010-0087 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: 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. e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Jones, 202-366-5053, Federal Highway Administration, Department of Transportation, Office of Highway Policy Information, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Heavy Vehicle Travel Information System (HVTIS).

OMB Control Number: 2125-0587.

Background: Title 49, United States Code, section 301, authorizes the DOT to collect statistical information relevant to domestic transportation. The FHWA is continuing to develop the HVTIS to house data that will enable analysis of the amount and nature of truck travel at the national and regional levels. The information will be used by the FHWA and other DOT agencies to evaluate changes in truck travel in order to assess impacts on highway safety; the role of travel in economic productivity; impacts of changes in truck travel on infrastructure condition; and maintenance of our Nation's mobility while protecting the human and natural environment. The increasing dependence on truck transport requires that data be available to better assess its overall contribution to the Nation's well-being. In conducting the data collection, the FHWA will be requesting that State Departments of Transportations (SDOTs) provide reporting of traffic volume, vehicle classification, and vehicle weight data which they collect as part of their existing traffic monitoring programs, including other sources such as local governments and traffic operations.

States and local governments collect traffic volume, vehicle classification data, and vehicle weight data throughout the year using weigh-in-motion devices. The data should be representative of all public roads within State boundaries. The data will allow transportation professionals at the Federal, State, and metropolitan levels to make informed decisions about policies and plans.

Respondents: 52 SDOTs, including the District of Columbia and Puerto Rico.

Frequency: Annually.

Estimated Average Burden per Response: Each of the SDOTs already collect traffic data for various purposes. In accordance with 23 U.S.C. 303, each State has a Traffic Monitoring System in place so the data collection burden relevant for this notice is the additional burden for each State to provide a copy of their traffic data using the record formats specified in the "Traffic Monitoring Guide". Automation and online tools continue to be developed in support of the HVTIS and the capability now exists for online submission and validation of total volume data. The estimated average monthly burden is 3.5 hours for an annual burden of 42 hours. The annual reporting requirement is estimated to be 6 hours for the States and the District of Columbia and Puerto Rico. The combined burden from the monthly and annual reports is 48 hours per respondent.

Estimated Total Annual Burden Hours: Total burden will be 2,496 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 15, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010-17841 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2010-0088]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under

SUPPLEMENTARY INFORMATION. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 20, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010-0088 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Koontz, 202-366-2076, Office of Natural and Human Environment, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Congestion Mitigation and Air Quality Improvement (CMAQ) Program.

OMB Control Number: 2125-0614.

Background: Section 1808 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA-LU) calls for an Evaluation and Assessment of CMAQ Projects. The statute calls for the identification and analysis of a representative sample of CMAQ projects and the development and population of a database that describes the impacts of the program both on traffic congestion levels and air quality. To establish and maintain this database, the FHWA is requesting States to submit annual reports on their CMAQ investments that cover projected air quality benefits, financial information, a brief description of projects, and several other factors outlined in the Interim Program Guidance for the CMAQ program. States are requested to provide the end of year summary reports via the automated system provided through FHWA by the first day of March of each year, covering the prior Federal fiscal year.

Respondents: 51 (each State DOT, and Washington DC).

Frequency: Annually.

Estimated Average Burden per Response: 125 hours per annual report.

Estimated Total Annual Burden Hours: 6,375 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: July 15, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010-17840 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2010-0089]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 20, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010-0089 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: 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. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony DeSimone, (317) 226-5307, Office of Program Administration, Federal Highway Administration, Department of Transportation, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, 46204, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Preparation and Execution of the Project Agreement and Modifications.

OMB Control Number: 2125-0529.

Background: Formal agreements between State Transportation Departments and the FHWA are required for Federal-aid highway

projects. These agreements, referred to as "project agreements" are written contracts between the State and the Federal government that define the extent of work to be undertaken and commitments made concerning a highway project. Section 1305 of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action. States continue to have the flexibility to use whatever format is suitable to provide the statutory information required, and burden estimates for this information collection are not changed.

Respondents: There are 56 respondents, including 50 State Transportation Departments, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of Guam, the Virgin Islands and American Samoa.

Frequency: Annually.

Estimated Average Burden per Response: There is an average of 498 annual agreements per respondent. Each agreement requires 1 hour to complete.

Estimated Total Annual Burden Hours: 27,888 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: July 15, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010-17839 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Collection of Safety Culture Data for Program Evaluation

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) described below is being forwarded to the Office of Management and Budget (OMB) for approval for a new information collection related to the evaluation of a demonstration/research program on voluntary reporting of close calls and near misses in the rail environment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on March 12, 2010 (75 FR 11988) and the comment period ended on May 11, 2010. The 60-day notice produced no comments.

DATES: Written comments should be submitted by August 23, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Demetra V. Collia, E-34, Room 302, Bureau of Transportation Statistics, Research and Innovative Technology Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; (202) 366-1610; Fax (202) 366-3676; e-mail Demetra.Collia@dot.gov.

SUPPLEMENTARY INFORMATION: *Title:* Collection of Safety Culture Data for Program Evaluation.

Type of Request: Approval of a new information collection.

OMB Control Number: New.

Affected Public: Employees in the railroad industry.

Number of Respondents: 3,600 (to be surveyed in three years).

Number of Responses: 3,600 (to be collected in three years).

Average Annual Burden: 600 hours (based on average time of 30 minutes to complete a survey and an average annual sample of 1,200 survey responses).

Abstract: Collecting data on the nation's transportation system is an important component of BTS'

responsibility to the transportation community and is authorized in BTS statutory authority (49 U.S.C. 111(c)(1) and (2)) and 49 U.S.C. 111(c)(5) (j). Further, BTS and the Federal Railroad Administration (FRA) share a common interest in promoting rail safety based on better data. In recognition of the need for new approaches to improving safety, the FRA is conducting a research program called the Confidential Close Call Reporting System (C³RS) designed to identify safety issues and promote corrective actions based on voluntary reports of close calls submitted to BTS.

While C³RS is being implemented with the participation of the FRA, railroad labor, and railroad management, there are legitimate questions about whether it is being implemented in the most effective way, and whether it will have its intended effect. Further, even if C³RS is successful, it will be necessary to know if it is successful enough to implement on an industry-wide scale. To address these important questions, the FRA has developed an evaluation model which includes a formative evaluation component to guide program development, a summative evaluation component to assess impact, and a sustainability evaluation component to determine how C³RS can continue after the test period is over. The evaluation model requires data derived from several sources including data collected through the proposed survey which is to be administered three times during the timeframe of the C³RS project (*i.e.*, baseline, mid-term and end-of-project). Baseline survey data were collected under a separate OMB control number (2139-0011). BTS is seeking a separate OMB approval for the collection of the remaining safety culture surveys because of changes to the data collection instruments and legal authority for this data collection. BTS will no longer invoke the Confidential Information and Statistical Efficiency Act of 2002 (CIPSEA) to protect the confidentiality of these data, rather the agency will conduct the survey data collection under its own statute (49 U.S.C. 111(i)).

Employees of three railroad sites (pilot sites) will be asked to fill out a questionnaire which will be made available to them at their workplace and mail back to BTS. Data will be collected from the entire population of affected workers (estimated number of participating employees: 3,600 or less). The survey will ask respondents to provide information on: (a) Beliefs about rail safety; (b) issues and personal concerns related to implementation of safety programs in their work environment; (c) knowledge and views

on voluntary reporting of unsafe events; and (d) opinions and observations about the operation of C³RS at their work site. It is estimated that the survey will take no more than 30 minutes to complete for a maximum total burden of 1,800 hours (3,600 respondents*30 minutes/60 = 1,800 hours). The survey will be administered at three pilot sites within three to four years resulting in an average annual burden of 600 hours (1,800/3).

ADDRESSES: The agency seeks public comments on its proposed information collection. Comments should address whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention: RITA/BTS Desk Officer.

Issued in Washington, DC, on this 16th day of July 2010.

Steven D. Dillingham,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2010-17922 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-HY-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Area Navigation Equipment Using Loran-C Inputs

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of cancellation of: (1) Loran-C navigation system Technical Standard Orders (TSO); and (2) the revocation of Loran-C navigation system TSO Authorizations (TSOA), and request for public comment.

SUMMARY: This notice announces the cancellation of Technical Standard Order (TSO) C-60, Airborne Area Navigation Equipment Using Loran-C inputs and all subsequent revisions. The effect of the cancelled TSOs will result in the revocation of all TSOs issued for the production of those navigational systems. These actions are necessary because the Loran-C Navigation System ceased operation on February 8, 2010.

DATES: Comments must be received on or before August 23, 2010

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Bridges, AIR-130, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024. Telephone (202) 385-4627, fax (202) 385-4651, e-mail to: kevin.bridges@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the cancellation of the TSO and the revocation of the associated TSOAs by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date.

Background

The Loran-C navigation system ceased transmitting usable signals on February 8, 2010. Because the Loran-C system ceased operation, the FAA intends to cancel all Loran-C Technical Standard Orders and revoke all associated Technical Standard Order Authorizations (TSOA).

The FAA database contains one (1) specific TSO requiring the Loran-C system as a means of navigation, and numerous TSOAs issued for the design and manufacture of Loran-C avionics equipment. This announcement serves as notice to all Loran-C TSOA holders that the FAA intends to cancel all TSOs (including active historical TSOs) and revoke all TSOAs for Loran-C avionics equipment.

Issued in Washington, DC, on July 13, 2010.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2010-17940 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the Proposed ORD Airport Surveillance Radar, Model 9, West Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Final Environmental Assessment (Final EA) and Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the Proposed ORD Airport Surveillance Radar, Model 9, West Chicago, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared, and approved on May 4, 2010, a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) based on the Final Environmental Assessment (Final EA) for the Proposed ORD Airport Surveillance Radar, Model 9 (ASR-9), in West Chicago, Illinois. The FAA prepared the Final EA in accordance with the National Environmental Policy Act and the FAA's regulations and guidelines for environmental documents and was signed on April 16, 2010. Copies of the FONSI/ROD and/or Final EA are available by contacting Ms. Virginia Marcks through the contact information provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, AJW-C14D, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294-7494.

SUPPLEMENTARY INFORMATION: The Final EA evaluated the construction and operation of the new ORD ASR-9 at DuPage Airport (DPA) in West Chicago, Illinois. The purpose and need of the ORD West ASR-9 is to enhance air traffic management for ORD to achieve the benefits of providing expanded radar coverage that would allow terminal air traffic control for additional new approach routes (West High and Wide approaches), as evaluated and approved in the O'Hare Modernization Environmental Impact Statement (EIS) and ROD.

The proposed ASR-9 would be constructed at a 200 foot (ft) x 200 ft area located west of the intersection of Kress Road and Western Drive on land leased from DPA. The total height of the ASR-9 tower structure would be 116 ft above ground level. The ASR-9 system consists of a tower, a rotating radar sail that transmits and receives the radio signals, an equipment building housing radar equipment, and an emergency generator with an aboveground storage tank for diesel fuel. One moving target indicator reflector and two Calibration and Performance Monitoring Equipment modules would be located at least 1 nautical mile from the preferred ASR-9 site. The FAA would construct a 24 ft wide x 400 ft long access road to the

ASR-9 site from Kress Road. The access road would be within a 30 ft wide access easement that would also contain underground utility lines. The access road and radar site together comprise 1.2 acres total land needed to construct the ASR-9 facility.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." In addition, FAA Order 5050.4B, "National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions" has been used as guidance in the preparation of the environmental analysis.

Issued in Des Plaines, Illinois, on July 13, 2010.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW-C14D, Federal Aviation Administration.

[FR Doc. 2010-17939 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for a Proposed Airport Traffic Control Tower and Base Building at Kalamazoo/Battle Creek International Airport, Portage City, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Final Environmental Assessment (Final EA) and Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for a Proposed Airport Traffic Control Tower and Base Building at Kalamazoo/Battle Creek International Airport, Portage City, Michigan.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared, and approved on April 16, 2010, a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) based on the Final Environmental Assessment (Final EA) for a Proposed Airport Traffic Control Tower (ATCT) with Associated Base Building at Kalamazoo/Battle Creek International Airport (AZO), Portage City, Michigan. The FAA prepared the Final EA in accordance with the National Environmental Policy Act and the FAA's regulations and guidelines for

environmental documents and it was signed on April 9, 2010. Copies of the FONSI/ROD and/or Final EA are available by contacting Ms. Virginia Marcks through the contact information provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, AJW-C14D, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294-7494.

SUPPLEMENTARY INFORMATION: The Final EA evaluated the construction and operation of a new ATCT at AZO. The ATCT would be located on vacant land in the northeast quadrant of AZO, east of main Runway 17/35 and between Runways 23 and 27. The ATCT site will occupy approximately 9.28 acres, and is 857 feet above mean sea level. The new ATCT will be a Low Activity Level facility with a 395-square-foot cab accommodating two operational positions and two support positions. The new ATCT will improve visibility of airport surfaces, have the capability to meet future operational and administrative expansion requirements, and increase the efficient functionality of the facility. In addition to the ATCT, the Final EA evaluated the construction and operation of a new 20,000-square-foot standard design Terminal Radar Approach Control Facility/Base Building conforming to the guidelines of the Terminal Facilities Design Standards for Base Building and Environmental Support Buildings with modified space designations and minor room sizing. The Base Building would meet current and future administrative space requirements. The project also includes, and the Final EA evaluated, construction of a paved parking area next to the Base Building, relocation of a portion of the existing airport perimeter road approximately 40 feet to the west of its current location, construction of a new paved access drive from East Kilgore Road to the ATCT site, construction of a 10-foot fence around the entire facility and a new fence from East Kilgore Road to the facility, Dopplerization of the Very High Frequency Omni-Directional Range facility, lease of the ATCT parcel from the airport, approval of Federal funding for the project, and update of the Airport Layout Plan.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." In addition, FAA Order 5050.4B, "National

Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions" has been used as guidance in the preparation of the environmental analysis.

Issued in Des Plaines, Illinois, on July 13, 2010.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW-C14D, Federal Aviation Administration.

[FR Doc. 2010-17938 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the Proposed Airport Development at Sawyer County Airport, Hayward, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Final Environmental Assessment (Final EA) and Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for the Proposed Airport Development at Sawyer County Airport, Hayward, Wisconsin.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared, and approved on May 16, 2010, a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) based on the Final Environmental Assessment (Final EA) for the Proposed Airport Development at Sawyer County Airport, Hayward, Wisconsin. The FAA prepared the Final EA in accordance with the National Environmental Policy Act and the FAA's regulations and guidelines for environmental documents. The Final EA was reviewed and evaluated by the FAA, and was accepted on February 16, 2010 as a Federal document by the FAA's Responsible Federal Official. Copies of the FONSI/ROD and/or Final EA are available by contacting Ms. Virginia Marcks through the contact information provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, AJW-C14D, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294-7494.

SUPPLEMENTARY INFORMATION: The Final EA evaluated the Proposed Airport Development at Sawyer County Airport

(HYR) in Hayward, Wisconsin. The Proposed Airport Development would increase aviation safety by adding an Instrument Landing System (ILS) to HYR, which would allow aircraft to land under certain conditions when the weather conditions are poor (*i.e.*, rain, snow, fog, *etc.*). The establishment of an ILS at HYR would also allow the airport to serve as an alternate for other area airports that do not have precision instrument approach capabilities, as there are no airports within 58 miles that are equipped with an ILS.

The FAA and the Wisconsin Department of Transportation Bureau of Aeronautics (WisDOT BOA) jointly prepared the Final EA, pursuant to the requirements of the National Environmental Policy Act and the Wisconsin Environmental Policy Act, respectively. A joint Federal-State EA was prepared since the Proposed Airport Development includes both Federal actions and State block program actions. Actions for the proposed airport development would be taken by the FAA or WisDOT BOA.

Specific construction activities of the Proposed Airport Development include: demolition of approximately 6,435 feet of Airport Road; construction of approximately 6,405 feet of relocated Airport Road; installation of ILS components on the north end of Runway 20; construction of access roads and equipment shelter buildings; construction of the parallel taxiway/ramp expansion on the west side of the runway; obstruction removal, including clearing 27.7 acres of conifer swamp, 11.3 acres of lowland hardwoods swamp, and 10.3 acres of shrub-carr; acquisition of 66 acres of land; and relocation and/or removal of Runway 20 navigational aids.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures." In addition, FAA Order 5050.4B, "National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions" has been used as guidance in the preparation of the environmental analysis.

Issued in Des Plaines, Illinois, on July 13, 2010.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW-C14D, Federal Aviation Administration.

[FR Doc. 2010-17935 Filed 7-21-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 16, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before August 23, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0041.

Type of Review: Revision of a currently approved collection.

Title: Corporation Dissolution or Liquidation.

Form: 966.

Abstract: Form 966 is filed by a corporation whose shareholders have agreed to liquidate the corporation. As a result of the liquidation, the shareholders receive the property of the corporation in exchange for their stock. The IRS uses Form 966 to determine if the liquidation election was properly made and if any taxes are due on the transfers of property.

Respondents: Private Sector; Businesses or other for-profits.

Estimated Total Burden Hours: 209,820 hours.

OMB Number: 1545-0181.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

Form: 4768.

Abstract: Form 4768 is used by estates to request an extension of time to file an estate (and GST) tax return and/or to pay the estate (and GST) taxes and to explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 30,710 hours.

OMB Number: 1545-0242.

Type of Review: Extension without change of a currently approved collection.

Title: Gas Guzzler Tax.

Form: 6197.

Abstract: Form 6197 is used to compute the gas guzzler tax on automobiles whose fuel economy does not meet certain standard for fuel economy. The tax is reported quarterly of Form 720. Form 6197 is filed each quarter with Form 720 for manufacturers. Individuals can make a one-time filing if they import a gas guzzler auto for personal use. The IRS uses the information to verify computation of the tax and compliance with the law.

Respondents: Private Sector; Businesses or other for-profits.

Estimated Total Burden Hours: 4,659 hours.

OMB Number: 1545-0704.

Type of Review: Revision of a currently approved collection.

Title: Information Return of U.S. Persons with Respect To Certain Foreign Corporations.

Form: 5471.

Abstract: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035, 6038 and 6046 and the regulations there under pertaining to the involvement of U.S. persons with certain foreign corporations.

Respondents: Private Sector; Businesses or other for-profits.

Estimated Total Burden Hours: 4,280,244 hours.

OMB Number: 1545-1564.

Type of Review: Extension without change of a currently approved collection.

Title: REG-103330-97 (Final) (T.D. 8839) IRS Adoption Taxpayer Identification Numbers.

Abstract: The regulations provide rules for obtaining IRS adoption taxpayer identification numbers (ATINs), which are used to identify children placed for adoption. To obtain an ATIN, a prospective adoptive parent must file Form W-7A. The regulations assist prospective adoptive parents in claiming tax benefits with respect to these children.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545-1595.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 98–25, Automatic Data Processing.

Abstract: Rev. Proc. 98–25 specifies the basic requirements that the IRS considers to be essential in cases where a taxpayer's records are maintained within an Automatic Data Processing System (ADP). If machine-sensible records are lost, stolen, destroyed, or materially inaccurate, the Rev. Proc. requires that a taxpayer promptly notify its District Director and submit a plan to replace the affected records. The District Director will notify the taxpayer of any objection(s) to the taxpayer's plan. Also, the Rev. Proc. provides that a taxpayer who maintains machine-sensible records may request to enter into a Record Retention. * * *

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 120,000 hours.

OMB Number: 1545–1578.

Type of Review: Extension without change of a currently approved collection.

Title: REG–106542–98 (Final), Election to Treat Trust as Part of an Estate.

Abstract: REG–106542–98 and Rev. Proc. 98–13 relate to an election to have certain revocable trusts treated and taxed as part of an estate, and provides the procedures and requirements for making the section 645 election.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 5,000 hours.

OMB Number: 1545–1736.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2001–24, Advanced Insurance Commissions.

Abstract: A taxpayer that wants to obtain automatic consent to change its method of accounting for cash advances on commissions paid to its agents must agree to the specified terms and conditions under the revenue procedure. This agreement is ratified by attaching the required statement to the Federal income tax return for the year of change.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,318 hours.

OMB Number: 1545–1873.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2004–15, Waivers of Minimum Funding Standards.

Abstract: This revenue procedure describes the process for obtaining a

waiver from the minimum funding standards set forth in section 412 of the Code.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 4,730 hours.

OMB Number: 1545–1599.

Type of Review: Extension without change of a currently approved collection.

Title: REG–208299–90 (NPRM) Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation.

Abstract: The information requested in sections 1.475(g)–2(b), 1.482–8(b)(3), (c)(3), (e)(5), (e)(6), (d)(3), and 1.863–3(h) is necessary for Service to determine whether the taxpayer has entered into controlled transactions at an arm's length price.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 20,000 hours.

OMB Number: 1545–2045.

Type of Review: Extension without change of a currently approved collection.

Title: (Announcement 2006–95) Settlement Initiative for Employees of Foreign Embassies, Foreign Consular Offices and International Organizations in the United States.

Abstract: The IRS has determined a substantial number of U.S. citizens and lawful permanent residents working in the international community have failed to fulfill their U.S. tax obligations. The IRS needs the information in order to apply the terms of the settlement and determine the amount of taxes, applicable statutory interest and penalties. The respondents are individuals employed by foreign embassies, foreign consular offices or international organizations in the United States.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 11,000 hours.

OMB Number: 1545–1625.

Type of Review: Extension without change of a currently approved collection.

Title: REG–105170–97 and REG–112991–01, (Final) Credit for Increasing Research Activities (TD 8930 & TD 9104).

Abstract: These final regulations relate to the computation of the credit under section 41(c) and the definition of qualified research under section 41(d). These regulations are intended to provide (1) guidance concerning the requirements necessary to qualify for

the credit for increasing research activities, (2) guidance in computing the credit for increasing research activities, and (3) rules for electing and revoking the election of the alternative incremental credit.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 250 hours.

OMB Number: 1545–1669.

Type of Review: Extension without change of a currently approved collection.

Title: REG–108639–99 (Final) Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m); Notice 2000–3.

Abstract: The regulations provide guidance for qualified retirement plans containing cash or deferred arrangements under section 401(k) and providing matching contributions or employee contributions under section 401(m). The IRS needs this information to insure compliance with sections 401(k) and 401(m).

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 26,500 hours.

OMB Number: 1545–1588.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209682–94 (TD 8847—Final) Adjustments Following Sales of Partnership Interests.

Abstract: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. The regulations require the partnership to attach a statement to its partnership return indicating the adjustment and how it was allocated among the partnership property.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 904,000 hours.

OMB Number: 1545–1869.

Type of Review: Extension without change of a currently approved collection.

Title: Information Return for Acquisition of Control or Substantial Change in Capital Structure.

Form: 8806.

Abstract: Form 8806 is used to report information regarding transactions involving acquisition of control or substantial change in capital structure under section 6043.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 113 hours.

OMB Number: 1545–2047.

Type of Review: Extension without change of a currently approved collection.

Title: Rev Proc 2007–21—Revenue Procedure Regarding 6707/6707A Rescission Request Procedures.

Abstract: This revenue procedure provides guidance to persons who are assessed a penalty under section 6707A or 6707 of the Internal Revenue Code, and who may request rescission of those penalties from the Commissioner.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 430 hours.

OMB Number: 1545–1729.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9114 (Final) Electronic Payee Statements.

Abstract: In general, under these regulations, a person required to furnish a statement on Form W–2 under Code sections 6041(d) or 6051, or Forms 1098–T or 1098–E under Code section 6050S, may furnish these statements electronically if the recipient consents to receive them electronically, and if the person furnishing the statement (1) makes certain disclosures to the recipient, (2) annually notifies the recipient that the statement is available on a Web site, and (3) provides access to the statement on that Web site for a prescribed period of time.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,844,950 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–17918 Filed 7–21–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 16, 2010.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before August 23, 2010 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0012.

Type of Review: Revision of a currently approved collection.

Title: Annual Financial Statements of Surety Companies—Schedule FA.

Form: 6314.

Abstract: Surety and Insurance Companies report information used to compute the amount of unauthorized reinsurance to determine Treasury Certified Companies' underwriting limitations which are published in Treasury Circular 570.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 14,628 hours.

Bureau Clearance Officer: Wesley Powe, Financial Management Service, 3700 East West Highway, Room 135, Hyattsville, MD 20782; (202) 874–7662.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–17936 Filed 7–21–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information

collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. Currently, the OCC is soliciting comments concerning an information collection titled “Guidance on Sound Incentive Compensation Practices.”

DATES: Written comments should be submitted by September 20, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention 1557–0245, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments by mail to: OCC Desk Officer, 1557–0245, U.S. Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting regular clearance of a collection for which it received emergency approval.¹

Title: Guidance on Sound Incentive Compensation Policies.

OMB Number: 1557–0245.

Abstract: Under the guidance, national banks are required to: (i) Have policies and procedures that identify and describe the role(s) of the personnel and units authorized to be involved in incentive compensation arrangements, identify the source of significant risk-related inputs, establish appropriate controls governing these inputs to help ensure their integrity, and identify the individual(s) and unit(s) whose approval is necessary for the

¹ 75 FR 36395 (June 25, 2010).

establishment or modification of incentive compensation arrangements; (ii) create and maintain sufficient documentation to permit an audit of the organization's processes for incentive compensation arrangements; (iii) have any material exceptions or adjustments to the incentive compensation arrangements established for senior executives approved and documented by its board of directors; and (iv) have its board of directors receive and review, on an annual or more frequent basis, an assessment by management of the effectiveness of the design and operation of the organization's incentive compensation system in providing risk-taking incentives that are consistent with the organization's safety and soundness.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,033 large banks; 617 small banks.

Estimated Burden per Respondent: 480 hours for large banks to modify policies and procedures to monitor incentive compensation. 80 hours for small banks to establish or modify policies and procedures to monitor incentive compensation. 40 hours annually for all banks to maintain policies and procedures to monitor incentive compensation arrangements.

Frequency of Response: Annually.

Total Annual Burden: 611,200 hours.

All comments will be considered in formulating the subsequent submission and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 19, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010-18006 Filed 7-21-10; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, "Affiliate Marketing/Consumer Opt-Out Notices." **DATES:** Comments must be submitted on or before September 20, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2-3, Attention: 1557-0230, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-5274, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to: OCC Desk Officer, [1557-0230], by mail to U.S. Office of Management and Budget, 725 17th St., NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary H. Gottlieb, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: *Title:* Fair Credit Reporting Affiliate Marketing. *OMB Control No.:* 1557-0230.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 541,860.

Total Annual Burden: 16,559 hours.

Description: Twelve CFR part 41, subpart C generally prohibits a person from using certain information received from an affiliate to make a solicitation for marketing purposes to a consumer unless the consumer is given notice of that potential use and an opportunity and a reasonable simple method to opt out of such solicitations.

Financial institutions will use the required notices to inform consumers about their rights under section 624 of Fair Credit Reporting Act and to comply with 12 CFR part 41, Subpart C. Consumers will use the notices to decide if they want to receive solicitations for marketing purposes or opt out. Financial institutions will use the consumers' opt out responses to determine the permissibility of using eligibility information obtained from an affiliate to make solicitations to the consumer. The responses will be used by financial institutions to comply with section 214 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).¹ We assume that the majority of banks will issue their affiliate marketing notices in a single notice with their annual privacy notice.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

¹ Public Law 108-159, 117 Stat. 1952.

Dated: July 19, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010-18007 Filed 7-21-10; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, "Examination Questionnaire."

DATES: Comments must be submitted by September 20, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2-3, Attention: 1557-0199, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-5274, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557-0199, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting

documentation submitted to OMB by contacting: Mary Gottlieb, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend the approval for the following information collection:

Title: Examination Questionnaire.

OMB Control No.: 1557-0199.

Affected Public: Businesses or other for-profit.

Type of Review: Regular review.

Abstract: The OCC has revised its Examination Questionnaire and updated the estimated burden hours to adjust for the reduction in the number of national banks. Completed Examination Questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs. A questionnaire is provided to each national bank at the conclusion of their supervisory cycle (12- or 18-month period). A banker may now choose to complete this questionnaire on National BankNet, the OCC's extranet site.

Burden Estimates:

Estimated Number of Respondents: 1,565.

Estimated Number of Responses per Respondent per Year: 0.89.

Estimated Number of Responses: 1,393.

Estimated time per response: 10 minutes.

Frequency of Response: On occasion.

Estimated Annual Burden: 232 hours.

Comments: All comments will be considered in formulating the subsequent submission and 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 OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 19, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010-18010 Filed 7-21-10; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning an information collection titled, "Record and Disclosure Requirements—FRB Regulations B, E, M, Z, CC, and DD."

DATES: Comments must be submitted on or before September 20, 2010.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2-3, Attention: 1557-0176, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-5274, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557-0176, by mail to U.S. Office of Management and Budget, 725 17th

Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting: Mary H. Gottlieb, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Record and Disclosure Requirements—FRB Regulations B, E, M, Z, CC, and DD.

OMB Control No.: 1557-0176.

Type of Review: Regular review.

Description: This information collection covers the Board of Governors of the Federal Reserve System's (FRB) Regulations B, C, E, M, Z, CC, and DD. The FRB Regulations include the following provisions:

Reg B—12 CFR 202—Equal Credit Opportunity

This regulation prohibits lenders from discriminating against credit applicants, establishes guidelines for gathering and evaluating information about personal characteristics in applications for certain dwelling-related loans, requires lenders to provide applicants with copies of appraisal reports in connection with credit transactions, and requires written notification of action taken on a credit application.

Reg C—12 CFR 203—Home Mortgage Disclosure

This regulation requires certain mortgage lenders to report certain home loan application information and to disclose certain data regarding their home mortgage lending.

Reg E—12 CFR 205—Electronic Fund Transfers

This regulation establishes the rights, liabilities, and responsibilities of parties in electronic fund transfers and offers protections to consumers when they use such systems.

Reg M—12 CFR 213—Consumer Leasing

This regulation implements the consumer leasing provisions of the Truth in Lending Act by requiring meaningful disclosure of leasing terms.

Reg Z—12 CFR 226—Truth in Lending

This regulation prescribes uniform methods for computing the cost of credit, disclosing credit terms and costs, and resolving errors on certain types of credit accounts.

Reg CC—12 CFR 229—Availability of Funds and Collection of Checks

This regulation establishes timeframes to govern the availability of funds deposited in checking accounts, rules to govern the collection and return of checks, and general provisions to govern the use of substitute checks.

Reg DD—12 CFR 230—Truth in Savings

This regulation requires depository institutions to provide disclosures sufficient to enable consumers to make informed comparisons about accounts at depository institutions.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 1,650.

Estimated Number of Responses: 1,650.

Estimated Annual Burden: 3,899,275 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 19, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2010-18014 Filed 7-21-10; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2007-69

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2007-69, Section 45H Certification.

DATES: Written comments should be received on or before *September 20, 2010* to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Section 45H Certification.

OMB Number: 1545-2074.

Revenue Procedure Number: Revenue Procedure 2007-69.

Abstract: The revenue procedure informs small business refiners how to obtain the certification required under 45H(f) of the Internal Revenue Code.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Average Time per Respondent: 1 hour, 3 mins.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17871 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation 209619-93

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-209619-93, Escrow Funds and Other Similar Funds (§§ 1.469B-1(k)(2), 1.468B-1(k)(3)(iv), 1.468B-6(e)(1), 1.468B-6(f), 1.468B-7(d), 1.468B-8(f), 1.468B-8(g)(1), 1.468B-9(c)(1), and 1.468B-9(f)(3)).

DATES: Written comments should be received on or before November 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation, the form and instructions should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Escrow Funds and Other Similar Funds.

OMB Number: 1545-1631.

Regulation Project Number: REG-209619-93.

Abstract: These regulations would amend the final regulations for qualified settlement funds (QSFs) and would provide new rules for qualified escrows and qualified trusts used in deferred section 1031 exchanges; pre-closing escrows; contingent at-closing escrows; and disputed ownership funds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

Estimated Number of Respondents: 9,300.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 4,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17870 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation 121475-03 (TD 9339)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Regulation 121475-03 (TD 9339) Qualified Zone Academy Bonds: Obligations of States and Political Subdivision.

DATES: Written comments should be received on or before September 20, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Qualified Zone Academy Bonds:

Obligations of States and Political Subdivision.

OMB Number: 1545–1908.

Regulation Number: Regulation 121475–03 (T.D. 9339).

Abstract: The agency needs the information to ensure compliance with the requirement under the regulation that the taxpayer rebates the earnings on the defeasance escrow to the United States. The agency will use the notice to ensure that the respondents pays rebate when rebate becomes due. The respondent are state and local governments that issue qualified zone academy bonds under section 1397E of the IRC.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 6.

Estimated Average Time per

Respondent: 30 minutes.

Estimated Total Annual Reporting Hours: 3.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–17868 Filed 7–21–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8825

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

DATES: Written comments should be received on or before September 20, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

OMB Number: 1545–1186.

Form Number: Form 8825.

Abstract: Partnerships and S corporations file Form 8825 with either Form 1065 or Form 1120S to report income and deductible expenses from rental real estate activities, including net income or loss from rental real estate activities that flow through from partnerships, estate, or trusts. The IRS uses the information on the form to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 705,000.

Estimated Time per Respondent: 8 hours, 55 minutes.

Estimated Total Annual Burden Hours: 6,288,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–17867 Filed 7–21–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13560

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13560, HCTC Health Plan Administrator (HPA) Return of Funds Form.

DATES: Written comments should be received on or before September 20, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Form 13560, HCTC Health Plan Administrator (HPA) Return of Funds form.

OMB Number: 1545-1891.

Form Number: Form 13560.

Abstract: Form 13560 is completed by Health Plan Administrators (HPAs) and accompanies a return of funds in order to ensure proper handling. This form serves as supporting documentation for any funds returned by an HPA and clarifies where the payment should be applied and why it is being sent.

Current Actions: Form 13561 was previously part of this collection and is now obsolete. There is no change in the total burden hours previously approved by OMB. This form is being submitted for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17866 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation 134235-08

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulation, REG-134235-08, Furnishing Identifying Number of Tax Return Preparer.

DATES: Written comments should be received on or before September 20, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Furnishing Identifying Number of Tax Return Preparer.

OMB Number: 1545-2176.

Regulation Number: Regulation 134235-08.

Abstract: This document contains proposed regulations under section 6109 of the Internal Revenue Code that provide guidance to tax return preparers on furnishing an identifying number on tax returns and claims for refund of tax that they prepare. The proposed regulations describe how the IRS will define the identifying number of tax return preparers. Additional provisions of the proposed regulations provide that tax return preparers must apply for and regularly renew their preparer identifying number as the IRS may prescribe in forms, instructions, or other guidance.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Time per Respondent: 1,200,000.

Estimated Total Annual Burden Hours: 300,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17865 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation 112841-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulation, REG-112841-10, Indoor Tanning Services; Cosmetic Services; Excise Tax.

DATES: Written comments should be received on or before September 20, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue

Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Indoor Tanning Services; Cosmetic Services; Excise Tax.

OMB Number: 1545-2177.

Regulation Number: Regulation 112841-10.

Abstract: The collection of information in this proposed regulation contains proposed amendments to the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49) under section 5000B of the Internal Revenue Code (Code). Section 5000B of the Code was enacted by section 10907 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)) to impose an excise tax on indoor tanning services. This information is required to be maintained in order for providers to accurately calculate the tax on indoor tanning services when those services are offered with other goods and services.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated total average annual record-keeping burden: 10,000 hours.

Estimated average annual burden hours per record-keeper: 30 minutes.

Estimated number of record-keepers: 20,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17864 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8826

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8826, Disabled Access Credit.

DATES: Written comments should be received on or before September 20, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the form and instructions should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Disabled Access Credit.

OMB Number: 1545-1205.

Form Number: Form 8826.

Abstract: Internal Revenue Code section 44 allows eligible small businesses to claim a nonrefundable

income tax credit of 50% of the amount of eligible access expenditures for any tax year that exceed \$250 but do not exceed \$10,250. Form 8826 figures the credit and the tax liability limit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms and individuals.

Estimated Number of Respondents: 17,422.

Estimated Time per Respondent: 5 hrs., 6 minutes.

Estimated Total Annual Burden Hours: 89,027.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17872 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1065, Schedule C, Schedule D, Schedule K-1, Schedule L, Schedule M-1, Schedule M-2, and Schedule M-3

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065 (U.S. Return of Partnership Income), Schedule D (Capital Gains and Losses), Schedule K-1 (Partner's Share of Income, Credits, Deductions and Other Items), Schedule L (Balance Sheets per Books), Schedule M-1 (Reconciliation of Income (Loss) per Books With Income (Loss) per Return), Schedule M-2 (Analysis of Partners' Capital Accounts), and Schedule M-3 (Net Income (Loss) Reconciliation for Certain Partnerships)).

DATES: Written comments should be received on or before September 20, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: U.S. Return of Partnership Income (Form 1065), Capital Gains and Losses (Schedule D), Partner's Share of Income, Credits, Deductions, *etc.* (Schedule K-1), Balance Sheets per Books (Schedule L), Reconciliation of Income (Loss) per Books With Income (Loss) per Return (Schedule M-1), Analysis of Partners' Capital Accounts (Schedule M-2), and Net Income (Loss) Reconciliation for Certain Partnerships (Schedule M-3).

OMB Number: 1545-0099.
Form Number: 1065, Schedule D, Schedule K-1, Schedule L, Schedule M-1, Schedule M-2, and Schedule M-3.

Abstract: Internal Revenue Code section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used by the IRS to verify correct reporting of partnership items and for general statistics. The information is used by partners to determine the income, loss, credits, *etc.*, to report on their tax returns.

Current Actions: Major changes were made to the form, instructions, and some of the schedules to better serve the taxpayers. These changes resulted in a decrease in burden hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and individuals or households.

Estimated Number of Respondents: 2,376,800.

Estimated Time per Respondent: Varies.

Estimated Total Annual Burden Hours: 707,661,044.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology;

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17873 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Announcement 2004-46

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Announcement 2004-4, Son of Boss Settlement Initiative.

DATES: Written comments should be received on or before September 20, 2010 to be assured consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the announcement should be directed to Elaine Christophe at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622-3179, or through the Internet at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Son of Boss Settlement Initiative.

OMB Number: 1545-1885.

Announcement Number:

Announcement 2004-46.

Abstract: Announcement 2004-46 offers settlement to certain taxpayers that participated in the transaction for efficient tax administration reasons and to avoid prolonged litigation

Current Actions: There are no changes being made to the announcement at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17875 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS-100-88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS-100-88 (TD 8540), Valuation Tables (§§ 1.7520-1 through 1.7520-4, 20.7520-1 through 20.7520-4, and 25.7520-1 through 25.7520-4).

DATES: Written comments should be received on or before September 20, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Elaine Christophe, (202) 622-3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at Elaine.H.Christophe@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Valuation Tables.

OMB Number: 1545-1343.

Regulation Project Number: PS-100-88 (TD 8540).

Abstract: Internal Revenue Code section 7520 provides rules for determining the valuation of an annuity, an interest for life or a term of years, or a remainder or reversionary interest. Code section 7530(a) allows a respondent to make an election to value an interest that qualifies, in whole or in part, for a charitable deduction, by use of a different interest rate component that is more favorable to the respondent. This regulation requires individuals or fiduciaries making the election to file a statement with their estate or gift tax return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Hours: 4,500.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010-17869 Filed 7-21-10; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Prohibited Service at Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 23, 2010. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at <http://www.reginfo.gov/public/do/PRAMain>.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and

OTS at these addresses: Office of Information and Regulatory Affairs, *Attention:* Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395-6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906-6518, or by e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at <http://www.ots.treas.gov>. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, ira.mills@ots.treas.gov (202) 906-6531, or facsimile number (202) 906-6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Prohibited Service at Savings and Loan Holding Companies.

OMB Number: 1550-0117.

Form Number: N/A.

Regulation requirement: 12 CFR Parts 585.110 and 12 CFR 516.

Description: Section 557.20 requires savings associations to establish and maintain deposit documentation practices and records. These records should include adequate evidence of ownership, balances, and all transactions involving the account. In addition, part 557 relies on the disclosure regulations applicable to savings associations under Regulation DD. Regulation DD implements the Truth in Savings Act, part of the Federal Deposit Insurance Corporation Improvement Act of 1991.

The regulations assist consumers in comparing deposit accounts offered by depository institutions. Consumers receive disclosures about fees, annual

percentage yield, interest rate, and other account terms whenever a consumer requests the information and before the consumer opens an account. The regulation also requires that savings associations provide fees and other information on any periodic statement the institution sends to the consumer. Regulation DD contains rules for advertisements of deposit accounts and advance notices to account holders of adverse changes in terms.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 15.

Estimated Burden Hours per Response: 16 hours.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 240 hours.

Clearance Officer: Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: July 16, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010-17843 Filed 7-21-10; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the names of four individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers*.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on July 15, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach and Implementation, Office of Foreign Assets Control, Department of

the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on demand service at (202) 622-0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or

hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) to play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On July 15, 2010 the Director of OFAC removed from the SDN List the four individuals listed below, whose property and interests in property were blocked pursuant to the Order:

1. DELGADO GUTIERREZ, Luis Alvaro, c/o TAURA S.A., Cali, Colombia;

Cedula No. 16718474 (Colombia) (individual) [SDNT]

2. IDARRAGA ESCANDON, Hernet (a.k.a. IDARRAGA ESCANDON, Hernet), c/o DISMERCOOP, Cali, Colombia; c/o GRACADAL S.A., Cali, Colombia; Carrera 25A No. 49-73, Cali, Colombia; DOB 22 Dec 1954; Cedula No. 16595668 (Colombia) (individual) [SDNT]
3. PALMA SAADE, Jessica Maria, Calle 78 No. 53-70, Local 202, Barranquilla, Colombia; c/o VESTIMENTA J y J S. de H., Barranquilla, Colombia; Cedula No. 32758645 (Colombia) (individual) [SDNT]
4. SALGADO MOSQUERA, Ricardo Ignacio, c/o MACROFARMA S.A., Pereira, Colombia; c/o FARMALIDER S.A., Cali, Colombia; Cedula No. 10216576 (Colombia); Passport 10216576 (Colombia) (individual) [SDNT]

Dated: July 15, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010-17721 Filed 7-21-10; 8:45 am]

BILLING CODE 4810-AL-P



Federal Register

**Thursday,
July 22, 2010**

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

**Medicare Program; Inpatient
Rehabilitation Facility Prospective
Payment System for Federal Fiscal Year
2011; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1344-N]

RIN 0938-AP89

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2011 (for discharges occurring on or after October 1, 2010 and on or before September 30, 2011) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before the August 1 that precedes the start of each fiscal year, the classification and weighting factors for the IRF prospective payment system's (PPS) case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

DATES: *Effective Date:* The updated IRF prospective payment rates are effective for IRF discharges occurring on or after October 1, 2010 and on or before September 30, 2011 (FY 2011).

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Addendum

Acronyms

Because of the many terms to which we refer by acronym in this notice, we are listing the acronyms used and their corresponding terms in alphabetical order below.

- ADC Average Daily Census
 ASCA Administrative Simplification Compliance Act of 2002, Public Law 107-105
 BBA Balanced Budget Act of 1997, Public Law 105-33
 BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106-113
 BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Public Law 106-554
 CBSA Core-Based Statistical Area
 CCR Cost-to-Charge Ratio
 CFR Code of Federal Regulations
 CMG Case-Mix Group
 DRG Diagnostic Related Group
 DSH Disproportionate Share Hospital
 FI Fiscal Intermediary
FR Federal Register
 FTE Full-time Equivalent
 FY Federal Fiscal Year
 HCFA Health Care Financing Administration
 HHH Hubert H. Humphrey Building
 HIPAA Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
 IOM Internet Only Manual
 IPF Inpatient Psychiatric Facility

- IPPS Inpatient Prospective Payment System
 IRF Inpatient Rehabilitation Facility
 IRF-PAI Inpatient Rehabilitation Facility-Patient Assessment Instrument
 IRF PPS Inpatient Rehabilitation Facility Prospective Payment System
 IRVEN Inpatient Rehabilitation Validation and Entry
 LTCH Long Term Care Hospital
 LIP Low-Income Percentage
 MA Medicare Advantage
 MAC Medicare Administrative Contractor
 MBPM Medicare Benefit Policy Manual
 MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110-173
 OMB Office of Management and Budget
 PAI Patient Assessment Instrument
 PPS Prospective Payment System
 QIC Qualified Independent Contractors
 RAC Recovery Audit Contractors
 RAND RAND Corporation
 RFA Regulatory Flexibility Act of 1980, Public Law 96-354
 RIA Regulatory Impact Analysis
 RIC Rehabilitation Impairment Category
 RPL Rehabilitation, Psychiatric, and Long-Term Care Hospital
 SCHIP State Children's Health Insurance Program

I. Background

A. Historical Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS)

Section 4421 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105-33, enacted on August 5, 1997), as amended by section 125 of the Medicare, Medicaid, State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106-113, enacted November 29, 1999) and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106-554, enacted December 21, 2000) provides for the implementation of a per discharge prospective payment system (PPS) under section 1886(j) of the Social Security Act (the Act) for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (hereinafter referred to as IRFs).

Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880), we are providing below a

general description of the IRF PPS for fiscal years (FYs) 2002 through 2010.

Under the IRF PPS from FY 2002 through FY 2005, as described in the FY 2002 IRF PPS final rule (66 FR 41316), the Federal prospective payment rates were computed across 100 distinct (Case-Mix Group) CMGs. We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget neutral conversion factor). For a detailed discussion of the budget neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted Federal prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRF's unadjusted Federal prospective payment rates.

For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRF would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this

blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS. The Web site URL is <http://www.cms.gov/InpatientRehabFacPPS/> and may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166) that we published on September 30, 2005, we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB) Core-Based Statistical Area (CBSA) market definitions, modifications to the CMGs, tier comorbidities, and CMG relative weights, implementation of a new teaching status adjustment for IRFs, revision and rebasing of the market basket index used to update IRF payments, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket index used to update IRF payments is a 2002-based market basket reflecting the operating and capital cost structures for freestanding IRFs and long-term care hospitals (LTCHs) (hereafter referred to as the rehabilitation, psychiatric, and long-term care (RPL) market basket). Any reference to the FY 2006 IRF PPS final rule in this notice also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166).

In the FY 2007 IRF PPS final rule (71 FR 48354), we further refined the IRF PPS case-mix classification system (the CMG relative weights) and the case-level adjustments, to ensure that IRF PPS payments would continue to reflect as accurately as possible the costs of care. For a detailed discussion of the FY 2007 policy revisions, please refer to the

FY 2007 IRF PPS final rule (71 FR 48354).

In the FY 2008 IRF PPS final rule (72 FR 44284), we updated the Federal prospective payment rates and the outlier threshold, revised the IRF wage index policy, and clarified how we determine high-cost outlier payments for transfer cases. For more information on the policy changes implemented for FY 2008, please refer to the FY 2008 IRF PPS final rule (72 FR 44284), in which we published the final FY 2008 IRF Federal prospective payment rates.

After publication of the FY 2008 IRF PPS final rule (72 FR 44284), section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA, Pub. L. 110-173, enacted December 29, 2007), amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. Section 1886(j)(3)(C) of the Act required the Secretary to develop an increase factor to update the IRF Federal prospective payment rates for each FY. Based on the legislative change to the increase factor, we revised the FY 2008 Federal prospective payment rates for IRF discharges occurring on or after April 1, 2008. Thus, the final FY 2008 IRF Federal prospective payment rates that were published in the FY 2008 IRF PPS final rule (72 FR 44284) were effective for discharges occurring on or after October 1, 2007 and on or before March 31, 2008; and the revised FY 2008 IRF Federal prospective payment rates were effective for discharges occurring on or after April 1, 2008 and on or before September 30, 2008. The revised FY 2008 Federal prospective payment rates are available on the CMS Web site at http://www.cms.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage.

In the FY 2009 IRF PPS final rule (73 FR 46370), we updated the CMG relative weights, the average length of stay values, and the outlier threshold; clarified IRF wage index policies regarding the treatment of "New England deemed" counties and multi-campus hospitals; and revised the regulation text in response to section 115 of the MMSEA to set the IRF compliance percentage at 60 percent ("the 60 percent rule") and continue the practice of including comorbidities in the calculation of compliance percentages. We also applied a zero percent market basket increase factor for FY 2009 in accordance with section 115 of the MMSEA. For more information on the policy changes implemented for FY 2009, please refer to the FY 2009 IRF PPS final rule (73 FR 46370), in which

we published the final FY 2009 IRF Federal prospective payment rates.

In the FY 2010 IRF PPS final rule (74 FR 39762) and in correcting amendments to the FY 2010 IRF PPS final rule (74 FR 50712) that we published on October 1, 2009, we updated the Federal prospective payment rates, the CMG relative weights, the average length of stay values, the rural, LIP, and teaching status adjustment factors, and the outlier threshold; implemented new IRF coverage requirements for determining whether an IRF claim is reasonable and necessary; and revised the regulation text to require IRFs to submit patient assessments on Medicare Advantage (Medicare Part C) patients for use in the 60 percent rule calculations. Any reference to the FY 2010 IRF PPS final rule in this notice also includes the provisions effective in the correcting amendments. For more information on the policy changes implemented for FY 2010, please refer to the FY 2010 IRF PPS final rule (74 FR 39762 and 74 FR 50712), in which we published the final FY 2010 IRF Federal prospective payment rates.

After publication of the FY 2010 IRF PPS final rule (74 FR 39762), section 3401(d) of the Patient Protection and Affordable Care Act (Affordable Care Act, Pub. L. 111–148, enacted March 23, 2010), as amended by section 10319 of the same act and by section 1105 of the Health Care and Education Reconciliation Act of 2010, amended section 1886(j)(3)(C) of the Act and added section 1886(j)(3)(D). Section 1886(j)(3)(C) of the Act requires the Secretary to develop an adjusted market basket increase factor using applicable productivity and other adjustments as defined by the Act. This adjusted market basket increase factor is to be used to update the IRF Federal prospective payment rates for each FY from 2012 forward. Section 1886(j)(3)(D)(i)(1) defines the adjustment that is to be applied to the market basket increase factor in FYs 2010 and 2011. The Secretary is to reduce the market basket increase factor by 0.25 percentage point for FY 2010. Notwithstanding these provisions, in accordance with paragraph (p) of section 3401 of the Affordable Care Act, the adjusted FY 2010 rate is only to be applied to discharges occurring on or after April 1, 2010. Section 1886(j)(3)(D)(i)(I) of the Act also requires the Secretary to reduce the market basket increase factor by 0.25 percentage point for FY 2011. Based on these legislative changes to section 1886(j)(3), we adjust the FY 2010 Federal prospective payment rates, and apply

these rates to IRF discharges occurring on or after April 1, 2010. Thus, the final FY 2010 IRF Federal prospective payment rates that were published in the FY 2010 IRF PPS final rule (74 FR 39762) were used for discharges occurring on or after October 1, 2009 and on or before March 31, 2010; and the adjusted FY 2010 IRF Federal prospective payment rates apply to discharges occurring on or after April 1, 2010. The adjusted FY 2010 Federal prospective payment rates are available on the CMS Web site at http://www.cms.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage.

In addition, sections 1886(j)(3)(C) and (D) of the Act also affected the FY 2010 IRF outlier threshold amount because they required an adjustment to the FY 2010 RPL market basket increase factor, which changed the standard payment conversion factor for FY 2010. Specifically, the original FY 2010 IRF outlier threshold amount was determined based on the original estimated FY 2010 RPL market basket increase factor of 2.5 percent and the standard payment conversion factor of \$13,661. However, as adjusted, the IRF prospective payments are based on the adjusted RPL market basket increase factor of 2.25 percent and the revised standard payment conversion factor of \$13,627. In order to maintain estimated outlier payments for FY 2010 equal to the established standard of 3 percent of total estimated IRF PPS payments for FY 2010, we revised the IRF outlier threshold amount for FY 2010 for discharges occurring on or after April 1, 2010. The revised IRF outlier threshold amount for FY 2010 is discussed in more detail in section VI.A of this notice.

B. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument (PAI), designated as the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF-PAI). In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF-PAI upon the admission and discharge of each Medicare Part C (Medicare Advantage) patient, as described in the FY 2010 IRF PPS final rule. All required data must be electronically encoded into the IRF-PAI software product. Generally, the software product includes patient classification

programming called the GROUPER software. The GROUPER software uses specific IRF-PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The GROUPER software produces a five-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last four digits represent the distinct CMG number. Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available on the CMS Web site at http://www.cms.gov/InpatientRehabFacPPS/06_Software.asp.

Once a patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104–191, enacted August 21, 1996), compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (ASCA, Pub. L. 107–105, enacted December 27, 2002) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-digit CMG number and sends it to the appropriate Medicare fiscal intermediary (FI) or Medicare Administrative Contractor (MAC). Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22) which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services “for which a claim is submitted other than in an electronic form specified by the Secretary.” Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial “in such unusual cases as the Secretary finds appropriate.” For more information we refer the reader to the final rule, “Medicare Program; Electronic Submission of Medicare Claims” (70 FR 71008, November 25, 2005). CMS instructions for the limited number of Medicare claims submitted on paper are available at: <http://www.cms.gov/manuals/downloads/clm104c25.pdf>.)

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR, parts 160 and 162, subparts A and I through

R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the program claim memoranda issued and published by CMS at: <http://www.cms.gov/ElectronicBillingEDITrans/> and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600).

The Medicare FI or MAC processes the claim through its software system. This software system includes pricing programming called the "PRICER" software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the new teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

II. Summary of Provisions of the Notice

In this notice, we use the methods described in the FY 2010 IRF PPS final rule (74 FR 39762) to update the Federal prospective payment rates for FY 2011 using updated FY 2009 IRF claims and FY 2008 IRF cost report data. No policy changes are being proposed in this notice. Furthermore, we explain the self-implementing changes resulting from the provisions in section 1886(j)(3)(C) and (D) of the Act, as described above.

In summary, this notice:

- Describes the adjustments to the FY 2010 IRF PPS Federal prospective payment rates and outlier threshold amount for IRF discharges occurring on or after April 1, 2010, in accordance with Section 3401(d) of the Affordable Care Act as amended by Section 10319 of the Same Act and by section 1105(c) of the Health Care and Education Reconciliation Act of 2010, as discussed in more detail in sections V.A and VI.A of this notice.
- Updates the FY 2011 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost

report data in a budget neutral manner, as discussed in section III of this notice.

- Updates the FY 2011 IRF PPS payments rates by a market basket increase factor, based upon the most current data available, with a 0.25 percentage point reduction as required by section 1886(j)(3)(D)(i)(I) of the Act, as described in section V.B of this notice.
- Updates the FY 2011 IRF PPS payment rates by the FY 2011 wage index and the labor-related share in a budget neutral manner, as discussed in sections V.B and V.C of this notice.
- Describes the calculation of the IRF Standard Payment Conversion Factor for FY 2011, as discussed in section V.D of this notice.
- Updates the outlier threshold amount for FY 2011, as discussed in section VI.B of this notice.
- Updates the cost-to-charge ratio (CCR) ceilings for FY 2011, as discussed in section VI.C of this notice.

This notice does not contain any revisions to existing regulation text.

III. Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay Values for FY 2011

As specified in 42 CFR 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care as well as provider efficiency.

As required by statute, we always use the most recent available data to update the CMG relative weights and average lengths of stay. For FY 2011, we used FY 2009 IRF claims and FY 2008 IRF cost report data. These data are the most current and complete data available at this time. Currently, less than 20 percent of the FY 2009 IRF cost report data are available for analysis, but the majority of the FY 2009 IRF claims data are available for analysis.

We will apply these data using the methodologies that were established in the FY 2002 IRF PPS final rule (66 FR 41316). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate

operating (routine and ancillary services) and capital costs of IRFs. The process used to calculate the CMG relative weights for this notice is as follows:

Step 1. We calculate the CMG relative weights by estimating the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2011 CMG relative weights to the same average CMG relative weight from the CMG relative weights implemented in the FY 2010 IRF PPS final rule (74 FR 39762).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we are updating the CMG relative weights for FY 2011 in such a way that total estimated aggregate payments to IRFs for FY 2011 are the same with or without the changes (that is, in a budget neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2011 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2011 (with no updates to the CMG relative weights).

Step 2. Apply the updates to the CMG relative weights (as discussed above) to calculate the estimated total amount of IRF PPS payments for FY 2011.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor (0.9942) that maintains the same total estimated aggregate payments in FY 2011 with and without the updates to the CMG relative weights.

Step 4. Apply the budget neutrality factor (0.9942) to the FY 2010 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section V.D of this notice, we discuss the use of the existing methodology to calculate the standard payment conversion factor for FY 2011.

The CMG relative weights and average length of stay values for FY 2011 are presented below in Table 1.

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Table 1: Relative Weights and Average Length of Stay Values for Case-Mix Groups

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0101	Stroke M>51.05	0.8035	0.7197	0.6454	0.6096	10	10	9	8
0102	Stroke M>44.45 and M<51.05 and C>18.5	0.9917	0.8883	0.7966	0.7524	12	12	11	10
0103	Stroke M>44.45 and M<51.05 and C<18.5	1.1439	1.0245	0.9188	0.8678	13	14	12	12
0104	Stroke M>38.85 and M<44.45	1.2393	1.1100	0.9954	0.9402	15	15	13	12
0105	Stroke M>34.25 and M<38.85	1.4613	1.3088	1.1737	1.1086	15	15	15	14
0106	Stroke M>30.05 and M<34.25	1.6711	1.4968	1.3422	1.2678	20	19	17	16
0107	Stroke M>26.15 and M<30.05	1.8917	1.6943	1.5193	1.4351	21	21	18	18
0108	Stroke M<26.15 and A>84.5	2.2976	2.0579	1.8454	1.7431	28	24	22	22
0109	Stroke M>22.35 and M<26.15 and A<84.5	2.2017	1.9719	1.7683	1.6703	23	23	20	21
0110	Stroke M<22.35 and A<84.5	2.7847	2.4941	2.2366	2.1126	35	29	26	25
0201	Traumatic brain injury M>53.35 and C>23.5	0.7712	0.6244	0.5824	0.5226	10	10	7	8
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5	1.0413	0.8430	0.7864	0.7056	14	13	10	10

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0203	Traumatic brain injury M>44.25 and C<23.5	1.1997	0.9713	0.9060	0.8130	16	14	11	11
0204	Traumatic brain injury M>40.65 and M<44.25	1.3484	1.0917	1.0183	0.9138	18	16	14	12
0205	Traumatic brain injury M>28.75 and M<40.65	1.6052	1.2996	1.2122	1.0878	18	16	15	14
0206	Traumatic brain injury M>22.05 and M<28.75	2.0205	1.6359	1.5259	1.3692	24	20	18	18
0207	Traumatic brain injury M<22.05	2.7619	2.2361	2.0858	1.8716	37	29	26	22
0301	Non-traumatic brain injury M>41.05	1.0842	0.9479	0.8520	0.7847	11	13	11	10
0302	Non-traumatic brain injury M>35.05 and M<41.05	1.3665	1.1947	1.0739	0.9890	13	14	13	13
0303	Non-traumatic brain injury M>26.15 and M<35.05	1.6270	1.4224	1.2785	1.1775	18	17	15	15
0304	Non-traumatic brain injury M<26.15	2.2312	1.9506	1.7533	1.6147	32	23	20	19
0401	Traumatic spinal cord injury M>48.45	0.8322	0.7488	0.7405	0.6640	11	11	11	9
0402	Traumatic spinal cord injury M>30.35 and M<48.45	1.2272	1.1042	1.0920	0.9792	17	15	14	13
0403	Traumatic spinal cord injury M>16.05 and M<30.35	2.0640	1.8572	1.8367	1.6468	28	22	22	21

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0404	Traumatic spinal cord injury M<16.05 and A>63.5	3.6601	3.2935	3.2570	2.9204	53	44	34	34
0405	Traumatic spinal cord injury M<16.05 and A<63.5	2.7859	2.5068	2.4790	2.2228	44	23	29	27
0501	Non-traumatic spinal cord injury M>51.35	0.7224	0.6359	0.5858	0.5234	10	10	8	8
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35	1.0044	0.8843	0.8146	0.7278	15	11	11	10
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15	1.3203	1.1624	1.0707	0.9566	18	15	13	12
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25	1.5694	1.3816	1.2727	1.1371	21	18	16	14
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25	1.8049	1.5889	1.4637	1.3077	23	19	18	17
0506	Non-traumatic spinal cord injury M<23.75	2.5700	2.2625	2.0842	1.8621	36	28	24	23
0601	Neurological M>47.75	1.0204	0.8350	0.7400	0.6611	10	12	9	9
0602	Neurological M>37.35 and M<47.75	1.3475	1.1027	0.9773	0.8731	14	13	12	11
0603	Neurological M>25.85 and M<37.35	1.7073	1.3971	1.2382	1.1062	17	17	14	14
0604	Neurological M<25.85	2.2792	1.8652	1.6530	1.4767	25	21	19	18

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0701	Fracture of lower extremity M>42.15	0.8880	0.7865	0.7564	0.6712	11	11	10	9
0702	Fracture of lower extremity M>34.15 and M<42.15	1.1617	1.0290	0.9896	0.8781	14	13	13	12
0703	Fracture of lower extremity M>28.15 and M<34.15	1.4055	1.2449	1.1972	1.0624	15	16	15	14
0704	Fracture of lower extremity M<28.15	1.7917	1.5870	1.5262	1.3543	19	19	18	17
0801	Replacement of lower extremity joint M>49.55	0.5635	0.5635	0.5262	0.4779	8	8	7	7
0802	Replacement of lower extremity joint M>37.05 and M<49.55	0.7658	0.7658	0.7151	0.6495	10	10	9	9
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5	1.0472	1.0472	0.9779	0.8881	13	14	12	12
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5	0.9373	0.9373	0.8753	0.7950	11	12	11	10
0805	Replacement of lower extremity joint M>22.05 and M<28.65	1.1791	1.1791	1.1011	1.0000	14	16	13	13
0806	Replacement of lower extremity joint M<22.05	1.4454	1.4454	1.3497	1.2259	15	18	16	15

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0901	Other orthopedic M>44.75	0.8530	0.7310	0.6814	0.6074	10	10	9	9
0902	Other orthopedic M>34.35 and M<44.75	1.1409	0.9776	0.9113	0.8124	12	12	12	11
0903	Other orthopedic M>24.15 and M<34.35	1.4777	1.2663	1.1804	1.0522	18	16	15	14
0904	Other orthopedic M<24.15	1.9257	1.6502	1.5383	1.3712	24	21	18	17
1001	Amputation, lower extremity M>47.65	0.9153	0.9055	0.8189	0.7246	12	12	10	10
1002	Amputation, lower extremity M>36.25 and M<47.65	1.1931	1.1803	1.0675	0.9445	15	15	13	12
1003	Amputation, lower extremity M<36.25	1.7701	1.7512	1.5837	1.4013	19	20	18	17
1101	Amputation, non-lower extremity M>36.35	1.1629	1.1629	1.0214	0.8868	12	14	13	11
1102	Amputation, non-lower extremity M<36.35	1.6229	1.6229	1.4253	1.2375	20	20	15	16
1201	Osteoarthritis M>37.65	0.9826	0.9395	0.8413	0.7724	14	11	11	10
1202	Osteoarthritis M>30.75 and M<37.65	1.2193	1.1659	1.0440	0.9585	13	13	13	12
1203	Osteoarthritis M<30.75	1.5144	1.4480	1.2966	1.1904	20	18	16	15
1301	Rheumatoid, other arthritis M>36.35	0.8729	0.8729	0.8621	0.7827	12	12	11	10

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1302	Rheumatoid, other arthritis M>26.15 and M<36.35	1.1714	1.1714	1.1569	1.0504	15	15	14	13
1303	Rheumatoid, other arthritis M<26.15	1.5349	1.5349	1.5158	1.3762	18	20	18	17
1401	Cardiac M>48.85	0.7919	0.7281	0.6481	0.5813	9	8	9	8
1402	Cardiac M>38.55 and M<48.85	1.0923	1.0044	0.8940	0.8018	12	13	11	11
1403	Cardiac M>31.15 and M<38.55	1.3284	1.2215	1.0873	0.9752	15	15	13	12
1404	Cardiac M<31.15	1.7290	1.5898	1.4152	1.2692	21	19	17	15
1501	Pulmonary M>49.25	0.9522	0.8452	0.7197	0.6935	11	11	9	9
1502	Pulmonary M>39.05 and M<49.25	1.2697	1.1271	0.9597	0.9247	14	14	11	11
1503	Pulmonary M>29.15 and M<39.05	1.5604	1.3851	1.1793	1.1364	16	16	13	13
1504	Pulmonary M<29.15	1.9923	1.7685	1.5058	1.4510	22	20	17	16
1601	Pain syndrome M>37.15	0.8341	0.8341	0.8080	0.7256	8	12	10	10
1602	Pain syndrome M>26.75 and M<37.15	1.1215	1.1215	1.0865	0.9756	10	16	14	13
1603	Pain syndrome M<26.75	1.4409	1.4409	1.3959	1.2535	11	20	17	16
1701	Major multiple trauma without brain or spinal cord injury M>39.25	1.0342	0.9632	0.8381	0.7368	12	12	11	10

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25	1.3447	1.2523	1.0896	0.9580	15	16	14	13
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05	1.5914	1.4820	1.2895	1.1337	17	19	16	15
1704	Major multiple trauma without brain or spinal cord injury M<25.55	2.0814	1.9383	1.6865	1.4827	25	24	20	18
1801	Major multiple trauma with brain or spinal cord injury M>40.85	1.1348	0.9797	0.8724	0.7321	16	12	12	10
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85	1.8183	1.5698	1.3980	1.1731	21	17	16	15
1803	Major multiple trauma with brain or spinal cord injury M<23.05	3.1861	2.7506	2.4495	2.0555	40	36	28	25
1901	Guillain Barre M>35.95	1.1154	1.1154	0.9512	0.8537	13	14	11	12
1902	Guillain Barre M>18.05 and M<35.95	2.1341	2.1341	1.8197	1.6332	23	23	22	20
1903	Guillain Barre M<18.05	3.2595	3.2595	2.7794	2.4946	26	28	32	31
2001	Miscellaneous M>49.15	0.8409	0.7437	0.6700	0.6014	11	10	9	8
2002	Miscellaneous M>38.75 and M<49.15	1.1329	1.0019	0.9025	0.8102	12	12	11	11

CMG	CMG Description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
2003	Miscellaneous M>27.85 and M<38.75	1.4437	1.2768	1.1502	1.0325	16	15	14	13
2004	Miscellaneous M<27.85	1.9274	1.7045	1.5355	1.3784	24	20	18	17
2101	Burns M>0	2.8363	2.1611	2.1611	1.7529	25	19	24	16
5001	Short-stay cases, length of stay is 3 days or fewer				0.1450				3
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.5356				7
5102	Expired, orthopedic, length of stay is 14 days or more				1.5816				20
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.7312				9
5104	Expired, not orthopedic, length of stay is 16 days or more				1.8759				23

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Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 2 shows how the application of the revisions for FY 2011 will affect particular CMG relative

weight values, which affect the overall distribution of payments within CMGs and tiers. Note that, because we are implementing the CMG relative weight revisions in a budget neutral manner (as described above), total estimated

aggregate payments to IRFs for FY 2011 will not be affected as a result of the CMG relative weight revisions. However, the revisions will affect the distribution of payments within CMGs and tiers.

Table 2: Distributional Affects of the Changes to the CMG Relative Weights (FY 2010 Values Compared With FY 2011 Values)

Percentage Change	Number of Cases Affected	Percentage of Cases Affected
Increased by 15% or more	167	0.0%
Increased by between 5% and 15%	2,780	0.7%
Changed by less than 5%	381,957	98.4%
Decreased by between 5% and 15%	2,898	0.7%
Decreased by 15% or more	175	0.0%

Note: Percentages do not sum to 100% due to rounding.

As Table 2 shows, over 98 percent of all IRF cases are in CMGs and tiers that will experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the revisions for FY 2011. The largest increase in the CMG relative weight values affecting the most cases is a 3.0 percent increase in the CMG relative weight value for CMG 0802—Replacement of Lower Extremity Joint, with a motor score between 37.05 and 49.55—in the “no comorbidity” tier. In the FY 2009 data, 12,149 IRF discharges were classified into this CMG and tier. We believe that the higher costs reported by IRFs for this CMG and tier in FY 2009, compared with the costs reported in FY 2008, may continue to reflect the IRF trend away from admitting lower-severity joint replacement cases in favor of higher-severity joint replacement cases. We believe that this may be evidence of a response, at least in part, to Medicare’s “60 percent” rule, and the increased focus on the medical review of IRF cases. As we said in the FY 2009 IRF PPS proposed rule (73 FR 22680), these policies likely increase the complexity of patients being admitted to IRFs, especially among the lower-extremity joint replacement cases with no comorbidities, which often do not meet the 60 percent rule criteria and have been the focus of a lot of the medical review activities.

The largest decrease in a CMG relative weight value affecting the most cases is a 0.5 percent decrease in the CMG relative weight for CMG A0110—Stroke, with motor score less than 22.35 and patient age less than 84.5 years—in the “no comorbidity” tier. In the FY 2009 IRF claims data, this change affects 16,829 cases. The decrease in the relative weight for CMG A0110 follows the same trend that is occurring in all 10 of the CMGs for stroke in the FY 2008 IRF cost report data and the FY 2009 IRF claims data that were used to update the CMG relative weights in this notice. That is, IRFs are reporting slightly lower costs for stroke patients that are classified into the “no comorbidity” tier and the next-lowest paying tier 3, with the relative weight values for CMG 0110 for FY 2011 decreasing by 0.5 percent in the “no comorbidity” tier and decreasing by 0.4 percent in tier 3, compared with FY 2010. At the same time, however, IRFs are reporting higher costs for stroke patients that are classified into the 2 highest-paying tiers—tiers 1 and 2—with the relative weight values for CMG 0110 for FY 2011 increasing by 6.5

percent and 1.8 percent in tiers 1 and 2, respectively, compared with FY 2010.

The changes in the average length of stay values for FY 2011, compared with the FY 2010 average length of stay values, are small and do not show any particular trends in IRF length of stay patterns.

IV. Updates to the Facility-Level Adjustment Factors

Section 1886(j)(3)(A)(v) of the Act confers broad authority upon the Secretary to adjust the per unit payment rate “by such * * * factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.” For example, we adjust the Federal prospective payment amount associated with a CMG to account for facility-level characteristics such as an IRF’s LIP percentage, teaching status, and location in a rural area, if applicable, as described in § 412.624(e). In the FY 2010 IRF PPS final rule (74 FR 39762), we updated the adjustment factors for calculating the rural, LIP, and teaching status adjustments based on the most recent three years worth of IRF claims data (at that time, FY 2006, FY 2007, and FY 2008) and the most recent available corresponding IRF cost report data. As discussed in the FY 2010 IRF PPS proposed rule (74 FR 21060 through 21061), we observed relatively large year-to-year fluctuations in the underlying data used to compute the adjustment factors, especially the teaching status adjustment factor. Therefore, we implemented a three-year moving average approach to updating the facility-level adjustment factors in the FY 2010 IRF PPS final rule (74 FR 39762) to provide greater stability and predictability of Medicare payments for IRFs. Each year, we review the major components of the IRF PPS to maintain and enhance the accuracy of the payment system. For FY 2010, we implemented a change to our methodology that was designed to decrease the IRF PPS volatility by using a three-year moving average to calculate the facility-level adjustment factors. This year, we are evaluating the effectiveness of the new methodology in stabilizing the IRF PPS rate structure. We plan to then, if necessary, propose further adjustments through a future rulemaking process.

V. FY 2011 IRF PPS Federal Prospective Payment Rates

A. Adjustment to the FY 2010 IRF PPS Federal Prospective Payment Rates, Reflecting Adjustments to the Rehabilitation, Psychiatric, and Long-Term Care Hospital (RPL) Market Basket Increase Factor in Accordance With Sections 3401(d) of the Patient Protection and Affordable Care Act (Affordable Care Act) as Amended by Section 10319 of the Same Act and by Section 1105(c) of the Health Care and Education Reconciliation Act of 2010

As discussed previously in this notice, sections 1886(j)(3)(C) and (D) of the Act require the increase factor to be reduced by 0.25 percentage point for FY 2010 and FY 2011. In accordance with paragraph (p) of section 3401 of the Affordable Care Act, the adjusted FY 2010 market basket increase factor is only applied to discharges on or after April 1, 2010. Thus, we revised the FY 2010 IRF Federal prospective payment rates for all IRF discharges occurring on or after April 1, 2010 to reflect an adjusted market basket increase factor of 2.25 percent, instead of the 2.5 percent market basket increase factor for FY 2010 that was published in the FY 2010 IRF PPS final rule (74 FR 39778). Revising the market basket increase factor for FY 2010 from 2.5 percent to 2.25 percent changes the FY 2010 standard payment conversion factor from the \$13,661 that was published in the FY 2010 IRF PPS final rule (74 FR 39780) to \$13,627. This change also affects the outlier threshold amount for FY 2010, as discussed further in section VI.A of this notice. The revised FY 2010 Federal prospective payment rates are available on the CMS Web site at http://www.cms.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage.

B. Market Basket Increase Factor and Labor-Related Share for FY 2011

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF Federal prospective payment rates for each FY. Sections 1886(j)(3)(C) and (D) of the Act require the application of a 0.25 percentage point reduction to the market basket increase factor for FYs 2010 and 2011. Thus, in this notice, we are updating the IRF PPS payments for FY 2011 by a market basket increase factor based upon the

most current data available, with a 0.25 percentage point reduction as required by section 1886(j)(3)(D)(i)(I) of the Act.

For this notice, we have used the same methodology described in the FY 2006 IRF PPS final rule (70 FR 47880 at 47908 through 47917) to compute the FY 2011 market basket increase factor and labor-related share. Using this method and the IHS Global Insight, Inc. forecast for the second quarter of 2010 of the 2002-based RPL market basket, the FY 2011 RPL market basket increase factor is 2.5 percent. IHS Global Insight is an economic and financial forecasting

firm that contracts with CMS to forecast the components of providers' market baskets.

In accordance with sections 1886(j)(3)(C) and (D) of the Act, a reduction of 0.25 percentage point is then applied to the FY 2011 RPL market basket increase factor of 2.5 percent. Thus, the adjusted RPL market basket increase factor is 2.25 percent for FY 2011.

Also, using the methodology described in the FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47917), we are updating the IRF labor-

related share for FY 2011. Using this method and the IHS Global Insight, Inc. forecast for the second quarter of 2010 of the 2002-based RPL market basket, the IRF labor-related share for FY 2011 is the sum of the FY 2011 relative importance of each labor-related cost category. This figure reflects the different rates of price change for these cost categories between the base year (FY 2002) and FY 2011. As shown in Table 3, the FY 2011 labor-related share is 75.271 percent.

Table 3: FY 2011 IRF RPL Labor-Related Share Relative Importance

Cost Category	FY 2011 IRF Labor-Related Share Relative Importance
Wages and salaries	52.449
Employee benefits	13.971
Professional fees	2.855
All other labor intensive services	2.109
SUBTOTAL:	71.384
Labor-related share of capital costs (.46)	3.887
TOTAL:	75.271

SOURCE: IHS GLOBAL INSIGHT, INC, 2nd QTR, 2010; Historical Data through 1st QTR, 2010.

C. Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities' costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act for a FY are made in a budget neutral manner.

In the FY 2009 IRF PPS final rule (73 FR 46378), we maintained the methodology described in the FY 2006 IRF PPS final rule to determine the wage index, labor market area definitions, and hold harmless policy consistent with the rationale outlined in the FY 2006 IRF PPS final rule (70 FR 47880, 47917 through 47933).

For FY 2011, we are maintaining the policies and methodologies described in the FY 2009 IRF PPS final rule relating to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we are using the Core-Based Statistical area (CBSA) labor market area definitions and the FY 2010 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2010 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost reporting periods beginning on or after October 1, 2005 and before October 1, 2006 (that is, 2006 cost report data).

The labor market designations made by the OMB include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We have used the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the FY 2011 IRF PPS wage index.

Additionally, we are incorporating the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current IRF PPS wage index. The changes were nominal and did not represent substantive changes to the CBSA-based designations. Specifically, OMB added or deleted certain CBSA numbers and revised certain titles. The OMB bulletins are available online at <http://www.whitehouse.gov/omb/bulletins/index.html>.

To calculate the wage-adjusted facility payment for the payment rates set forth in this notice, we multiply the unadjusted Federal payment rate for IRFs by the FY 2011 RPL labor-related share (75.271 percent) to determine the labor-related portion of the standard payment amount. We then multiply the labor-related portion by the applicable IRF wage index from the tables in the addendum to this notice. Table 1 is for urban areas, and Table 2 is for rural areas.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner. We calculate a

budget neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689), codified at § 412.624(e)(1), as described in the steps below. We use the listed steps to ensure that the FY 2011 IRF standard payment conversion factor reflects the update to the wage indexes (based on the FY 2006 hospital cost report data) and the labor-related share in a budget neutral manner:

Step 1. Determine the total amount of the estimated FY 2010 IRF PPS rates, using the FY 2010 standard payment conversion factor and the labor-related share and the wage indexes from FY 2010 (as published in the FY 2010 IRF PPS final rule (74 FR 39762)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the FY 2010 standard payment conversion factor and the FY 2011 labor-related share and CBSA urban and rural wage indexes.

Step 3. Divide the amount calculated in step 1 by the amount calculated in

step 2. The resulting quotient is the FY 2011 budget neutral wage adjustment factor of 1.0005.

Step 4. Apply the FY 2011 budget neutral wage adjustment factor from step 3 to the FY 2010 IRF PPS standard payment conversion factor after the application of the adjusted market basket update to determine the FY 2011 standard payment conversion factor.

We discuss the calculation of the standard payment conversion factor for FY 2011 in section V.D. of this notice.

D. Description of the IRF Standard Payment Conversion Factor and Payment Rates for FY 2011

To calculate the standard payment conversion factor for FY 2011, as illustrated in Table 4 below, we begin by applying the adjusted market basket increase factor for FY 2011 that was adjusted in accordance with sections 1886(j)(3)(C) and (D) of the Act (2.25 percent, or 2.5 percent less 0.25 percentage point), to the standard

payment conversion factor for FY 2010 (\$13,627). As described in section V.A of this notice, the adjusted standard payment conversion factor of \$13,627 for FY 2010 differs from the original FY 2010 standard payment conversion factor that was published in the FY 2010 IRF PPS final rule (74 FR 39778) because of the requirements of sections 1886(j)(3)(C) and (D) of the Act. Applying the 2.25 percent adjusted market basket increase factor for FY 2011 to the revised standard payment conversion factor for FY 2010 of \$13,627 yields a standard payment amount of \$13,934. Then, we apply the budget neutrality factor for the FY 2011 wage index and labor related share of 1.0005, which results in a standard payment amount of \$13,941. Then, we apply the budget neutrality factor for the revised CMG relative weights of 0.9942, which results in a standard payment amount of \$13,860 for FY 2011.

Table 4: Calculations to Determine the Final FY 2011 Standard Payment Conversion Factor

Explanation for Adjustment	Calculations
Standard Payment Conversion Factor for FY 2010	\$13,627
Market Basket Increase Factor for FY 2011 (2.5 percent), reduced by 0.25 percentage point in accordance with sections 1886(j)(3)(C) and (D) of the Act	x 1.0225
Budget Neutrality Factor for the Wage Index and Labor-Related Share	x 1.0005
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	x 0.9942
Final FY 2011 Standard Payment Conversion Factor	= \$13,860

After the application of the CMG relative weights described in section III

of this notice, the resulting unadjusted IRF prospective payment rates for FY

2011 are shown below in Table 5, "FY 2011 Payment Rates."

Table 5: FY 2011 Payment Rates

Table 5: FY 2011 Payment Rates				
CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	\$ 11,136.51	\$ 9,975.04	\$ 8,945.24	\$ 8,449.06
0102	\$ 13,744.96	\$12,311.84	\$11,040.88	\$10,428.26
0103	\$ 15,854.45	\$14,199.57	\$12,734.57	\$12,027.71
0104	\$ 17,176.70	\$15,384.60	\$13,796.24	\$13,031.17
0105	\$ 20,253.62	\$18,139.97	\$16,267.48	\$15,365.20
0106	\$ 23,161.45	\$20,745.65	\$18,602.89	\$17,571.71
0107	\$ 26,218.96	\$23,483.00	\$21,057.50	\$19,890.49
0108	\$ 31,844.74	\$28,522.49	\$25,577.24	\$24,159.37
0109	\$ 30,515.56	\$27,330.53	\$24,508.64	\$23,150.36
0110	\$ 38,595.94	\$34,568.23	\$30,999.28	\$29,280.64
0201	\$ 10,688.83	\$ 8,654.18	\$ 8,072.06	\$ 7,243.24
0202	\$ 14,432.42	\$11,683.98	\$10,899.50	\$ 9,779.62
0203	\$ 16,627.84	\$13,462.22	\$12,557.16	\$11,268.18
0204	\$ 18,688.82	\$15,130.96	\$14,113.64	\$12,665.27
0205	\$ 22,248.07	\$18,012.46	\$16,801.09	\$15,076.91
0206	\$ 28,004.13	\$22,673.57	\$21,148.97	\$18,977.11
0207	\$ 38,279.93	\$30,992.35	\$28,909.19	\$25,940.38
0301	\$ 15,027.01	\$13,137.89	\$11,808.72	\$10,875.94
0302	\$ 18,939.69	\$16,558.54	\$14,884.25	\$13,707.54
0303	\$ 22,550.22	\$19,714.46	\$17,720.01	\$16,320.15
0304	\$ 30,924.43	\$27,035.32	\$24,300.74	\$22,379.74
0401	\$ 11,534.29	\$10,378.37	\$10,263.33	\$ 9,203.04
0402	\$ 17,008.99	\$15,304.21	\$15,135.12	\$13,571.71
0403	\$ 28,607.04	\$25,740.79	\$25,456.66	\$22,824.65
0404	\$ 50,728.99	\$45,647.91	\$45,142.02	\$40,476.74
0405	\$ 38,612.57	\$34,744.25	\$34,358.94	\$30,808.01
0501	\$ 10,012.46	\$ 8,813.57	\$ 8,119.19	\$ 7,254.32
0502	\$ 13,920.98	\$12,256.40	\$11,290.36	\$10,087.31
0503	\$ 18,299.36	\$16,110.86	\$14,839.90	\$13,258.48
0504	\$ 21,751.88	\$19,148.98	\$17,639.62	\$15,760.21
0505	\$ 25,015.91	\$22,022.15	\$20,286.88	\$18,124.72
0506	\$ 35,620.20	\$31,358.25	\$28,887.01	\$25,808.71

Table 5: FY 2011 Payment Rates				
CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0601	\$ 14,142.74	\$11,573.10	\$10,256.40	\$ 9,162.85
0602	\$ 18,676.35	\$15,283.42	\$13,545.38	\$12,101.17
0603	\$ 23,663.18	\$19,363.81	\$17,161.45	\$15,331.93
0604	\$ 31,589.71	\$25,851.67	\$22,910.58	\$20,467.06
0701	\$ 12,307.68	\$10,900.89	\$10,483.70	\$ 9,302.83
0702	\$ 16,101.16	\$14,261.94	\$13,715.86	\$12,170.47
0703	\$ 19,480.23	\$17,254.31	\$16,593.19	\$14,724.86
0704	\$ 24,832.96	\$21,995.82	\$21,153.13	\$18,770.60
0801	\$ 7,810.11	\$ 7,810.11	\$ 7,293.13	\$ 6,623.69
0802	\$ 10,613.99	\$10,613.99	\$ 9,911.29	\$ 9,002.07
0803	\$ 14,514.19	\$14,514.19	\$13,553.69	\$12,309.07
0804	\$ 12,990.98	\$12,990.98	\$12,131.66	\$11,018.70
0805	\$ 16,342.33	\$16,342.33	\$15,261.25	\$13,860.00
0806	\$ 20,033.24	\$20,033.24	\$18,706.84	\$16,990.97
0901	\$ 11,822.58	\$10,131.66	\$ 9,444.20	\$ 8,418.56
0902	\$ 15,812.87	\$13,549.54	\$12,630.62	\$11,259.86
0903	\$ 20,480.92	\$17,550.92	\$16,360.34	\$14,583.49
0904	\$ 26,690.20	\$22,871.77	\$21,320.84	\$19,004.83
1001	\$ 12,686.06	\$12,550.23	\$11,349.95	\$10,042.96
1002	\$ 16,536.37	\$16,358.96	\$14,795.55	\$13,090.77
1003	\$ 24,533.59	\$24,271.63	\$21,950.08	\$19,422.02
1101	\$ 16,117.79	\$16,117.79	\$14,156.60	\$12,291.05
1102	\$ 22,493.39	\$22,493.39	\$19,754.66	\$17,151.75
1201	\$ 13,618.84	\$13,021.47	\$11,660.42	\$10,705.46
1202	\$ 16,899.50	\$16,159.37	\$14,469.84	\$13,284.81
1203	\$ 20,989.58	\$20,069.28	\$17,970.88	\$16,498.94
1301	\$ 12,098.39	\$12,098.39	\$11,948.71	\$10,848.22
1302	\$ 16,235.60	\$16,235.60	\$16,034.63	\$14,558.54
1303	\$ 21,273.71	\$21,273.71	\$21,008.99	\$19,074.13
1401	\$ 10,975.73	\$10,091.47	\$ 8,982.67	\$ 8,056.82
1402	\$ 15,139.28	\$13,920.98	\$12,390.84	\$11,112.95
1403	\$ 18,411.62	\$16,929.99	\$15,069.98	\$13,516.27
1404	\$ 23,963.94	\$22,034.63	\$19,614.67	\$17,591.11
1501	\$ 13,197.49	\$11,714.47	\$ 9,975.04	\$ 9,611.91

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1502	\$ 17,598.04	\$15,621.61	\$13,301.44	\$12,816.34
1503	\$ 21,627.14	\$19,197.49	\$16,345.10	\$15,750.50
1504	\$ 27,613.28	\$24,511.41	\$20,870.39	\$20,110.86
1601	\$ 11,560.63	\$11,560.63	\$11,198.88	\$10,056.82
1602	\$ 15,543.99	\$15,543.99	\$15,058.89	\$13,521.82
1603	\$ 19,970.87	\$19,970.87	\$19,347.17	\$17,373.51
1701	\$ 14,334.01	\$13,349.95	\$11,616.07	\$10,212.05
1702	\$ 18,637.54	\$17,356.88	\$15,101.86	\$13,277.88
1703	\$ 22,056.80	\$20,540.52	\$17,872.47	\$15,713.08
1704	\$ 28,848.20	\$26,864.84	\$23,374.89	\$20,550.22
1801	\$ 15,728.33	\$13,578.64	\$12,091.46	\$10,146.91
1802	\$ 25,201.64	\$21,757.43	\$19,376.28	\$16,259.17
1803	\$ 44,159.35	\$38,123.32	\$33,950.07	\$28,489.23
1901	\$ 15,459.44	\$15,459.44	\$13,183.63	\$11,832.28
1902	\$ 29,578.63	\$29,578.63	\$25,221.04	\$22,636.15
1903	\$ 45,176.67	\$45,176.67	\$38,522.48	\$34,575.16
2001	\$ 11,654.87	\$10,307.68	\$ 9,286.20	\$ 8,335.40
2002	\$ 15,701.99	\$13,886.33	\$12,508.65	\$11,229.37
2003	\$ 20,009.68	\$17,696.45	\$15,941.77	\$14,310.45
2004	\$ 26,713.76	\$23,624.37	\$21,282.03	\$19,104.62
2101	\$ 39,311.12	\$29,952.85	\$29,952.85	\$24,295.19
5001	\$ -	\$ -	\$ -	\$ 2,009.70
5101	\$ -	\$ -	\$ -	\$ 7,423.42
5102	\$ -	\$ -	\$ -	\$21,920.98
5103	\$ -	\$ -	\$ -	\$10,134.43
5104	\$ -	\$ -	\$ -	\$25,999.97

E. Example of the Methodology for Adjusting the Federal Prospective Payment Rates

Table 6 illustrates the methodology for adjusting the Federal prospective payments (as described in sections V.B through V.D of this notice). The examples below are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) appears in Table 5 above.

One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a disproportionate share hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0228), a wage index of 0.8529, and a rural adjustment of 18.4 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0666), a

wage index of 0.8964, and a teaching status adjustment of 0.0610.

To calculate each IRF's labor and non-labor portion of the Federal prospective payment, we begin by taking the unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) from Table 5 above. Then, we multiply the estimated labor-related share (75.271) described in section V.B of this notice by the unadjusted Federal prospective payment rate. To determine the non-labor portion of the Federal prospective payment rate, we subtract the labor portion of the Federal payment from the

unadjusted Federal prospective payment.

To compute the wage-adjusted Federal prospective payment, we multiply the labor portion of the Federal payment by the appropriate wage index found in the addendum in Tables 1 and 2. The resulting figure is the wage-adjusted labor amount. Next, we compute the wage-adjusted Federal

payment by adding the wage-adjusted labor amount to the non-labor portion.

Adjusting the wage-adjusted Federal payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted Federal prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching

status adjustment (if applicable), we multiply the teaching status adjustment (0.0610, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted Federal prospective payment rates. Table 6 illustrates the components of the adjusted payment calculation.

Table 6: Example of Computing the IRF FY 2011 Federal Prospective Payment

Steps		Rural Facility A (Spencer Co., IN)	Urban Facility B (Harrison Co., IN)
1	Unadjusted Federal Prospective Payment	\$29,280.64	\$ 29,280.64
2	Labor Share	X 0.75271	X 0.75271
3	Labor Portion of Federal Payment	= \$22,039.83	= \$22,039.83
4	CBSA Based Wage Index (shown in the Addendum, Tables 1 and 2)	X 0.8529	X 0.8964
5	Wage-Adjusted Amount	= \$18,797.77	= \$19,756.50
6	Nonlabor Amount	+ \$7,240.81	+ \$7,240.81
7	Wage-Adjusted Federal Payment	= \$26,038.58	= \$26,997.31
8	Rural Adjustment	X 1.184	X 1.000
9	Wage- and Rural- Adjusted Federal Payment	= \$30,829.68	= \$26,997.31
10	LIP Adjustment	X 1.0228	X 1.0666
11	FY 2011 Wage-, Rural- and LIP- Adjusted Federal Prospective Payment Rate	= \$31,532.60	= \$28,795.33
12	FY 2011 Wage- and Rural- Adjusted Federal Prospective Payment	\$30,829.68	\$26,997.31
13	Teaching Status Adjustment	X 0.000	X 0.0610
14	Teaching Status Adjustment Amount	= \$0.00	= \$1,646.84
15	FY2011 Wage-, Rural-, and LIP- Adjusted Federal Prospective Payment Rate	+ \$31,532.60	+ \$28,795.33
16	Total FY 2011 Adjusted Federal Prospective Payment	= \$31,532.60	= \$30,442.17

Thus, the adjusted payment for Facility A would be \$31,532.60 and the adjusted payment for Facility B would be \$30,442.17.

VI. Update to Payments for High-Cost Outliers Under the IRF PPS

A. Adjustment to the Outlier Threshold Amount for FY 2010, Reflecting the Adjustment to the FY 2010 RPL Market Basket in Accordance With Sections 3401(d) of the Patient Protection and Affordable Care Act (Affordable Care Act), as Amended by Section 10319 of the Same Act and by Section 1105(c) of the Health Care and Education Reconciliation Act of 2010

As discussed in section I.A of this notice, after publication of the FY 2010 IRF PPS final rule (74 FR 39762), Affordable Care Act amended section 1886(j)(3)(C) of the Act and added section 1886(j)(3)(D) which, in concert, required the application of a 0.25 percentage point reduction to the market basket increase factor for FY 2010. Notwithstanding these provisions, paragraph (p) of section 3401 of the Affordable Care Act provides that the adjusted FY 2010 rate is only to be applied to discharges occurring on or after April 1, 2010. Thus, based on the legislative change to the increase factor, we revised the FY 2010 Federal prospective payment rates for IRF discharges occurring on or after April 1, 2010.

In addition, the legislative change to the market basket increase factor for FY 2010 also affects the FY 2010 IRF outlier threshold amount because it reduces the FY 2010 RPL market basket increase factor, which changes the standard payment conversion factor for FY 2010. Specifically, the FY 2010 IRF outlier threshold amount was determined based on the estimated FY 2010 RPL market basket increase factor of 2.5 percent and the standard payment conversion factor of \$13,661. However, for FY 2010 IRF discharges occurring on or after April 1, 2010, IRF prospective payments are based on the adjusted RPL market basket increase factor of 2.25 percent and the revised standard payment conversion factor of \$13,627. In order to maintain estimated outlier payments in FY 2010 at the percentage adopted in our FY 2010 final rule, we revise the IRF outlier threshold amount for FY 2010 from \$10,652 that was published in the FY 2010 IRF PPS final rule (74 FR 39788) to \$10,721 for FY 2010 IRF discharges occurring on or after April 1, 2010. The outlier threshold amount of \$10,652 continues to apply for IRF discharges occurring on or after October 1, 2009 through March 31, 2010. The

revised IRF outlier threshold amount was computed using the same data and the same methodology as was used to compute the FY 2010 outlier threshold amount for the FY 2010 IRF PPS final rule (74 FR 39762).

B. Update to the Outlier Threshold Amount for FY 2011

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also, adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge (CCR) by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 through 2010 IRF PPS final rules (70 FR 47880, 70 FR 57166, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (FR 73 46287) that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2011 in this notice, we are using FY 2009 claims data and the

same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2010. Based on an analysis of this updated data, we estimate that IRF outlier payments as a percentage of total estimated payments are approximately 3.1 percent in FY 2010. Although we are still analyzing the reasons for this unexpected increase in outlier payments in the FY 2009 IRF claims data, we note that IPPS hospitals experienced about the same magnitude increase in outlier payments in FY 2009 (from 5.1 percent to 5.3 percent). Based on this updated analysis, we will update the FY 2011 outlier threshold amount to ensure that estimated FY 2011 outlier payments are approximately 3 percent of total estimated IRF payments. The outlier threshold amount of \$10,721 for discharges occurring on or after April 1, 2010 will be changed to \$11,410 in FY 2011 to reduce estimated outlier payments and thereby maintain estimated outlier payments at 3 percent of total estimated aggregate IRF payments for FY 2011.

C. Update to the IRF Cost-to-Charge Ratio Ceilings

In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR 45674, 45692 through 45694), we apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we are updating the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2011, in this notice based on analysis of the most recent data that is available. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2011, as discussed below.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2011, we estimate a national average CCR of 0.620 for rural IRFs, which we calculate by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we estimate a national average CCR of 0.489 for urban IRFs, which we calculate by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher costs factor more heavily

into the averages than the CCRs of IRFs with lower costs. For this notice, we have used the most recent available cost report data (FY 2008). This includes all IRFs whose cost reporting periods began on or after October 1, 2007, and before October 1, 2008. If, for any IRF, the FY 2008 cost report was missing or had an "as submitted" status, we used data from a previous fiscal year's (that is, FY 2004 through FY 2007) settled cost report for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care.

In addition, in accordance with past practice, we set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, the national CCR ceiling is set at 2.94 for FY 2011. This means that, if an individual IRF's CCR exceeds this ceiling of 2.94 for FY 2011, we would replace the IRF's CCR with the appropriate national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculate the national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as discussed above) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3 to compute a statistically significant reliable ceiling.

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

VII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VIII. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public

interest and we incorporate a statement of finding and its reasons in the notice. We find that it is unnecessary to undertake notice and comment rulemaking for the updates in this notice because the update does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. In addition, new sections 1886(j)(3)(C) and (D) of the Act require the application of an "Other Adjustment" to the update to the IRF PPS increase factor in FYs 2010 and 2011. We applied the statutorily-required adjustments in this notice. We find that notice and comment rulemaking is unnecessary to implement those statutory provisions because they are self-implementing provisions of law, not requiring the exercise of any discretion on the part of the Secretary. Therefore, under 5 U.S.C. 553(b)(3)(B), for good cause, we waive notice and comment procedures.

IX. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 30, 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA, September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for a major notice with economically significant effects (\$100 million or more in any one year). We estimate that this notice is economically significant, as measured by the \$100 million threshold and hence also a major rule under the Congressional Review Act. To estimate the total impact of the updates described in this notice, we compare the FY 2011 estimated payments with the revised FY 2010 estimated payments. The revised FY 2010 estimated payments reflect the revised Federal prospective payment rates and outlier threshold amount that applied to IRF discharges occurring on or after April 1, 2010, in accordance with sections 1886(j)(3)(C) and (D) of the Act, as

described in sections V.A and VI.A of this notice. Based on this analysis, we estimate that the total impact of these updates on FY 2011 IRF PPS payments will be an increase of approximately \$135 million.

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IRFs and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$7 million to \$34.5 million in any one year. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432 at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf, November 17, 2000.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,200 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 7, we estimate that the net revenue impact of this notice on all IRFs is to increase estimated payments by approximately 2.16 percent, with only one category of IRFs (32 urban IRFs in the New England region) estimated to receive an increase in estimated payments of greater than 3 percent (3.19 percent). Thus, we do not anticipate that this notice would have a significant impact on a substantial number of small entities. Medicare fiscal intermediaries, Medicare Administrative Contractors, and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As discussed in

detail below, the rates and policies set forth in this notice will not have an adverse impact on rural hospitals based on the data of the 182 rural units and 21 rural hospitals in our database of 1,171 IRFs for which data were available.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-04, enacted on March 22, 1995) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold level is approximately \$135 million. This notice will not impose spending costs on State, local, or tribal governments, in the aggregate, or by the private sector, of \$135 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this notice will not have a substantial effect on State and local governments, preempt State law, or otherwise have a Federalism implication.

B. Anticipated Effects of the Notice

1. Basis and Methodology of Estimates

This notice sets forth updates to the IRF PPS rates contained in the FY 2010 final rule, as revised by sections 1886(j)(3)(C) and (D) of the Act for IRF discharges occurring on or after April 1, 2010, as described in sections V.A and VI.A of this notice. Specifically, this notice sets forth updates to the CMG relative weights and length of stay values, the wage index, and the outlier threshold for high-cost cases. This notice also implements a 0.25 percentage point reduction to the FY 2011 RPL market basket increase factor in accordance with sections 1886(j)(3)(C) and (D) of the Act.

We estimate that the FY 2011 impact will be a net increase of \$135 million in payments to IRF providers. The impact analysis in Table 7 of this notice represents the projected effects of the updates to IRF PPS payments for FY 2011 compared with the revised estimated IRF PPS payments in FY 2010. The revised FY 2010 estimated payments reflect the revised Federal prospective payment rates and outlier threshold amount that applied to IRF discharges occurring on or after April 1, 2010, in accordance with sections 1886(j)(3)(C) and (D) of the Act, as described in sections V.A and VI.A of

this notice. We determine the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. Although some of these changes may not necessarily be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2011, we are implementing standard annual revisions described in this notice (for example, the update to the wage and market basket indexes used to adjust the Federal rates). We are also implementing a 0.25 percentage point reduction to the FY 2011 RPL market basket increase factor in accordance with sections 1886(j)(3)(C) and (D) of the Act. We estimate that these revisions will increase payments to IRFs by approximately \$140 million.

The aggregate change in estimated payments associated with this notice is an increase in payments to IRFs of \$135 million for FY 2011. We estimate that the application of the FY 2011 RPL market basket increase factor, as reduced by 0.25 percentage point in accordance with sections 1886(j)(3)(C) and (D) of the Act, will increase aggregate payments to IRFs by \$140 million. However, we estimate a \$5 million decrease in aggregate payments to IRFs due to the update to the outlier threshold amount to decrease estimated outlier payments from approximately 3.1 percent in FY 2010 to 3.0 percent in FY 2011. Taken together, these updates will result in a net change in estimated payments from FY 2010 to FY 2011 of \$135 million.

The effects of the changes that impact IRF PPS payment rates are shown in Table 7. The following changes that affect the IRF PPS payment rates are discussed separately below:

- The effects of the update to the outlier threshold amount, from approximately 3.1 percent to 3.0 percent

of total estimated payments for FY 2011, consistent with section 1886(j)(4) of the Act.

- The effects of the annual market basket update (using the RPL market basket) to IRF PPS payment rates, as required by section 1886(j)(3)(A)(i) and section 1886(j)(3)(C) of the Act, including the 0.25 percentage point reduction for FY 2011 in accordance with sections 1886(j)(3)(C) and (D) of the Act.

- The effects of applying the budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act.

- The effects of the budget-neutral changes to the CMG relative weights and average length of stay values, under the authority of section 1886(j)(2)(C)(i) of the Act.

- The total change in estimated payments based on the FY 2011 payment updates relative to the revised estimated FY 2010 payments. The revised FY 2010 estimated payments reflect the adjusted Federal prospective payment rates and outlier threshold amount that apply to IRF discharges occurring on or after April 1, 2010, in accordance with sections 1886(j)(3)(C) and (D) of the Act.

2. Description of Table 7

The table below categorizes IRFs by geographic location, including urban or rural location, and location with respect to CMS's nine census divisions (as defined on the cost report) of the country. In addition, the table divides IRFs into those that are separate rehabilitation hospitals (otherwise called freestanding hospitals in this section), those that are rehabilitation units of a hospital (otherwise called hospital units in this section), rural or urban facilities, ownership (otherwise called for-profit, non-profit, and government), and by teaching status. The top row of the table shows the overall impact on the 1,171 IRFs included in the analysis.

The next 12 rows of Table 7 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 968 IRFs located in urban areas included in our analysis. Among these, there are 768 IRF units of hospitals located in urban areas and 200 freestanding IRF hospitals located in urban areas. There are 203

IRFs located in rural areas included in our analysis. Among these, there are 182 IRF units of hospitals located in rural areas and 21 freestanding IRF hospitals located in rural areas. There are 382 for-profit IRFs. Among these, there are 317 IRFs in urban areas and 65 IRFs in rural areas. There are 721 non-profit IRFs. Among these, there are 597 urban IRFs and 124 rural IRFs. There are 68 government-owned IRFs. Among these, there are 54 urban IRFs and 14 rural IRFs.

The remaining three parts of Table 7 show IRFs grouped by their geographic location within a region and by teaching status. First, IRFs located in urban areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. Second, IRFs located in rural areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. Finally, IRFs are grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and

IRFs with an intern and resident to ADC ratio greater than 19 percent.

The estimated impacts of each payment update described in this notice to the facility categories listed above are shown in the columns of Table 7. The description of each column is as follows:

Column (1) shows the facility classification categories described above.

Column (2) shows the number of IRFs in each category in our FY 2009 analysis file.

Column (3) shows the number of cases in each category in our FY 2009 analysis file.

Column (4) shows the estimated effect of the adjustment to the outlier threshold amount.

Column (5) shows the estimated effect of the update to the IRF PPS payment rates, which includes a 2.5 percent market basket increase factor with the 0.25 percentage point reduction in accordance with sections 1886(f)(3)(C) and (D) of the Act.

Column (6) shows the estimated effect of the update to the IRF labor-related share and wage index, in a budget neutral manner.

Column (7) shows the estimated effect of the update to the CMG relative weights and average length of stay values, in a budget neutral manner.

Column (8) compares our estimates of the payments per discharge,

incorporating all of the payment updates reflected in this notice for FY 2011 to our estimates of the revised payments per discharge in FY 2010. The revised FY 2010 estimated payments reflect the revised Federal prospective payment rates and outlier threshold amount that became effective for IRF discharges occurring on or after April 1, 2010, in accordance with sections 1886(j)(3)(C) and (d) of the Act, as described in sections V.A and VI.A of this notice.

The average estimated increase for all IRFs is approximately 2.16 percent. This estimated net increase includes the effects of the RPL market basket increase factor for FY 2011 of 2.5 percent, reduced by 0.25 percentage point in accordance with sections 1886(j)(3)(C) and (D) of the Act. It also includes the approximate 0.1 percent overall estimated decrease in estimated IRF outlier payments from the update to the outlier threshold amount. Since we are making the updates to the IRF wage index and the CMG relative weights in a budget-neutral manner, they will not affect total estimated IRF payments in the aggregate. However, as described in more detail in each section, they will affect the estimated distribution of payments among providers.

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Table 7: IRF Impact Table for FY 2011

Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	Outlier (4)	Adjusted Market Basket Increase Factor for FY 2011 ¹ (5)	FY2011 CBSA wage index and labor-share (6)	CMG (7)	Total Percent Change (8)
Total	1,171	391,708	-0.09	2.25	0.00	0.00	2.16
Urban unit	768	201,038	-0.12	2.25	0.06	0.01	2.20
Rural unit	182	29,245	-0.11	2.25	-0.22	0.12	2.03
Urban hospital	200	154,454	-0.04	2.25	-0.03	-0.03	2.15
Rural hospital	21	6,971	-0.06	2.25	0.03	-0.06	2.15
Urban For-Profit	317	144,735	-0.06	2.25	0.03	-0.04	2.19
Rural For-Profit	65	13,366	-0.09	2.25	-0.19	0.02	1.98
Urban Non-Profit	597	196,217	-0.11	2.25	0.00	0.02	2.16
Rural Non-Profit	124	20,780	-0.11	2.25	-0.17	0.12	2.09
Urban Government	54	14,540	-0.14	2.25	0.22	-0.06	2.27
Rural Government	14	2,070	-0.13	2.25	-0.12	0.10	2.08
Urban	968	355,492	-0.09	2.25	0.02	-0.01	2.17
Rural	203	36,216	-0.10	2.25	-0.17	0.08	2.05
Urban by region							
Urban New England	32	16,316	-0.08	2.25	0.94	0.05	3.19
Urban Middle Atlantic	144	66,550	-0.06	2.25	-0.14	0.08	2.13
Urban South Atlantic	129	62,166	-0.08	2.25	-0.05	-0.05	2.07
Urban East North Central	191	57,111	-0.11	2.25	-0.10	0.09	2.12

Facility Classification	Number of IRFs	Number of cases	Outlier	Adjusted Market Basket Increase Factor for FY 2011 ¹	FY2011 CBSA wage index and labor-share	CMG	Total Percent Change
Urban East South Central	51	25,818	-0.05	2.25	0.07	-0.10	2.17
Urban West North Central	75	18,057	-0.12	2.25	0.36	-0.02	2.47
Urban West South Central	173	63,217	-0.08	2.25	-0.33	0.03	1.85
Urban Mountain	70	22,899	-0.10	2.25	0.87	-0.09	2.95
Urban Pacific	103	23,358	-0.14	2.25	0.01	-0.28	1.82
Rural by region							
Rural New England	6	1,494	-0.15	2.25	-1.22	0.06	0.92
Rural Middle Atlantic	17	3,390	-0.05	2.25	-0.13	0.14	2.21
Rural South Atlantic	27	5,991	-0.10	2.25	-0.42	0.02	1.74
Rural East North Central	35	6,492	-0.09	2.25	-0.30	0.10	1.94
Rural East South Central	21	3,935	-0.07	2.25	0.23	-0.01	2.41
Rural West North Central	33	4,328	-0.15	2.25	-0.04	0.20	2.25
Rural West South Central	51	9,466	-0.10	2.25	-0.04	0.12	2.22
Rural Mountain	8	705	-0.16	2.25	0.72	0.00	2.82
Rural Pacific	5	415	-0.41	2.25	-0.09	-0.30	1.43
Teaching Status							
Non-teaching	1,049	338,210	-0.09	2.25	0.04	0.00	2.20
Resident to ADC	73	38,436	-0.10	2.25	-0.32	-0.03	1.80

Facility Classification	Number of IRFs	Number of cases	Outlier	Adjusted Market Basket Increase Factor for FY 2011 ¹	FY2011 CBSA wage index and labor-share	CMG	Total Percent Change
less than 10%							
Resident to ADC 10%-19%	33	11,754	-0.13	2.25	0.25	-0.05	2.33
Resident to ADC greater than 19%	16	3,308	-0.08	2.25	0.03	0.13	2.33

¹This column reflects the impact of the RPL market basket increase factor for FY 2011 of 2.5 percent, reduced by 0.25 percentage point in accordance with sections 1886(f)(3)(C) and (D) of the Act.

3. Impact of the Update to the Outlier Threshold Amount

The outlier threshold adjustment is presented in column 4 of Table 7. In the FY 2010 IRF PPS final rule (74 FR 39786 through 39788), we used FY 2008 IRF claims data (the best, most complete data available at that time) to set the outlier threshold amount for FY 2010 so that estimated outlier payments would equal 3 percent of total estimated payments for FY 2010. As discussed in section VI.A of this notice, we revised the outlier threshold amount for IRF discharges occurring on or after April 1, 2010 to reflect the reduction to the RPL market basket that was made in accordance with sections 1886(j)(3)(C) and (D) of the Act and to ensure that estimated IRF outlier payments for FY 2010 would continue to equal 3 percent of total estimated payments for FY 2010. This revised analysis was done using the same data and the same methodology that was used to set the FY 2010 outlier threshold amount for the FY 2010 IRF PPS final rule (74 FR 39786 through 39788).

However, for this notice, we are updating our analysis using FY 2009 IRF claims data and, based on this updated analysis, we estimate that IRF outlier payments as a percentage of total estimated IRF payments are 3.1 percent in FY 2010. Thus, we are adjusting the outlier threshold amount in this notice to set total estimated outlier payments equal to 3 percent of total estimated payments in FY 2011. The estimated change in total IRF payments for FY 2011, therefore, includes an approximate 0.1 percent decrease in payments because the estimated outlier portion of total payments is estimated to decrease from approximately 3.1 percent to 3 percent.

The impact of this outlier adjustment update (as shown in column 4 of Table 7) is to decrease estimated overall payments to IRFs by about 0.09 percent. We do not estimate that any group of IRFs will experience an increase in payments from this update. We estimate the largest decrease in payments to be a 0.41 percent decrease in estimated payments to rural IRFs in the Pacific region, which is due to the small number of IRFs in that region (5) and the high volume of outlier payments paid to those IRFs.

4. Impact of the Market Basket Update to the IRF PPS Payment Rates, Including the 0.25 Percentage Point Reduction to the RPL Market Basket Increase Factor in Accordance with Sections 1886(j)(3)(C) and (D) of the Act

The adjusted market basket update to the IRF PPS payment rates is presented in column 5 of Table 7. In the aggregate the update would result in a net 2.25 percent increase in overall estimated payments to IRFs. This net increase reflects the estimated RPL market basket increase factor for FY 2011 of 2.5 percent, and the 0.25 percentage point reduction to the RPL market basket increase factor in accordance with sections 1886(j)(3)(C) and (D) of the Act.

5. Impact of the CBSA Wage Index and Labor-Related Share

In column 6 of Table 7, we present the effects of the budget neutral update of the wage index and labor-related share. The changes to the wage index and the labor-related share are discussed together because the wage index is applied to the labor-related share portion of payments, so the changes in the two have a combined effect on payments to providers. As discussed in section V.B of this notice, the labor-related share decreased from 75.779 percent in FY 2010 to 75.271 percent in FY 2011.

In the aggregate, since these updates to the wage index and the labor-related share are applied in a budget-neutral manner as required under section 1886(j)(6) of the Act, we do not estimate that these updates will affect overall estimated payments to IRFs. However, we estimate that these updates will have small distributional effects. For example, we estimate the largest increase in estimated payments from the update to the CBSA wage index and labor-related share to be a 0.94 percent increase for urban IRFs in the New England region. In addition, we estimate a 0.17 percent decrease in overall payments to rural IRFs, with the largest decrease in estimated payments of 1.22 percent for rural IRFs in the New England region.

6. Impact of the Update to the CMG Relative Weights and Average Length of Stay Values

In column 7 of Table 7, we present the effects of the budget neutral update of the CMG relative weights and average length of stay values. In the aggregate we do not estimate that these updates will affect overall estimated payments to IRFs. However, we estimate that these updates will have small distributional effects, with the largest decrease in

payments as a result of these updates being a 0.30 percent decrease to rural IRFs in the Pacific region and the largest increase in payments as a result of these updates being a 0.20 percent increase to rural IRFs in the West North Central region.

C. Alternatives Considered

Because we have determined that this notice would have a significant economic impact on IRFs and on a substantial number of small entities, we will discuss the alternative changes to the IRF PPS that we considered.

Section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services. Thus, we did not consider alternatives to updating payments using the estimated RPL market basket increase factor for FY 2011. However, as noted previously in this notice, sections 1886(j)(3)(C) and (D) of the Act require the Secretary to apply a 0.25 percentage point reduction to the market basket increase factor for FY 2011. Thus, in accordance with the recently amended section 1886(j)(3)(C) of the Act, we are updating IRF Federal prospective payments in this notice by 2.25 percent (which equals the 2.5 percent estimated RPL market basket increase factor for FY 2011 reduced by 0.25 percentage points, as required by sections 1886(f)(3)(C) and (D) of the Act).

We considered maintaining the existing CMG relative weights and average length of stay values for FY 2011. However, in light of recently available data and our desire to ensure that the CMG relative weights and average length of stay values are as reflective as possible of recent changes in IRF utilization and case mix, we believe that it is appropriate to update the CMG relative weights and average length of stay values at this time to ensure that IRF PPS payments continue to reflect as accurately as possible the current costs of care in IRFs.

We considered maintaining the existing outlier threshold amount for FY 2011 because updating the outlier threshold amount has an estimated negative effect on IRF payments and, therefore, on small entities. If we were to maintain the FY 2010 outlier threshold amount, more outlier cases would have qualified for the additional outlier payments in FY 2011. However, analysis of updated FY 2009 data indicates that estimated outlier payments would exceed 3 percent of total estimated payments for FY 2011 unless we updated the outlier threshold

amount. Also, we estimate that the overall effect of this update on estimated payments to IRFs is small (less than 1 percent).

D. Accounting Statement

As required by OMB Circular A-4 (available at <http://>

www.whitehouse.gov/omb/circulars/a004/a-4.pdf), in Table 8 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this notice. This table provides our best estimate of the

increase in Medicare payments under the IRF PPS as a result of the updates presented in this notice based on the data for 1,171 IRFs in our database. All estimated expenditures are classified as transfers to Medicare providers (that is, IRFs).

Table 8.--Accounting Statement: Classification of Estimated Expenditures, from the 2010 IRF PPS Fiscal Year to the 2011 IRF PPS Fiscal Year

Category	Transfers
Annualized Monetized Transfers	\$135 million
From Whom to Whom?	Federal Government to IRF Medicare Providers

E. Conclusion

Overall, the estimated payments per discharge for IRFs in FY 2011 are projected to increase by 2.16 percent, compared with the revised estimated payments in FY 2010, as reflected in column 8 of Table 7. As noted previously, the revised FY 2010 estimated payments reflect the revised Federal prospective payment rates and outlier threshold amount that became effective for IRF discharges occurring on or after April 1, 2010, in accordance with sections 1886(j)(3)(C) and (D) of the Act, as described in sections V.A and VI.A of this notice. IRF payments per discharge are estimated to increase 2.17 percent in urban areas and 2.05 percent in rural areas, compared with the

revised estimated FY 2010 payments. Payments to rehabilitation units in rural areas are estimated to increase by 2.03 percent per discharge, and payments to rehabilitation units in urban areas are estimated to increase by 2.20 percent per discharge. Payments to rehabilitation freestanding hospitals in rural and urban areas are estimated to increase 2.15 percent per discharge.

Overall, no IRFs are estimated to experience a net decrease in payments as a result of the updates in this notice. The largest payment increase is estimated at 3.19 percent for urban IRFs located in the New England region. This is due to the larger than average positive effect of the FY 2011 CBSA wage index and labor-related share updates for urban IRFs in this region.

In accordance with the provisions of Executive Order 12866, this Notice was reviewed by the Office of Management and Budget.

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: May 13, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Approved: July 14, 2010.

Kathleen Sebelius,

Secretary.

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Addendum

In this addendum, we provide the wage index tables referred to throughout the preamble to this notice. The tables presented below are as follows:

Table A: FY 2011 Wage Index For Urban Areas Based On CBSA Labor Market Areas.

Table B: FY 2008 Wage Index Based On CBSA Labor Market Areas For Rural Areas.

TABLE A: FY 2011 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.7946
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3462
10420	Akron, OH Portage County, OH Summit County, OH	0.8850
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8899

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8777
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9399
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8012
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA Altoona, PA	0.9611
11020	Altoona, PA Blair County, PA	0.8863
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.8689
11180	Ames, IA Story County, IA	0.9493
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.2013
11300	Anderson, IN Madison County, IN	0.9052
11340	Anderson, SC Anderson County, SC	0.9023
11460	Ann Arbor, MI Washtenaw County, MI	1.0293
11500	Anniston-Oxford, AL Calhoun County, AL	0.7643
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9289

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9409
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9518
12540	Bakersfield, CA Kern County, CA	1.1232
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0214
12620	Bangor, ME Penobscot County, ME	1.0154
12700	Barnstable Town, MA Barnstable County, MA	1.2618
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8180
12980	Battle Creek, MI Calhoun County, MI	1.0000
13020	Bay City, MI Bay County, MI	0.9267

CBSA Code	Urban Area (Constituent Counties)	Wage Index
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9057
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9492
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9591
12100	Atlantic City-Hammonton, NJ Atlantic County, NJ	1.1554
12220	Auburn-Opelika, AL Lee County, AL	0.8138

CBSA Code	Urban Area (Constituent Counties)	Wage Index
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.2186
14500	Boulder, CO Boulder County, CO	1.0266
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8469
14600	Bradenton-Sarasota-Venice, FL Manatee County, FL Sarasota County, FL	0.9735
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0755
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2792
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9020
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9178
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9740
15500	Burlington, NC Alamance County, NC	0.8749
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	1.0106
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1278
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0374
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8813

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8383
13380	Bellingham, WA Whatcom County, WA	1.1395
13460	Bend, OR Deschutes County, OR	1.1446
13644	Bethesda-Fredrick-Rockville, MD Frederick County, MD Montgomery County, MD	1.0298
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8781
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8780
13820	Birmingham-Hoover, AL Bibb County, AL Bibb County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8554
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7637
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8394
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.9043
14060	Bloomington-Normal, IL McLean County, IL	0.9378
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9318

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN Cheyenne, WY Laramie County, WY	0.8831
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0471
17020	Chico, GA Butte County, CA	1.1198
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9483
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN Cleveland, TN Bradley County, TN Polk County, TN	0.7980
17420		0.7564

CBSA Code	Urban Area (Constituent Counties)	Wage Index
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9076
16020	Cape Girardeau-Jackson, MO-IL Alexander County, IL Bollinger County, MO Cape Girardeau County, MO	0.9047
16180	Carson City, NV Carson City, NV	1.0531
16220	Casper, WY Natrona County, WY	0.9520
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8984
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	1.0108
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8141
16700	Charleston-North Charleston-Summerville, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9279
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9474
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9372

CBSA Code	Urban Area (Constituent Counties)	Wage Index
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX Corvallis, OR Benton County, OR	0.8693 1.1002
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8045
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	0.9853
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8666
19180	Danville, IL Vermillion County, IL	0.8738
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8323
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.8284 0.7799
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7995
19500	Decatur, IL Macon County, IL	0.7995
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.8865

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.8914
17660	Coeur d'Alene, ID Kootenai County, ID	0.9235
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9498
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9821
17860	Columbia, MO Boone County, MO Howard County, MO	0.8618
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8789
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscookee County, GA	0.8724
18020	Columbus, IN Bartholomew County, IN	0.9536
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0101

CBSA Code	Urban Area (Constituent Counties)	Wage Index
20940	El Centro, CA Imperial County, CA	0.8766
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8388
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9489
21300	Elmira, NY Chemung County, NY	0.8341
21340	El Paso, TX El Paso County, TX	0.8541
21500	Erie, PA Erie County, PA	0.8779
21660	Eugene-Springfield, OR Lane County, OR	1.1034
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8522
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1114
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.3790
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8172
22140	Farmington, NM San Juan County, NM	0.7889
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9358
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8775

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19740	Denver-Aurora-Broomfield, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0731
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9649
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9729
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7406
20100	Dover, DE Kent County, DE	0.9931
20220	Dubuque, IA Dubuque County, IA	0.8869
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0448
20500	Durham-Chapel Hill, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9618
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9567
20764	Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1061

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23580	Gainesville, GA Hall County, GA	0.9123
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN Glens Falls, NY Warren County, NY Washington County, NY Goldsboro, NC Wayne County, NC	0.9288
24020	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.8456
24140	Mesa Junction, CO	0.9056
24220	Mesa County, CO	0.7775
24300	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9721
24340	Great Falls, MT Cascade County, MT	0.8354
24540	Greeley, CO Weld County, CO	0.9578
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9621
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9062
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9401
24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9980

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22380	Flagstaff, AZ Coconino County, AZ	1.2475
22420	Flint, MI Genesee County, MI	1.1234
22500	Florence, SC Darlington County, SC Florence County, SC	0.8114
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7998
22540	Fond du Lac, WI Fond du Lac County, WI	0.9660
22660	Fort Collins-Loveland, CO Larimer County, CO	1.0175
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0383
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7861
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8758
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9012
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9499
23420	Fresno, CA Fresno County, CA	1.1267
23460	Gadsden, AL Etowah County, AL	0.8266
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.8978

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26380	Kouma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7875
26420	Houston-Sugar Land-Baytown, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	0.9841
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9097
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9064
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9436
26900	Indianapolis-Carmel, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	0.9742
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9548
27060	Ithaca, NY Tompkins County, NY	1.0112
27100	Jackson, MI Jackson County, MI	0.8720

CBSA Code	Urban Area (Constituent Counties)	Wage Index
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3537
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8783
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.8965
25260	Hanford-Corcoran, CA Kings County, CA	1.1010
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9286
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9025
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.1194
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7664
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9000
25980	Hinesville-Fort Stewart, GA ¹ Liberty County, GA Long County, GA	0.9028
26100	Holland-Grand Haven, MI Ottawa County, MI	0.8696
26180	Honolulu, HI Honolulu County, HI	1.1662
26300	Hot Springs, AR Garland County, AR	0.9004

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	0.9679
28420	Kennwick-Pasco-Richland, WA Benton County, WA Franklin County, WA	1.0448
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8702
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7999
28740	Kingston, NY Ulster County, NY	0.9367
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.7881
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9862
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9915

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8186
27180	Jackson, TN Chester County, TN Madison County, TN	0.8581
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9105
27340	Jacksonville, NC Onslow County, NC	0.8026
27500	Janesville, WI Rock County, WI	0.9201
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8709
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.7722
27780	Johnstown, PA Cambria County, PA	0.8233
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7722
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8285
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0264
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0174

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30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9085
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.8889
30620	Lima, OH Allen County, OH	0.9379
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.9563
30780	Little Rock-North Little Rock-Conway, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8559
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.8993
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8049
31020	Longview, WA Cowlitz County, WA	1.0707
31084	Los Angeles-Long Beach-Santa Ana, CA Los Angeles County, CA	1.2039

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29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9181
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8516
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7985
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0475
29420	Lake Havasu City-Kingman, AZ Mohave County, AZ	1.0567
29460	Lakeland-Winter Haven, FL Polk County, FL	0.8390
29540	Lancaster, PA Lancaster County, PA	0.9204
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	0.9770
29700	Laredo, TX Webb County, TX	0.8078
29740	Las Cruces, NM Dona Ana County, NM	0.8939
29820	Las Vegas-Paradise, NV Clark County, NV	1.2130
29940	Lawrence, KS Douglas County, KS	0.8580
30020	Lawton, OK Comanche County, OK	0.7847
30140	Lebanon, PA Lebanon County, PA	0.8119
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9570

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31900	Mansfield, OH Richland County, OH	0.9100
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3704
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.8852
32780	Medford, OR Jackson County, OR	1.0070
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9268
32900	Merced, CA Merced County, CA	1.2123
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	0.9954
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9311
33260	Midland, TX Midland County, TX	0.9546
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0151

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31140	Louisville-Jefferson County, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY Trimble County, KY	0.8964
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8751
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8521
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9826
31460	Madera-Chowchilla, CA Madera County, CA	0.7958
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.1234
31700	Manchester-Nashua, NH Hillsborough County, NH	1.0171
31740	Manhattan, KS Geary County, KS Pottawatomie County, KS Riley County, KS	0.7878
31860	Mankato-North Mankato, MN Blue Earth County, MN Nicollet County, MN	0.9177

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34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9823
34820	Myrtle Beach-North Myrtle Beach-Conway, SC Horry County, SC	0.8730
34900	Napa, CA Napa County, CA	1.4453
34940	Naples-Marco Island, FL Collier County, FL	0.9662
34980	Nashville-Davidson--Murfreesboro--Franklin, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	0.9689
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2477
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA New Haven-Milford, CT New Haven County, CT	1.1419
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.9092

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33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1095
33540	Missoula, MT Missoula County, MT	0.9206
33660	Mobile, AL Mobile County, AL	0.7785
33700	Modesto, CA Stanislaus County, CA	1.2502
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7752
33780	Monroe, MI Monroe County, MI	0.8885
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8304
34060	Morgantown, WV Morgantown County, WV Preston County, WV	0.8459
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7201
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0452
34620	Muncie, IN Delaware County, IN	0.8386

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36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9608
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.8951
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9152
36980	Owensboro, KY Davies County, KY Hancock County, KY McLean County, KY	0.8357
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.2301
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9060
37380	Palm Coast, FL Flagler County, FL	0.9603
37460	Panama City-Lynn Haven-Panama City Beach, FL Bay County, FL	0.8324
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.7716
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8433
37764	Peabody, MA Essex County, MA	1.0871
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8312

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35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.3005
35660	Niles-Benton Harbor, MI Berrien County, MI	0.8903
35980	Norwich-New London, CT New London County, CT	1.1399
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.6404
36100	Ocala, FL Marion County, FL	0.8556
36140	Ocean City, NJ Cape May County, NJ	1.0160
36220	Odessa, TX Ector County, TX	0.9862
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9361
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McCain County, OK Oklahoma County, OK	0.8900
36500	Olympia, WA Thurston County, WA	1.1531

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1498
38940	Fort St. Lucie, FL Martin County, FL St. Lucie County, FL	0.9896
39100	Foughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.1216
39140	Prescott, AZ Yavapai County, AZ	1.0121
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI Provo-Orem, UT Juab County, UT Utah County, UT Pueblo County, CO	1.0782
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9548
39380	Pueblo County, CO	0.8570
39460	Punta Gorda, FL Charlotte County, FL	0.8774
39540	Racine, WI Racine County, WI	0.9373
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9663
39660	Rapid City, SD Meade County, SD Pennington County, SD	1.0046
39740	Reading, PA Berks County, PA	0.9263

CBSA Code	Urban Area (Constituent Counties)	Wage Index
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9155
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0739
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0630
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.7281
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8625
38340	Pittsfield, MA Berkshire County, MA	1.0658
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9239
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4220
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0187

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40420	Rockford, IL Boone County, IL Winnebago County, IL	1.0152
40484	Rockingham County, NH Rockingham County, NH Strafford County, NH	1.0125
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.8845
40660	Rome, GA Floyd County, GA	0.8915
40900	Sacramento-Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.4073
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.9122
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.1107
41100	St. George, UT Washington County, UT	0.9236
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0189

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39820	Redding, CA Shasta County, CA	1.4039
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0285
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9521
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1285
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8671
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1136
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8724

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41780	Sandusky, OH Erie County, OH	0.8888
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5874
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4740
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.6404

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.9102
41420	Salem, OR Marion County, OR Polk County, OR	1.0974
41500	Salinas, CA Monterey County, CA	1.5207
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9110
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9378
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.7914
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8857
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1752

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.2213
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6735
42140	Santa Fe, NM Santa Fe County, NM	1.0694
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.5891
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9043
42540	Scranton-Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8375
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1577
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9362
43100	Sheboygan, WI Sheboygan County, WI	0.9166
43300	Sherman-Denison, TX Grayson County, TX	0.8064
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8383
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9094
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.8983
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9690

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerio Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Guarabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4363
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2550
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1972

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.9061
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8113
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9541
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.9026
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0552
46060	Tucson, AZ Pima County, AZ	0.9505
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8662
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8698
46340	Tyler, TX Smith County, TX	0.8312
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8460
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.7944

CBSA Code	Urban Area (Constituent Counties)	Wage Index
43900	Spartanburg, SC Spartanburg County, SC	0.9341
44060	Spokane, WA Spokane County, WA	1.0444
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9545
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0373
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8453
44220	Springfield, OH Clark County, OH	0.9195
44300	State College, PA Centre County, PA	0.9096
44700	Stockton, CA San Joaquin County, CA	1.2331
44940	Sumter, SC Sumter County, SC	0.8152
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9785
45104	Tacoma, WA Pierce County, WA	1.1195
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8406
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.8982

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.0882
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8518
48140	Mausau, WI Marathon County, WI	0.9440
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.7368
48300	Wenatchee-East Wenatchee, WA Chelan County, WA Douglas County, WA	0.9719
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9879
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6869
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9018

CBSA Code	Urban Area (Constituent Counties)	Wage Index
46700	Vallejo-Fairfield, CA Solano County, CA	1.4934
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8054
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0207
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8960
47300	Visalia-Porterville, CA Tulare County, CA	1.0221
47380	Waco, TX McLennan County, TX	0.8377
47580	Warner Robins, GA Houston County, GA	0.8754
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	0.9806

¹At this time, there are no hospitals located in this urban area on which to base a wage index.

Table B: FY 2008 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.9197
48700	Williamsport, PA Lycoming County, PA	0.7877
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0555
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.8386
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	0.9777
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.8953
49340	Worcester, MA Worcester County, MA	1.1089
49420	Yakima, WA Yakima County, WA	0.9949
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3348
49620	York-Hanover, PA York County, PA	0.9299
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8679
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.1265
49740	Yuma, AZ Yuma County, AZ	0.9143

State Code	Nonurban Area	Wage Index
1	Alabama	0.7327
2	Alaska	1.1669
3	Arizona	0.8790
4	Arkansas	0.7332
5	California	1.2051
6	Colorado	0.9929
7	Connecticut	1.1093
8	Delaware	0.9910
10	Florida	0.8566
11	Georgia	0.7623
12	Hawaii	1.1113
13	Idaho	0.7733
14	Illinois	0.8312
15	Indiana	0.8529
16	Iowa	0.8624
17	Kansas	0.8167
18	Kentucky	0.7813
19	Louisiana	0.7611
20	Maine	0.8579
21	Maryland	0.9131
22	Massachusetts ¹	1.1700
23	Michigan	0.8778
24	Minnesota	0.9160
25	Mississippi	0.7638
26	Missouri	0.7671
27	Montana	0.8399
28	Nebraska	0.8705

State Code	Nonurban Area	Wage Index
29	Nevada	0.9674
30	New Hampshire	0.9957
31	New Jersey ¹	-----
32	New Mexico	0.8938
33	New York	0.8269
34	North Carolina	0.8535
35	North Dakota	0.7813
36	Ohio	0.8506
37	Oklahoma	0.7654
38	Oregon	1.0236
39	Pennsylvania	0.8306
40	Puerto Rico ¹	0.4047
41	Rhode Island ¹	-----
42	South Carolina	0.8394
43	South Dakota	0.8510
44	Tennessee	0.7808
45	Texas	0.7759
46	Utah	0.8363
47	Vermont	0.9763
48	Virgin Islands	0.7416
49	Virginia	0.7869
50	Washington	1.0224
51	West Virginia	0.7396
52	Wisconsin	0.9206
53	Wyoming	0.9535
65	Guam	0.9611

¹ All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2010. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2009.



Federal Register

**Thursday,
July 22, 2010**

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

**Medicare Program; Prospective Payment
System and Consolidated Billing for
Skilled Nursing Facilities for FY 2011;
Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services

[CMS-1338-NC]

RIN 0938-AP87

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2011
AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period sets forth an update to the payment rates used under the prospective payment system for skilled nursing facilities for fiscal year 2011, and implements section 10325 of the Patient Protection and Affordable Care Act.

DATES: *Effective Date:* The rate updates in this notice with comment period are effective on October 1, 2010.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 20, 2010.

ADDRESSES: In commenting, please refer to file code CMS-1338-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1338-NC, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1338-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close

of the comment period to either of the following addresses:

a. Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Ellen Berry, (410) 786-4528 (for information related to clinical issues).

Abby Ryan, (410) 786-4343 (for information related to the development of the payment rates and case-mix indexes).

Kia Sidbury, (410) 786-7816 (for information related to the wage index).

Bill Ullman, (410) 786-5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication

of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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Abbreviations

In addition, because of the many terms to which we refer by abbreviation in this notice, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ACA Patient Protection and Affordable Care Act, Public Law 111-148
AIDS Acquired Immune Deficiency Syndrome
ARD Assessment Reference Date
BBA Balanced Budget Act of 1997, Public Law 105-33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Public Law 106-113
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106-554
CAH Critical Access Hospital
CBSA Core-Based Statistical Area
CFR Code of Federal Regulations
CMI Case-Mix Index
CMS Centers for Medicare & Medicaid Services
FQHC Federally Qualified Health Center
FR **Federal Register**
FY Fiscal Year
GAO Government Accountability Office
HCPCS Healthcare Common Procedure Coding System
HR-III Hybrid Resource Utilization Groups, Version 3
MDS Minimum Data Set
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110-173
MSA Metropolitan Statistical Area
OMB Office of Management and Budget
OMRA Other Medicare Required Assessment
PPS Prospective Payment System
RAI Resident Assessment Instrument
RAVEN Resident Assessment Validation Entry
RFA Regulatory Flexibility Act, Public Law 96-354
RHC Rural Health Clinic
RIA Regulatory Impact Analysis
RUG-III Resource Utilization Groups, Version 3
RUG-IV Resource Utilization Groups, Version 4
RUG-53 Refined 53-Group RUG-III Case-Mix Classification System
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
SOM State Operations Manual
STM Staff Time Measurement
STRIVE Staff Time and Resource Intensity Verification
UMRA Unfunded Mandates Reform Act, Public Law 104-4

I. Background

Annual updates to the prospective payment system (PPS) rates for skilled

nursing facilities (SNFs) are required by section 1888(e) of the Social Security Act (the Act), as added by section 4432 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105-33, enacted on August 5, 1997), and amended by the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106-113, enacted on November 29, 1999), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106-554, enacted December 21, 2000), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA, Pub. L. 108-173, enacted on December 8, 2003). Our most recent annual update occurred in a final rule (74 FR 40288, August 11, 2009) that set forth updates to the SNF PPS payment rates for fiscal year (FY) 2010. We subsequently published a correction notice (74 FR 48865, September 25, 2009) with respect to those payment rate updates.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the BBA amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this notice, we update the per diem payment rates for SNFs for FY 2011. Major elements of the SNF PPS include:

- *Rates.* As discussed in section I.G.1. of this notice, we established per diem Federal rates for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included a "Part B add-on" (an estimate of the cost of those services that, before July 1, 1998, were paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay). We adjust the rates annually using a SNF market basket index, and we adjust them by the hospital inpatient wage index to account for geographic variation in wages. We also apply a case-mix adjustment to account for the relative resource utilization of different patient types. As further discussed in section I.F, for FY 2011 this adjustment will utilize a "hybrid" RUG-III system that incorporates the specific revisions relating to concurrent therapy and the look-back period that are components of the Resource Utilization Groups, version 4 (RUG-IV) case-mix classification system, and will use information

obtained from the required resident assessments using version 3.0 of the Minimum Data Set (MDS 3.0). (The resident assessment is approved under OMB# 0938-0739.) Additionally, as noted in the final rule for FY 2006 (70 FR 45028, August 4, 2005), the payment rates at various times have also reflected specific legislative provisions, including section 101 of the BBRA, sections 311, 312, and 314 of the BIPA, and section 511 of the MMA.

- *Transition.* Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full Federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments entirely on the adjusted Federal per diem rates, we no longer include adjustment factors related to facility-specific rates for the coming FY.

- *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the existing resident assessment process and case-mix classification system. As further discussed in section II.E, in FY 2011, under the hybrid RUG-III system, this approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 35 RUGs of the 53-group RUG-III case-mix classification system (RUG-53) to assist in making certain SNF level of care determinations. In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the case-mix classification structure (see section II.E. of this notice for a more detailed discussion of the relationship between the case-mix classification system and SNF level of care determinations).

- *Consolidated Billing.* The SNF PPS includes a consolidated billing provision that requires a SNF to submit consolidated Medicare bills to its fiscal intermediary or Medicare

Administrative Contractor for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, this provision places with the SNF the Medicare billing responsibility for physical therapy, occupational therapy, and speech-language pathology services that the resident receives during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. A more detailed discussion of this provision appears in section IV. of this notice.

- *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision appears in section V. of this notice.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we provide for publication annually in the **Federal Register**:

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the upcoming FY.
2. The case-mix classification system to be applied with respect to these services during the upcoming FY.
3. The factors to be applied in making the area wage adjustment with respect to these services.

Along with other revisions discussed later in this preamble, this notice provides these required annual updates to the Federal rates.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. We described these provisions in detail in the SNF PPS final rule for FY 2001 (65 FR 46770, July 31, 2000). In particular, section 101(a) of the

BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified groups in the original, 44-group Resource Utilization Groups, version 3 (RUG-III) case-mix classification system. In accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired on January 1, 2006, upon the implementation of a refined, 53-group version of the RUG-III system, RUG-53 (see section I.G.1. of this notice). We included further information on BBRA provisions that affected the SNF PPS in Program Memorandums A-99-53 and A-99-61 (December 1999).

Also, section 103 of the BBRA designated certain additional services for exclusion from the consolidated billing requirement, as discussed in section IV. of this notice. Further, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the final rule for FY 2002 (66 FR 39562, July 31, 2001), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002, to reflect section 408 of the BBRA.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA also included several provisions that resulted in adjustments to the SNF PPS. We described these provisions in detail in the final rule for FY 2002 (66 FR 39562, July 31, 2001). In particular:

- Section 203 of the BIPA exempted CAH swing beds from the SNF PPS. We included further information on this provision in Program Memorandum A-01-09 (Change Request #1509), issued January 16, 2001, which is available online at <http://www.cms.gov/transmittals/downloads/a0109.pdf>.
- Section 311 of the BIPA revised the statutory update formula for the SNF market basket, and also directed us to conduct a study of alternative case-mix classification systems for the SNF PPS. In 2006, we submitted a report to the Congress on this study, which is available online at http://www.cms.gov/SNFPSS/Downloads/RC_2006_PC-PPSNF.pdf.
- Section 312 of the BIPA provided for a temporary increase of 16.66 percent in the nursing component of the case-mix adjusted Federal rate for

services furnished on or after April 1, 2001, and before October 1, 2002; accordingly, this add-on is no longer in effect. This section also directed the Government Accountability Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued. The report (GAO-03-176), which GAO issued in November 2002, is available online at <http://www.gao.gov/new.items/d03176.pdf>.

- Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical therapy, occupational therapy, and speech-language pathology services) furnished to SNF residents during noncovered stays, effective January 1, 2001. (A more detailed discussion of this provision appears in section IV. of this notice.)

- Section 314 of the BIPA corrected an anomaly involving three of the RUGs that section 101(a) of the BBRA had designated to receive the temporary payment adjustment discussed above in section I.C. of this notice. (As noted previously, in accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired upon the implementation of case-mix refinements on January 1, 2006.)

- Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes. To date, this has proven to be unfeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data.

We included further information on several of the BIPA provisions in Program Memorandum A-01-08 (Change Request #1510), issued January 16, 2001, which is available online at <http://www.cms.gov/transmittals/downloads/a0108.pdf>.

E. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

The MMA included a provision that resulted in a further adjustment to the SNF PPS. Specifically, section 511 of the MMA amended section 1888(e)(12) of the Act, to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF residents with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special AIDS add-on was to remain in effect until “ * * * the

Secretary certifies that there is an appropriate adjustment in the case mix * * * to compensate for the increased costs associated with [such] residents * * * The AIDS add-on is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at <http://www.cms.gov/transmittals/downloads/r160cp.pdf>. In the SNF PPS final rule for FY 2010 (74 FR 40288, August 11, 2009), we did not address the certification of the AIDS add-on in that final rule's implementation of the case-mix refinements for RUG-IV, thus allowing the temporary add-on payment created by section 511 of the MMA to remain in effect.

For the limited number of SNF residents that qualify for the AIDS add-on, implementation of this provision results in a significant increase in payment. For example, using FY 2008 data, we identified less than 3,300 SNF residents with a diagnosis code of 042 (Human Immunodeficiency Virus (HIV) Infection). For FY 2011, an urban facility with a resident with AIDS in hybrid RUG-III (HR-III) group "SSB" would have a case-mix adjusted payment of \$318.73 (see Table 4B) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted payment of approximately \$726.70. Similarly, an urban facility with a resident with AIDS in RUG-IV group "HC2" would have a case-mix adjusted payment of \$394.48 (see Table 4A) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted payment of approximately \$899.41.

In addition, section 410 of the MMA contained a provision that excluded from consolidated billing certain services furnished to SNF residents by rural health clinics (RHCs) and Federally Qualified Health Centers (FQHCs). (Further information on this provision appears in section IV. of this notice.)

F. The Patient Protection and Affordable Care Act (ACA)

Section 10325 of the ACA (Pub. L. 111-148, enacted on March 23, 2010) includes a self-implementing provision involving the SNF PPS. Section 10325 postpones the implementation of the RUG-IV case-mix classification system published in the FY 2010 SNF PPS final rule (74 FR 40288, August 11, 2009), requiring that the Secretary not implement the RUG-IV case-mix classification system before October 1, 2011. Notwithstanding this postponement of overall RUG-IV

implementation, section 10325 further specifies that the Secretary is required to implement, effective October 1, 2010, the changes related to concurrent therapy and the look-back period that were finalized as components of RUG-IV (see 74 FR 40315-19, 40322-24). Because these changes were already subject to notice and public comment and finalized in the FY 2010 SNF PPS final rule, we believe that this ACA requirement is largely self-implementing and requires no substantive exercise of discretion by the Secretary. In addition, section 10325 of the ACA specifies that version 3.0 of the Minimum Data Set (MDS 3.0) shall proceed as planned, with an implementation date of October 1, 2010 (see 74 FR 40342-43). The MDS is approved under OMB# 0938-0872. The MDS 3.0 RAI Manual and MDS 3.0 Item Set are scheduled to be published on the CMS Web site, <http://www.cms.gov>, in October 2010.

The statutory mandate to adopt RUG-IV's concurrent therapy and look-back revisions (along with MDS 3.0) prior to implementing the overall RUG-IV system itself will necessitate implementing those particular revisions within the framework of the existing RUG-53 case-mix classification system. While there is currently an existing grouper (the software program that uses assessment data to assign each SNF resident to the appropriate RUG) that utilizes RUG-53 and the MDS 2.0, as well as a revised grouper that utilizes RUG-IV and the MDS 3.0, no grouper currently exists that incorporates the particular combination of features mandated by the statute: The use of the new RUG-IV revisions on concurrent therapy and the look-back period as well as the MDS 3.0, but within the overall context of the existing RUG-53 system. Moreover, attempting to develop and implement such a modified grouper within the short timeframe available before the ACA provision's October 1, 2010 effective date would potentially cause significant disruption to providers, suppliers, and State agencies.

Accordingly, as we continue to build the payment infrastructure needed to incorporate the combination of features mandated by section 10325 of the ACA for FY 2011, we will apply, effective October 1, 2010, interim payment rates that reflect not only the use of MDS 3.0 but also the new RUG-IV system in its entirety as finalized in the FY 2010 SNF PPS final rule (74 FR 40288, August 11, 2009). As discussed above, the only grouper that currently exists that utilizes MDS 3.0 is the RUG-IV grouper. Once the necessary infrastructure is in

place, we will then retroactively adjust claims to reflect a hybrid RUG-III (HR-III) system which incorporates RUG-IV's specific revisions on concurrent therapy and the look-back period within the framework of the existing RUG-53 system, along with the use of MDS 3.0. Tables 4 and 5 set forth both the RUG-IV rates that will be used on an interim basis effective October 1, 2010 and the HR-III rates that will apply once we build the infrastructure necessary to support this system. The FY 2011 rates will be based on the rates that were finalized for FY 2010, as modified to reflect the market basket adjustment, the forecast error adjustment, the applicable case-mix adjustment, and the parity adjustment (as discussed below).

We note that a parity adjustment was applied to the RUG-53 nursing case-mix weights when the RUG-III system was initially refined in 2006, in order to ensure that the implementation of the refinements would not cause any change in overall payment levels (70 FR 45031, August 4, 2005). A detailed discussion of the parity adjustment in the specific context of the RUG-IV payment rates appears in the FY 2010 SNF PPS proposed rule (74 FR 22236-38, May 12, 2009) and final rule (74 FR 40338-39, August 11, 2009). Consistent with our policy set forth in the FY 2006 SNF PPS final rule (70 FR 45031) when we transitioned from the RUG-III 44 group model to the RUG-53 model, and in the FY 2010 SNF PPS final rule (74 FR 40338-39) when we finalized the transition from RUG-53 to RUG-IV, in calculating the rates under the HR-III model, we will apply a parity adjustment to the nursing case-mix weights under the HR-III system to ensure parity between overall payments under the RUG-53 model currently in effect and anticipated payments under the HR-III system required by the ACA. As discussed in section II.B.2 of this notice, we are calculating and applying this parity adjustment using the same methodology finalized in both the FY 2006 SNF PPS final rule and the FY 2010 SNF PPS final rule.

Accordingly, as discussed above, effective October 1, 2010, on an interim basis, we will implement and pay claims under the RUG-IV system that was finalized in the FY 2010 SNF PPS final rule, until we build the payment infrastructure necessary to support the HR-III system required by the ACA. Once that infrastructure is in place, we will then retroactively adjust claims back to October 1, 2010 as necessary to implement the rates effective under HR-III. In this notice, we also invite public comment on our implementation of section 10325 of the ACA.

As discussed above, we will implement the MDS 3.0 (including the MDS 3.0 swing bed assessment (see 74 FR 40356–57)) effective October 1, 2010 as specified in the FY 2010 SNF PPS final rule. We will also implement effective October 1, 2010, all other non-RUG–IV changes finalized in the FY 2010 SNF PPS final rule for implementation effective FY 2011, including without limitation revisions to certain therapy reporting and assessment procedures effective with the MDS 3.0 (74 FR 40346–49) (that is, updated reporting procedures for short-stay patients, implementation of an optional, abbreviated start-of-therapy OMRA, a revised Assessment Reference Date (ARD) requirement for the end-of-therapy OMRA, and an abbreviated end-of-therapy OMRA).

G. Skilled Nursing Facility Prospective Payment—General Overview

We implemented the Medicare SNF PPS effective with cost reporting periods beginning on or after July 1, 1998. This methodology uses prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities and bad debts. Covered SNF services include post-hospital services for which benefits are provided under Part A, as well as those items and services (other than physician and certain other services specifically excluded under the BBA) which, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in an SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year (FY 1995) updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in an SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month

period beginning July 1, 1998) using an SNF market basket index, and then standardized for the costs of facility differences in case mix and for geographic variations in wages. In compiling the database used to compute the Federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA prescribed, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The RUG–IV classification system uses beneficiary assessment data from the MDS 3.0 completed by SNFs to assign beneficiaries to one of 66 RUG–IV groups. The original RUG–III case-mix classification system used beneficiary assessment data from the MDS, version 2.0 (MDS 2.0) completed by SNFs to assign beneficiaries to one of 44 RUG–III groups. Then, under incremental refinements that became effective on January 1, 2006, we added nine new groups—comprising a new Rehabilitation plus Extensive Services category—at the top of the RUG–III hierarchy. The May 12, 1998 interim final rule (63 FR 26252) included a detailed description of the original 44-group RUG–III case-mix classification system. A comprehensive description of the refined RUG–53 system appeared in the proposed and final rules for FY 2006 (70 FR 29070, May 19, 2005, and 70 FR 45026, August 4, 2005), and a detailed description of the 66-group RUG–IV system appeared in the proposed and final rules for FY 2010 (74 FR 22208, May 12, 2009, and 74 FR 40288, August 11, 2009).

Further, in accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the Federal rates in this notice reflect an update to the rates that we published in the final rule for FY 2010 (74 FR 40288, August 11, 2009) and the associated correction notice (74 FR 48865, September 25, 2009), equal to the full change in the SNF market basket index, adjusted by the forecast error correction.

A more detailed discussion of the SNF market basket index and related issues appears in sections I.F.2. and III. of this notice.

2. FY 2011 Rate Updates Using the Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. We use the SNF market basket index to update the Federal rates on an annual basis. In the SNF PPS final rule for FY 2008 (72 FR 43425 through 43430, August 3, 2007), we revised and rebased the market basket, which included updating the base year from FY 1997 to FY 2004. The proposed FY 2011 market basket increase is 2.3 percent, which is based on IHS Global Insight, Inc. second quarter 2010 forecast with historical data through first quarter 2010.

In addition, as explained in the final rule for FY 2004 (66 FR 46058, August 4, 2003) and in section III.B. of this notice, the annual update of the payment rates includes, as appropriate, an adjustment to account for market basket forecast error. As described in the final rule for FY 2008, the threshold percentage that serves to trigger an adjustment to account for market basket forecast error is 0.5 percentage point effective for FY 2008 and subsequent years. This adjustment takes into account the forecast error from the most recently available FY for which there is final data, and applies whenever the difference between the forecasted and actual change in the market basket exceeds a 0.5 percentage point threshold. For FY 2009 (the most recently available FY for which there is final data), the estimated increase in the market basket index was 3.4 percentage points, while the actual increase was 2.8 percentage points, resulting in the actual increase being 0.6 percentage point lower than the estimated increase. Accordingly, as the difference between the estimated and actual amount of change exceeds the 0.5 percentage point threshold, the payment rates for FY 2011 include a negative 0.6 percentage point forecast error adjustment. As we stated in the final rule for FY 2004 that first promulgated the forecast error adjustment (68 FR 46058, August 4, 2003), the adjustment will “* * * reflect both upward and downward adjustments, as appropriate.” Table 1 shows the forecasted and actual market basket amounts for FY 2009.

Table 1 - Difference Between the Forecasted and Actual Market Basket Increases for FY 2009

Index	Forecasted FY 2009 Increase*	Actual FY 2009 Increase**	FY 2009 Difference***
SNF	3.4	2.8	<-0.6>

*Published in Federal Register; based on second quarter 2008 IHS Global Insight Inc. forecast (2004-based index).

**Based on the second quarter 2010 IHS Global Insight forecast (2004-based index).

***The FY 2009 forecast error correction of the SNF market basket will be applied to the FY 2011 PPS update recommendations.

II. FY 2011 Annual Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This notice sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2010. The schedule incorporates per diem Federal rates that provide Part A payment for almost all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

In accordance with section 1888(e)(2)(B) of the Act, the Federal rates apply to all costs (routine, ancillary, and capital-related) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare

beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297)).

2. Methodology Used for the Calculation of the Federal Rates

The FY 2011 rates reflect an update using the latest market basket index, and adjusting for the FY 2009 forecast error correction. The FY 2011 market basket increase factor is 2.3 percent which, when combined with a negative 0.6 percentage point forecast error adjustment for FY 2009, results in a net FY 2011 update of 1.7 percent. A complete description of the multi-step process used to calculate Federal rates initially appeared in the May 12, 1998 interim final rule (63 FR 26252), as further revised in subsequent rules. As explained above in section I.C of this notice, under section 101(c)(2) of the BBRA, the previous temporary increases in the per diem adjusted payment rates for certain designated RUGs (as specified in section 101(a) of the BBRA and section 314 of the BIPA) are no longer in effect due to the implementation of case-mix refinements as of January 1, 2006. However, the temporary increase of 128 percent in the

per diem adjusted payment rates for SNF residents with AIDS, enacted by section 511 of the MMA, remains in effect.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal FY beginning October 1, 2009, and ending September 30, 2010, and the midpoint of the Federal FY beginning October 1, 2010, and ending September 30, 2011, to which the payment rates apply. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, we update the payment rates for FY 2011 by a factor equal to the full market basket index percentage increase. As explained in section I.G.2 of this notice, we adjust the market basket index by the forecast error from the most recently available FY for which there is final data and apply this adjustment whenever the difference between the forecasted and actual change in the market basket exceeds a 0.5 percentage point threshold. We further adjust the rates by a wage index budget neutrality factor, described later in this section. Tables 2 and 3 reflect the updated components of the unadjusted Federal rates for FY 2011, prior to adjustment for case-mix.

Table 2
FY 2011 Unadjusted Federal Rate Per Diem
Urban

Rate Component	Nursing - Case-Mix	Therapy - Case-Mix	Therapy - Non-Case-mix	Non-Case-Mix
Per Diem Amount	\$157.82	\$118.88	\$15.66	\$80.54

Table 3
FY 2011 Unadjusted Federal Rate Per Diem
Rural

Rate Component	Nursing - Case-Mix	Therapy - Case-Mix	Therapy - Non-Case-mix	Non-Case-Mix
Per Diem Amount	\$150.79	\$137.08	\$16.72	\$82.04

B. Case-Mix Adjustments

1. Background

Section 1888(e)(4)(G)(i) of the Act requires the Secretary to make an adjustment to account for case-mix. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment and other data that the Secretary considers appropriate. In first implementing the SNF PPS (63 FR 26252, May 12, 1998), we developed the RUG-III case-mix classification system, which tied the amount of payment to resident resource use in combination with resident characteristic information. Staff time measurement (STM) studies conducted in 1990, 1995, and 1997 provided information on resource use (time spent by staff members on residents) and resident characteristics that enabled us not only to establish RUG-III, but also to create case-mix indexes (CMIs).

Although the establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage, there is a correlation between level of care and provider payment. One of the elements affecting the SNF PPS per diem rates is the case-mix adjustment derived from a classification system based on comprehensive resident assessments using the MDS. Case-mix classification is based, in part, on the beneficiary's need for skilled nursing care and therapy. The case-mix classification system uses clinical data from the MDS, and wage-adjusted staff time measurement data, to assign a case-mix group to each patient record that is then used to calculate a per diem payment under the SNF PPS. The original RUG-III grouper logic was based on clinical data collected in 1990,

1995, and 1997. As discussed in the SNF PPS proposed rule for FY 2010 (74 FR 22208, May 12, 2009), we subsequently conducted a multi-year data collection and analysis under the Staff Time and Resource Intensity Verification (STRIVE) project to update the case-mix classification system for FY 2011. The resulting RUG-IV case-mix classification system reflected the data collected in 2006-2007 during the STRIVE project, and was finalized in the FY 2010 SNF PPS final rule (74 FR 40288, August 11, 2009) to take effect in FY 2011 concurrently with an updated new resident assessment instrument, the MDS 3.0, which collects the clinical data used for case-mix classification under RUG-IV.

Under the BBA, each update of the SNF PPS payment rates must include the case-mix classification methodology applicable for the coming Federal FY. As indicated in section I.F of this notice, the payment rates set forth herein reflect the use of the HR-III case-mix classification system from October 1, 2010 through September 30, 2011. However, due to time constraints in preparing the HR-III grouper, the 66-group RUG-IV case-mix classification system that we discussed in detail in the proposed and final rules for FY 2010 will be used beginning October 1, 2010. Once the HR-III Grouper is ready for implementation, payments will be retroactively adjusted to the October 1, 2010 date.

2. Parity Adjustment

Consistent with the policy finalized in the FY 2010 SNF PPS final rule (74 FR 40338-39), the updated RUG-IV rates set forth in Tables 4A and 5A reflect an upward adjustment to the nursing CMIs to achieve parity in overall payments between the existing RUG-53 model and the RUG-IV model. As explained in

the FY 2010 SNF PPS final rule, we applied an upward adjustment of 59.4 percent to the RUG-IV nursing CMIs to achieve parity between the RUG-53 and RUG-IV models, based on an analysis using FY 2008 claims data. However, after the FY 2010 SNF PPS final rule was published, final FY 2009 claims data became available. As we stated in the FY 2010 SNF PPS final rule (74 FR 40339), in the absence of actual RUG-IV utilization data, we believe the most recent final claims data are the best source available to estimate RUG-IV utilization for FY 2011, as they are closest to the FY 2011 timeframe. Thus, we updated our analysis described in the FY 2010 SNF PPS proposed and final rules using final FY 2009 claims data to enhance the accuracy of our calculation of the adjustment necessary to achieve parity between the RUG-53 model and the RUG-IV model. Using the methodology finalized in the FY 2010 SNF PPS final rule with updated FY 2009 claims data, the adjustment to the RUG-IV nursing CMIs necessary to achieve parity is an upward adjustment of 61 percent.

Consistent with this policy, and using the same methodology finalized in the FY 2006 SNF PPS final rule and the FY 2010 SNF PPS final rule, we have calculated and applied a parity adjustment to the HR-III nursing CMIs so that overall payments under the HR-III case-mix classification system maintain parity with overall payments under the existing RUG-53 model. We used FY 2009 claims data, the most recent final claims data available, to compare the distribution of payment days by RUG category in the RUG-53 model with anticipated payments by RUG category in the new HR-III model. Our projections of future utilization patterns under the HR-III system indicated that the HR-III system would

produce lower overall payments than under the RUG-53 model. Therefore, consistent with our policy in place when we transitioned to the RUG-53 model in FY 2006, and our policy in FY 2010 when we finalized the transition from the RUG-53 model to the RUG-IV model, we are providing for an adjustment to the nursing CMI's under the HR-III system that would achieve "parity" between the RUG-53 and the HR-III models (that is, would not cause any change in overall payment levels). Based on our analysis of the FY 2009 claims data, the adjustment to the nursing CMI's under the HR-III model

necessary to achieve "parity" is an upward adjustment of 34.2 percent. Our calculation of the parity adjustment uses the most recent data available to estimate HR-III utilization for FY 2011. In the absence of actual HR-III utilization data, we believe the most recent data are the best source available, as they are closest to the FY 2011 timeframe. As actual HR-III utilization becomes available, we intend to assess the effectiveness of the parity adjustment in maintaining budget neutrality and, if necessary, to recalibrate the adjustment in the future.

We list the case-mix adjusted RUG-IV payment rates separately for urban and rural SNFs in Tables 4A and 5A, with the corresponding case-mix values which reflect the parity adjustment discussed above. Similarly, the HR-III case-mix adjusted payment rates (reflecting the parity adjustment) are listed on Tables 4B and 5B. These tables do not reflect the AIDS add-on enacted by section 511 of the MMA, which we apply only after making all other adjustments (wage and case-mix).

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Table 4A
RUG-IV
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
URBAN

RUG-IV Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUX	3.59	1.87	566.57	222.31		80.54	869.42
RUL	3.45	1.87	544.48	222.31		80.54	847.33
RVX	3.51	1.28	553.95	152.17		80.54	786.66
RVL	2.95	1.28	465.57	152.17		80.54	698.28
RHX	3.43	0.85	541.32	101.05		80.54	722.91
RHL	2.89	0.85	456.10	101.05		80.54	637.69
RMX	3.31	0.55	522.38	65.38		80.54	668.30
RML	2.95	0.55	465.57	65.38		80.54	611.49
RLX	3.04	0.28	479.77	33.29		80.54	593.60
RUC	2.1	1.87	331.42	222.31		80.54	634.27
RUB	2.1	1.87	331.42	222.31		80.54	634.27
RUA	1.33	1.87	209.90	222.31		80.54	512.75
RVC	2.02	1.28	318.80	152.17		80.54	551.51
RVB	1.49	1.28	235.15	152.17		80.54	467.86
RVA	1.48	1.28	233.57	152.17		80.54	466.28
RHC	1.94	0.85	306.17	101.05		80.54	487.76
RHB	1.6	0.85	252.51	101.05		80.54	434.10
RHA	1.23	0.85	194.12	101.05		80.54	375.71
RMC	1.83	0.55	288.81	65.38		80.54	434.73
RMB	1.63	0.55	257.25	65.38		80.54	403.17
RMA	1.13	0.55	178.34	65.38		80.54	324.26
RLB	2.01	0.28	317.22	33.29		80.54	431.05
RLA	0.95	0.28	149.93	33.29		80.54	263.76
ES3	3.58		565.00		15.66	80.54	661.20
ES2	2.67		421.38		15.66	80.54	517.58
ES1	2.32		366.14		15.66	80.54	462.34
HE2	2.22		350.36		15.66	80.54	446.56
HE1	1.74		274.61		15.66	80.54	370.81
HD2	2.04		321.95		15.66	80.54	418.15
HD1	1.6		252.51		15.66	80.54	348.71
HC2	1.89		298.28		15.66	80.54	394.48
HC1	1.48		233.57		15.66	80.54	329.77
HB2	1.86		293.55		15.66	80.54	389.75
HB1	1.46		230.42		15.66	80.54	326.62
LE2	1.96		309.33		15.66	80.54	405.53
LE1	1.54		243.04		15.66	80.54	339.24

RUG-IV Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
LD2	1.86		293.55		15.66	80.54	389.75
LD1	1.46		230.42		15.66	80.54	326.62
LC2	1.56		246.20		15.66	80.54	342.40
LC1	1.22		192.54		15.66	80.54	288.74
LB2	1.45		228.84		15.66	80.54	325.04
LB1	1.14		179.91		15.66	80.54	276.11
CE2	1.68		265.14		15.66	80.54	361.34
CE1	1.5		236.73		15.66	80.54	332.93
CD2	1.56		246.20		15.66	80.54	342.40
CD1	1.38		217.79		15.66	80.54	313.99
CC2	1.29		203.59		15.66	80.54	299.79
CC1	1.15		181.49		15.66	80.54	277.69
CB2	1.15		181.49		15.66	80.54	277.69
CB1	1.02		160.98		15.66	80.54	257.18
CA2	0.88		138.88		15.66	80.54	235.08
CA1	0.78		123.10		15.66	80.54	219.30
BB2	0.97		153.09		15.66	80.54	249.29
BB1	0.9		142.04		15.66	80.54	238.24
BA2	0.7		110.47		15.66	80.54	206.67
BA1	0.64		101.00		15.66	80.54	197.20
PE2	1.5		236.73		15.66	80.54	332.93
PE1	1.4		220.95		15.66	80.54	317.15
PD2	1.38		217.79		15.66	80.54	313.99
PD1	1.28		202.01		15.66	80.54	298.21
PC2	1.1		173.60		15.66	80.54	269.80
PC1	1.02		160.98		15.66	80.54	257.18
PB2	0.84		132.57		15.66	80.54	228.77
PB1	0.78		123.10		15.66	80.54	219.30
PA2	0.59		93.11		15.66	80.54	189.31
PA1	0.54		85.22		15.66	80.54	181.42

**Table 4B
HYBRID RUG-III (HR-III)
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
URBAN**

HR-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Component	Non-case Mix Component	Total Rate
RUX	2.37	2.25	374.03	267.48		80.54	722.05
RUL	1.76	2.25	277.76	267.48		80.54	625.78

HR-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Component	Non-case Mix Component	Total Rate
RVX	1.93	1.41	304.59	167.62		80.54	552.75
RVL	1.66	1.41	261.98	167.62		80.54	510.14
RHX	1.78	0.94	280.92	111.75		80.54	473.21
RHL	1.7	0.94	268.29	111.75		80.54	460.58
RMX	2.41	0.77	380.35	91.54		80.54	552.43
RML	2.11	0.77	333.00	91.54		80.54	505.08
RLX	1.64	0.43	258.82	51.12		80.54	390.48
RUC	1.61	2.25	254.09	267.48		80.54	602.11
RUB	1.23	2.25	194.12	267.48		80.54	542.14
RUA	1.05	2.25	165.71	267.48		80.54	513.73
RVC	1.53	1.41	241.46	167.62		80.54	489.62
RVB	1.36	1.41	214.64	167.62		80.54	462.80
RVA	1.03	1.41	162.55	167.62		80.54	410.71
RHC	1.52	0.94	239.89	111.75		80.54	432.18
RHB	1.38	0.94	217.79	111.75		80.54	410.08
RHA	1.18	0.94	186.23	111.75		80.54	378.52
RMC	1.44	0.77	227.26	91.54		80.54	399.34
RMB	1.36	0.77	214.64	91.54		80.54	386.72
RMA	1.3	0.77	205.17	91.54		80.54	377.25
RLB	1.42	0.43	224.10	51.12		80.54	355.76
RLA	1.06	0.43	167.29	51.12		80.54	298.95
SE3	2.31		364.56		15.66	80.54	460.76
SE2	1.85		291.97		15.66	80.54	388.17
SE1	1.57		247.78		15.66	80.54	343.98
SSC	1.53		241.46		15.66	80.54	337.66
SSB	1.41		222.53		15.66	80.54	318.73
SSA	1.37		216.21		15.66	80.54	312.41
CC2	1.52		239.89		15.66	80.54	336.09
CC1	1.33		209.90		15.66	80.54	306.10
CB2	1.22		192.54		15.66	80.54	288.74
CB1	1.13		178.34		15.66	80.54	274.54
CA2	1.11		175.18		15.66	80.54	271.38
CA1	1.01		159.40		15.66	80.54	255.60
IB2	0.93		146.77		15.66	80.54	242.97
IB1	0.9		142.04		15.66	80.54	238.24
IA2	0.76		119.94		15.66	80.54	216.14
IA1	0.71		112.05		15.66	80.54	208.25

HR-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Component	Non-case Mix Component	Total Rate
BB2	0.91		143.62		15.66	80.54	239.82
BB1	0.87		137.30		15.66	80.54	233.50
BA2	0.75		118.37		15.66	80.54	214.57
BA1	0.64		101.00		15.66	80.54	197.20
PE2	1.06		167.29		15.66	80.54	263.49
PE1	1.03		162.55		15.66	80.54	258.75
PD2	0.97		153.09		15.66	80.54	249.29
PD1	0.94		148.35		15.66	80.54	244.55
PC2	0.89		140.46		15.66	80.54	236.66
PC1	0.87		137.30		15.66	80.54	233.50
PB2	0.7		110.47		15.66	80.54	206.67
PB1	0.67		105.74		15.66	80.54	201.94
PA2	0.66		104.16		15.66	80.54	200.36
PA1	0.62		97.85		15.66	80.54	194.05

**Table 5A
RUG-IV
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
RURAL**

RUG-IV Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUX	3.59	1.87	541.34	256.34		82.04	879.72
RUL	3.45	1.87	520.23	256.34		82.04	858.61
RVX	3.51	1.28	529.27	175.46		82.04	786.77
RVL	2.95	1.28	444.83	175.46		82.04	702.33
RHX	3.43	0.85	517.21	116.52		82.04	715.77
RHL	2.89	0.85	435.78	116.52		82.04	634.34
RMX	3.31	0.55	499.11	75.39		82.04	656.54
RML	2.95	0.55	444.83	75.39		82.04	602.26
RLX	3.04	0.28	458.40	38.38		82.04	578.82
RUC	2.1	1.87	316.66	256.34		82.04	655.04
RUB	2.1	1.87	316.66	256.34		82.04	655.04
RUA	1.33	1.87	200.55	256.34		82.04	538.93
RVC	2.02	1.28	304.60	175.46		82.04	562.10
RVB	1.49	1.28	224.68	175.46		82.04	482.18
RVA	1.48	1.28	223.17	175.46		82.04	480.67
RHC	1.94	0.85	292.53	116.52		82.04	491.09
RHB	1.6	0.85	241.26	116.52		82.04	439.82
RHA	1.23	0.85	185.47	116.52		82.04	384.03

RUG-IV Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RMC	1.83	0.55	275.95	75.39		82.04	433.38
RMB	1.63	0.55	245.79	75.39		82.04	403.22
RMA	1.13	0.55	170.39	75.39		82.04	327.82
RLB	2.01	0.28	303.09	38.38		82.04	423.51
RLA	0.95	0.28	143.25	38.38		82.04	263.67
ES3	3.58		539.83		16.72	82.04	638.59
ES2	2.67		402.61		16.72	82.04	501.37
ES1	2.32		349.83		16.72	82.04	448.59
HE2	2.22		334.75		16.72	82.04	433.51
HE1	1.74		262.37		16.72	82.04	361.13
HD2	2.04		307.61		16.72	82.04	406.37
HD1	1.6		241.26		16.72	82.04	340.02
HC2	1.89		284.99		16.72	82.04	383.75
HC1	1.48		223.17		16.72	82.04	321.93
HB2	1.86		280.47		16.72	82.04	379.23
HB1	1.46		220.15		16.72	82.04	318.91
LE2	1.96		295.55		16.72	82.04	394.31
LE1	1.54		232.22		16.72	82.04	330.98
LD2	1.86		280.47		16.72	82.04	379.23
LD1	1.46		220.15		16.72	82.04	318.91
LC2	1.56		235.23		16.72	82.04	333.99
LC1	1.22		183.96		16.72	82.04	282.72
LB2	1.45		218.65		16.72	82.04	317.41
LB1	1.14		171.90		16.72	82.04	270.66
CE2	1.68		253.33		16.72	82.04	352.09
CE1	1.5		226.19		16.72	82.04	324.95
CD2	1.56		235.23		16.72	82.04	333.99
CD1	1.38		208.09		16.72	82.04	306.85
CC2	1.29		194.52		16.72	82.04	293.28
CC1	1.15		173.41		16.72	82.04	272.17
CB2	1.15		173.41		16.72	82.04	272.17
CB1	1.02		153.81		16.72	82.04	252.57
CA2	0.88		132.70		16.72	82.04	231.46
CA1	0.78		117.62		16.72	82.04	216.38
BB2	0.97		146.27		16.72	82.04	245.03
BB1	0.9		135.71		16.72	82.04	234.47
BA2	0.7		105.55		16.72	82.04	204.31
BA1	0.64		96.51		16.72	82.04	195.27
PE2	1.5		226.19		16.72	82.04	324.95
PE1	1.4		211.11		16.72	82.04	309.87
PD2	1.38		208.09		16.72	82.04	306.85

RUG-IV Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
PD1	1.28		193.01		16.72	82.04	291.77
PC2	1.1		165.87		16.72	82.04	264.63
PC1	1.02		153.81		16.72	82.04	252.57
PB2	0.84		126.66		16.72	82.04	225.42
PB1	0.78		117.62		16.72	82.04	216.38
PA2	0.59		88.97		16.72	82.04	187.73
PA1	0.54		81.43		16.72	82.04	180.19

Table 5B
HYBRID RUG-III
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES
RURAL

HR-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Component	Non-case Mix Component	Total Rate
RUX	2.37	2.25	357.37	308.43		82.04	747.84
RUL	1.76	2.25	265.39	308.43		82.04	655.86
RVX	1.93	1.41	291.02	193.28		82.04	566.34
RVL	1.66	1.41	250.31	193.28		82.04	525.63
RHX	1.78	0.94	268.41	128.86		82.04	479.31
RHL	1.7	0.94	256.34	128.86		82.04	467.24
RMX	2.41	0.77	363.40	105.55		82.04	550.99
RML	2.11	0.77	318.17	105.55		82.04	505.76
RLX	1.64	0.43	247.30	58.94		82.04	388.28
RUC	1.61	2.25	242.77	308.43		82.04	633.24
RUB	1.23	2.25	185.47	308.43		82.04	575.94
RUA	1.05	2.25	158.33	308.43		82.04	548.80
RVC	1.53	1.41	230.71	193.28		82.04	506.03
RVB	1.36	1.41	205.07	193.28		82.04	480.39
RVA	1.03	1.41	155.31	193.28		82.04	430.63
RHC	1.52	0.94	229.20	128.86		82.04	440.10
RHB	1.38	0.94	208.09	128.86		82.04	418.99
RHA	1.18	0.94	177.93	128.86		82.04	388.83
RMC	1.44	0.77	217.14	105.55		82.04	404.73
RMB	1.36	0.77	205.07	105.55		82.04	392.66
RMA	1.3	0.77	196.03	105.55		82.04	383.62
RLB	1.42	0.43	214.12	58.94		82.04	355.10
RLA	1.06	0.43	159.84	58.94		82.04	300.82

HR-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Component	Non-case Mix Component	Total Rate
SE3	2.31		348.32		16.72	82.04	447.08
SE2	1.85		278.96		16.72	82.04	377.72
SE1	1.57		236.74		16.72	82.04	335.50
SSC	1.53		230.71		16.72	82.04	329.47
SSB	1.41		212.61		16.72	82.04	311.37
SSA	1.37		206.58		16.72	82.04	305.34
CC2	1.52		229.20		16.72	82.04	327.96
CC1	1.33		200.55		16.72	82.04	299.31
CB2	1.22		183.96		16.72	82.04	282.72
CB1	1.13		170.39		16.72	82.04	269.15
CA2	1.11		167.38		16.72	82.04	266.14
CA1	1.01		152.30		16.72	82.04	251.06
IB2	0.93		140.23		16.72	82.04	238.99
IB1	0.9		135.71		16.72	82.04	234.47
IA2	0.76		114.60		16.72	82.04	213.36
IA1	0.71		107.06		16.72	82.04	205.82
BB2	0.91		137.22		16.72	82.04	235.98
BB1	0.87		131.19		16.72	82.04	229.95
BA2	0.75		113.09		16.72	82.04	211.85
BA1	0.64		96.51		16.72	82.04	195.27
PE2	1.06		159.84		16.72	82.04	258.60
PE1	1.03		155.31		16.72	82.04	254.07
PD2	0.97		146.27		16.72	82.04	245.03
PD1	0.94		141.74		16.72	82.04	240.50
PC2	0.89		134.20		16.72	82.04	232.96
PC1	0.87		131.19		16.72	82.04	229.95
PB2	0.7		105.55		16.72	82.04	204.31
PB1	0.67		101.03		16.72	82.04	199.79
PA2	0.66		99.52		16.72	82.04	198.28
PA1	0.62		93.49		16.72	82.04	192.25

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We are maintaining that practice for FY 2011, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index is appropriate and reasonable for the SNF PPS. As explained in the update notice for FY 2005 (69 FR 45786, July 30, 2004), the SNF PPS does not use the

hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments.

Finally, we continue to use the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the FY 2011 SNF

PPS wage index. For rural geographic areas that do not have hospitals and, therefore, lack hospital wage data on which to base an area wage adjustment, we use the average wage index from all contiguous Core-Based Statistical Areas (CBSAs) as a reasonable proxy. This methodology is used to construct the wage index for rural Massachusetts. However, we do not apply this methodology to rural Puerto Rico due to the distinct economic circumstances that exist there, but instead continue using the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we use the average wage indexes of all of the urban areas

within the State to serve as a reasonable proxy for the wage index of that urban CBSA. The only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA.

To calculate the SNF PPS wage index adjustment, we apply the wage index adjustment to the labor-related portion of the Federal rate, which is 69.311 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2011, using the revised and rebased FY 2004-based market basket. The labor-related relative importance for FY 2010 was 69.840, as shown in Table 9. We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion

of the total costs after taking into account historical and projected price changes between the base year and FY 2011. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2011 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2011 in four steps. First, we compute the FY 2011 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY

2011 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2011 relative importance for each cost category by multiplying this ratio by the base year (FY 2004) weight. Finally, we add the FY 2011 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, non-medical professional fees, labor-intensive services, and a portion of capital-related expenses) to produce the FY 2011 labor-related relative importance. Tables 6A and 7A below show the Federal rates for RUG-IV by labor-related and non-labor-related components. Similarly, Tables 6B and 7B show the Federal rates for HR-III.

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Table 6A
RUG-IV
Case-Mix Adjusted Federal Rates for Urban SNFs
By Labor and Non-Labor Component

RUG-IV Category	Total Rate	Labor Portion	Non-Labor Portion
RUX	869.42	\$602.60	\$266.82
RUL	847.33	\$587.29	\$260.04
RVX	786.66	\$545.24	\$241.42
RVL	698.28	\$483.98	\$214.30
RHX	722.91	\$501.06	\$221.85
RHL	637.69	\$441.99	\$195.70
RMX	668.30	\$463.21	\$205.09
RML	611.49	\$423.83	\$187.66
RLX	593.60	\$411.43	\$182.17
RUC	634.27	\$439.62	\$194.65
RUB	634.27	\$439.62	\$194.65
RUA	512.75	\$355.39	\$157.36
RVC	551.51	\$382.26	\$169.25
RVB	467.86	\$324.28	\$143.58
RVA	466.28	\$323.18	\$143.10
RHC	487.76	\$338.07	\$149.69
RHB	434.10	\$300.88	\$133.22
RHA	375.71	\$260.41	\$115.30
RMC	434.73	\$301.32	\$133.41
RMB	403.17	\$279.44	\$123.73
RMA	324.26	\$224.75	\$99.51
RLB	431.05	\$298.77	\$132.28
RLA	263.76	\$182.81	\$80.95
ES3	661.20	\$458.28	\$202.92
ES2	517.58	\$358.74	\$158.84
ES1	462.34	\$320.45	\$141.89
HE2	446.56	\$309.52	\$137.04
HE1	370.81	\$257.01	\$113.80
HD2	418.15	\$289.82	\$128.33
HD1	348.71	\$241.69	\$107.02
HC2	394.48	\$273.42	\$121.06
HC1	329.77	\$228.57	\$101.20

RUG-IV Category	Total Rate	Labor Portion	Non-Labor Portion
HB2	389.75	\$270.14	\$119.61
HB1	326.62	\$226.38	\$100.24
LE2	405.53	\$281.08	\$124.45
LE1	339.24	\$235.13	\$104.11
LD2	389.75	\$270.14	\$119.61
LD1	326.62	\$226.38	\$100.24
LC2	342.40	\$237.32	\$105.08
LC1	288.74	\$200.13	\$88.61
LB2	325.04	\$225.29	\$99.75
LB1	276.11	\$191.37	\$84.74
CE2	361.34	\$250.45	\$110.89
CE1	332.93	\$230.76	\$102.17
CD2	342.40	\$237.32	\$105.08
CD1	313.99	\$217.63	\$96.36
CC2	299.79	\$207.79	\$92.00
CC1	277.69	\$192.47	\$85.22
CB2	277.69	\$192.47	\$85.22
CB1	257.18	\$178.25	\$78.93
CA2	235.08	\$162.94	\$72.14
CA1	219.30	\$152.00	\$67.30
BB2	249.29	\$172.79	\$76.50
BB1	238.24	\$165.13	\$73.11
BA2	206.67	\$143.25	\$63.42
BA1	197.20	\$136.68	\$60.52
PE2	332.93	\$230.76	\$102.17
PE1	317.15	\$219.82	\$97.33
PD2	313.99	\$217.63	\$96.36
PD1	298.21	\$206.69	\$91.52
PC2	269.80	\$187.00	\$82.80
PC1	257.18	\$178.25	\$78.93
PB2	228.77	\$158.56	\$70.21
PB1	219.30	\$152.00	\$67.30
PA2	189.31	\$131.21	\$58.10
PA1	181.42	\$125.74	\$55.68

Table 6B
HYBRID RUG-III
Case-Mix Adjusted Federal Rates for Urban SNFs
By Labor and Non-Labor Component

HR-III	TOTAL RATE	Labor Portion	Non-Labor Portion
RUX	722.05	\$500.46	\$221.59
RUL	625.78	\$433.73	\$192.05
RVX	552.75	\$383.12	\$169.63
RVL	510.14	\$353.58	\$156.56
RHX	473.21	\$327.99	\$145.22
RHL	460.58	\$319.23	\$141.35
RMX	552.43	\$382.89	\$169.54
RML	505.08	\$350.08	\$155.00
RLX	390.48	\$270.65	\$119.83
RUC	602.11	\$417.33	\$184.78
RUB	542.14	\$375.76	\$166.38
RUA	513.73	\$356.07	\$157.66
RVC	489.62	\$339.36	\$150.26
RVB	462.80	\$320.77	\$142.03
RVA	410.71	\$284.67	\$126.04
RHC	432.18	\$299.55	\$132.63
RHB	410.08	\$284.23	\$125.85
RHA	378.52	\$262.36	\$116.16
RMC	399.34	\$276.79	\$122.55
RMB	386.72	\$268.04	\$118.68
RMA	377.25	\$261.48	\$115.77
RLB	355.76	\$246.58	\$109.18
RLA	298.95	\$207.21	\$91.74
SE3	460.76	\$319.36	\$141.40
SE2	388.17	\$269.04	\$119.13
SE1	343.98	\$238.42	\$105.56
SSC	337.66	\$234.04	\$103.62
SSB	318.73	\$220.91	\$97.82
SSA	312.41	\$216.53	\$95.88
CC2	336.09	\$232.95	\$103.14
CC1	306.10	\$212.16	\$93.94
CB2	288.74	\$200.13	\$88.61
CB1	274.54	\$190.29	\$84.25
CA2	271.38	\$188.10	\$83.28
CA1	255.60	\$177.16	\$78.44
IB2	242.97	\$168.40	\$74.57
IB1	238.24	\$165.13	\$73.11

HR-III	TOTAL RATE	Labor Portion	Non-Labor Portion
IA2	216.14	\$149.81	\$66.33
IA1	208.25	\$144.34	\$63.91
BB2	239.82	\$166.22	\$73.60
BB1	233.50	\$161.84	\$71.66
BA2	214.57	\$148.72	\$65.85
BA1	197.20	\$136.68	\$60.52
PE2	263.49	\$182.63	\$80.86
PE1	258.75	\$179.34	\$79.41
PD2	249.29	\$172.79	\$76.50
PD1	244.55	\$169.50	\$75.05
PC2	236.66	\$164.03	\$72.63
PC1	233.50	\$161.84	\$71.66
PB2	206.67	\$143.25	\$63.42
PB1	201.94	\$139.97	\$61.97
PA2	200.36	\$138.87	\$61.49
PA1	194.05	\$134.50	\$59.55

Table 7A
RUG-IV
Case-Mix Adjusted Federal Rates for Rural SNFs
by Labor and Non-Labor Component

RUG-IV Category	Total Rate	Labor Portion	Non-Labor Portion
RUX	879.72	609.74	269.98
RUL	858.61	595.11	263.50
RVX	786.77	545.32	241.45
RVL	702.33	486.79	215.54
RHX	715.77	496.11	219.66
RHL	634.34	439.67	194.67
RMX	656.54	455.05	201.49
RML	602.26	417.43	184.83
RLX	578.82	401.19	177.63
RUC	655.04	454.01	201.03
RUB	655.04	454.01	201.03
RUA	538.93	373.54	165.39
RVC	562.10	389.60	172.50
RVB	482.18	334.20	147.98
RVA	480.67	333.16	147.51
RHC	491.09	340.38	150.71
RHB	439.82	304.84	134.98
RHA	384.03	266.18	117.85

RUG-IV Category	Total Rate	Labor Portion	Non-Labor Portion
RMC	433.38	300.38	133.00
RMB	403.22	279.48	123.74
RMA	327.82	227.22	100.60
RLB	423.51	293.54	129.97
RLA	263.67	182.75	80.92
ES3	638.59	442.61	195.98
ES2	501.37	347.50	153.87
ES1	448.59	310.92	137.67
HE2	433.51	300.47	133.04
HE1	361.13	250.30	110.83
HD2	406.37	281.66	124.71
HD1	340.02	235.67	104.35
HC2	383.75	265.98	117.77
HC1	321.93	223.13	98.80
HB2	379.23	262.85	116.38
HB1	318.91	221.04	97.87
LE2	394.31	273.30	121.01
LE1	330.98	229.41	101.57
LD2	379.23	262.85	116.38
LD1	318.91	221.04	97.87
LC2	333.99	231.49	102.50
LC1	282.72	195.96	86.76
LB2	317.41	220.00	97.41
LB1	270.66	187.60	83.06
CE2	352.09	244.04	108.05
CE1	324.95	225.23	99.72
CD2	333.99	231.49	102.50
CD1	306.85	212.68	94.17
CC2	293.28	203.28	90.00
CC1	272.17	188.64	83.53
CB2	272.17	188.64	83.53
CB1	252.57	175.06	77.51
CA2	231.46	160.43	71.03
CA1	216.38	149.98	66.40
BB2	245.03	169.83	75.20
BB1	234.47	162.51	71.96
BA2	204.31	141.61	62.70
BA1	195.27	135.34	59.93
PE2	324.95	225.23	99.72
PE1	309.87	214.77	95.10
PD2	306.85	212.68	94.17
PD1	291.77	202.23	89.54

RUG-IV Category	Total Rate	Labor Portion	Non-Labor Portion
PC2	264.63	183.42	81.21
PC1	252.57	175.06	77.51
PB2	225.42	156.24	69.18
PB1	216.38	149.98	66.40
PA2	187.73	130.12	57.61
PA1	180.19	124.89	55.30

Table 7B
HYBRID RUG-III
Case-Mix Adjusted Federal Rates for Rural SNFs
By Labor and Non-Labor Component

HR-III	TOTAL RATE	Labor Portion	Non-Labor Portion
RUX	747.84	\$518.34	\$229.50
RUL	655.86	\$454.58	\$201.28
RVX	566.34	\$392.54	\$173.80
RVL	525.63	\$364.32	\$161.31
RHX	479.31	\$332.21	\$147.10
RHL	467.24	\$323.85	\$143.39
RMX	550.99	\$381.90	\$169.09
RML	505.76	\$350.55	\$155.21
RLX	388.28	\$269.12	\$119.16
RUC	633.24	\$438.90	\$194.34
RUB	575.94	\$399.19	\$176.75
RUA	548.80	\$380.38	\$168.42
RVC	506.03	\$350.73	\$155.30
RVB	480.39	\$332.96	\$147.43
RVA	430.63	\$298.47	\$132.16
RHC	440.10	\$305.04	\$135.06
RHB	418.99	\$290.41	\$128.58
RHA	388.83	\$269.50	\$119.33
RMC	404.73	\$280.52	\$124.21
RMB	392.66	\$272.16	\$120.50
RMA	383.62	\$265.89	\$117.73
RLB	355.10	\$246.12	\$108.98
RLA	300.82	\$208.50	\$92.32
SE3	447.08	\$309.88	\$137.20
SE2	377.72	\$261.80	\$115.92
SE1	335.50	\$232.54	\$102.96
SSC	329.47	\$228.36	\$101.11
SSB	311.37	\$215.81	\$95.56
SSA	305.34	\$211.63	\$93.71
CC2	327.96	\$227.31	\$100.65
CC1	299.31	\$207.45	\$91.86

HR-III	TOTAL RATE	Labor Portion	Non-Labor Portion
CB2	282.72	\$195.96	\$86.76
CB1	269.15	\$186.55	\$82.60
CA2	266.14	\$184.46	\$81.68
CA1	251.06	\$174.01	\$77.05
IB2	238.99	\$165.65	\$73.34
IB1	234.47	\$162.51	\$71.96
IA2	213.36	\$147.88	\$65.48
IA1	205.82	\$142.66	\$63.16
BB2	235.98	\$163.56	\$72.42
BB1	229.95	\$159.38	\$70.57
BA2	211.85	\$146.84	\$65.01
BA1	195.27	\$135.34	\$59.93
PE2	258.60	\$179.24	\$79.36
PE1	254.07	\$176.10	\$77.97
PD2	245.03	\$169.83	\$75.20
PD1	240.50	\$166.69	\$73.81
PC2	232.96	\$161.47	\$71.49
PC1	229.95	\$159.38	\$70.57
PB2	204.31	\$141.61	\$62.70
PB1	199.79	\$138.48	\$61.31
PA2	198.28	\$137.43	\$60.85
PA1	192.25	\$133.25	\$59.00

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Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. For FY 2011 (Federal rates effective October 1, 2010), we apply an adjustment to fulfill the budget neutrality requirement. We meet this requirement by multiplying each of the components of the unadjusted Federal rates by a budget neutrality factor equal to the ratio of the weighted average wage adjustment factor for FY 2010 to the weighted average wage adjustment factor for FY 2011. For this calculation, we use the same 2009 claims utilization data for both the numerator and denominator of this ratio. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share of the rate component. The budget neutrality factor for this year is 0.9997. The wage index applicable to FY 2011 is set forth

in Tables A and B, which appear in the Addendum of this notice.

In the SNF PPS final rule for FY 2006 (70 FR 45026, August 4, 2005), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03-04 (June 6, 2003), available online at <http://www.whitehouse.gov/omb/bulletins/b03-04.html>, which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. As indicated in the FY 2008 SNF PPS final rule (72 FR 43423, August 3, 2007), this and all subsequent SNF PPS rules and notices are considered to incorporate the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. The OMB bulletins may be accessed online at <http://www.whitehouse.gov/omb/bulletins/index.html>.

In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, we provided for a 1-year transition with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), subsequent to the expiration of this 1-year transition on September 30, 2006, we used the full CBSA-based wage index values, as now presented in Tables A and B in the Addendum of this notice.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act, as amended by section 311 of the BIPA, the payment rates in this notice reflect an update equal to the full SNF market basket, estimated at 2.3 percentage points. In addition, as discussed in sections I.G.2

and III. of this notice, the annual update includes a negative 0.6 percentage point adjustment to account for market basket forecast error, for a net update of 1.7 percent for FY 2011. We continue to disseminate the rates, wage index, and case-mix classification methodology through the **Federal Register** before the August 1 that precedes the start of each succeeding FY.

E. Relationship of RUG-IV and HR-III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. As set forth in the FY 2010 SNF PPS final rule (74 FR 40341, August 11, 2009), this designation reflects an administrative presumption under the 66-group RUG-IV system that beneficiaries who are correctly assigned to one of the upper 52 RUG-IV groups on the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on the 5-day Medicare required assessment.

A beneficiary assigned to any of the lower 14 RUG-IV groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 52 RUG-IV groups during the immediate post-hospital period require a covered level of care, which would be less likely for those beneficiaries assigned to one of the lower 14 RUG-IV groups.

In this notice, we designate the upper 52 RUG-IV groups for purposes of this administrative presumption, consisting of all groups encompassed by the following RUG-IV categories:

- Rehabilitation plus Extensive Services;
- Ultra High Rehabilitation;
- Very High Rehabilitation;
- High Rehabilitation;
- Medium Rehabilitation;
- Low Rehabilitation;
- Extensive Services;
- Special Care High;
- Special Care Low; and,
- Clinically Complex.

By contrast, under the HR-III system discussed in section I.F of this notice, we will revert to the 53-group

classification structure of the previous, RUG-53 case-mix classification system. Under that structure, as discussed in section III.B.5 of the FY 2010 SNF PPS final rule (74 FR 40304, August 11, 2009), the administrative level-of-care presumption applies to the upper 35 groups (as encompassed by the Rehabilitation plus Extensive Services, Ultra High Rehabilitation, Very High Rehabilitation, High Rehabilitation, Medium Rehabilitation, Low Rehabilitation, Extensive Services, Special Care, and Clinically Complex categories), while it does not apply to the lower 18 groups.

F. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the hypothetical SNF XYZ described in Tables 8A and 8B below, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment, for RUG-IV and HR-III, respectively. SNF XYZ's 12-month cost reporting period begins October 1, 2010. SNF XYZ's total PPS payment would equal \$41,979 for RUG-IV and \$36,517 for HR-III, respectively. We derive the Labor and Non-labor columns from Table 6A for RUG-IV and Table 6B for HR-III.

Table 8A
RUG-IV
SNF XYZ: Located in Cedar Rapids, IA (Urban CBSA 16300)
Wage Index: 0.8858

RUG-IV Group	Labor	Wage index	Adjusted Labor	Non-Labor	Adjusted Rate	Percent Adjustment	Medicare Days	Payment
RVX	\$545.24	0.8858	\$482.97	\$241.42	\$724.39	\$724.39	14	\$10,142.00
ES2	\$358.74	0.8858	\$317.77	\$158.84	\$476.61	\$476.61	30	\$14,298.00
RHA	\$260.41	0.8858	\$230.67	\$115.30	\$345.97	\$345.97	16	\$5,536.00
CC2	\$207.79	0.8858	\$184.06	\$ 92.00	\$276.06	*\$629.42	10	\$6,294.00
BA2	\$143.25	0.8858	\$126.89	\$ 63.42	\$190.31	\$190.31	30	\$5,709.00
							100	\$41,979.00

*Reflects a 128 percent adjustment from section 511 of the MMA.

Table 8B
HYBRID RUG-III
SNF XYZ: Located in Cedar Rapids, IA (Urban CBSA 16300)
Wage Index: 0.8858

HR-III Group	Labor	Wage index	Adjusted Labor	Non-Labor	Adjusted Rate	Percent Adjustment	Medicare Days	Payment
RVX	\$383.12	0.8858	\$339.37	\$169.63	\$509.00	\$509.00	14	\$7,126.00
RLX	\$270.65	0.8858	\$239.74	\$119.83	\$359.57	\$359.57	30	\$10,787.00
RHA	\$262.36	0.8858	\$232.40	\$116.16	\$348.56	\$348.56	16	\$5,577.00
CC2	\$232.95	0.8858	\$206.35	\$103.14	\$309.49	*\$705.63	10	\$7,056.00
IA2	\$149.81	0.8858	\$132.70	\$ 66.33	\$199.03	\$199.03	30	\$5,971.00
							100	\$36,517.00

*Reflects a 128 percent adjustment from section 511 of the MMA.

III. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index (input price index), that reflects changes over time in the prices of an appropriate mix of goods and

services included in the SNF PPS. This notice incorporates the latest available projections of the SNF market basket index. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services,

ancillary services, and capital-related expenses.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 9 below summarizes the updated labor-related share for FY 2011.

Table 9
Labor-related Relative Importance,
FY 2010 and FY 2011

	Relative importance, labor-related, FY 2010 09:2 forecast	Relative importance, labor-related, FY 2011 10:2 forecast
Wages and salaries	51.078	50.654
Employee benefits	11.533	11.511
Nonmedical professional fees	1.323	1.32
Labor-intensive services	3.446	3.427
Capital-related (.391)	2.460	2.399
Total	69.840	69.311

Source: IHS Global Insight, Inc.

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the average of the previous FY to the average of the current FY. For the Federal rates established in this notice, we use the percentage increase in the SNF market basket index to compute the update factor for FY 2011. This is based on the IHS Global Insight, Inc. (formerly DRI-WEFA) second quarter 2010 forecast (with historical data through the first quarter 2010) of the FY 2011 percentage increase in the FY 2004-based SNF market basket index for routine, ancillary, and capital-related expenses, to compute the update factor in this notice. Finally, as discussed in section I.A. of this notice, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the initial three-phase transition period from facility-specific to full Federal rates that started with cost reporting periods beginning in July 1998 has expired.

B. Market Basket Forecast Error Adjustment

As discussed in the June 10, 2003, supplemental proposed rule (68 FR 34768) and finalized in the August 4, 2003, final rule (68 FR 46057-59), the regulations at § 413.337(d)(2) provide for an adjustment to account for market basket forecast error. The initial adjustment applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002, resulting in an increase of 3.26 percent. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently

available FY for which there is final data, and apply whenever the difference between the forecasted and actual change in the market basket exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425, August 3, 2007), we adopted a 0.5 percentage point threshold effective with FY 2008. As discussed previously in section I.G.2. of this notice, as the difference between the estimated and actual amounts of increase in the market basket index for FY 2009 (the most recently available FY for which there is final data) exceeds the 0.5 percentage point threshold, the payment rates for FY 2011 include a forecast error adjustment.

C. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2011 Federal rates be at a level equal to the full market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2009 through September 30, 2010 to the average market basket level for the period of October 1, 2010 through September 30, 2011. Using this process, the market basket update factor for FY 2011 SNF PPS Federal rates is 2.3 percent, adjusted by the negative 0.6 percentage point forecast error adjustment, for a net update of 1.7 percent for FY 2011. We used this update factor to compute the SNF PPS rate shown in Tables 2 and 3.

IV. Consolidated Billing

Section 4432(b) of the BBA established a consolidated billing requirement that places the Medicare

billing responsibility for virtually all of the services that the SNF's residents receive with the SNF, except for a small number of services that the statute specifically identifies as being excluded from this provision. As noted previously in section I. of this notice, subsequent legislation enacted a number of modifications in the consolidated billing provision.

Specifically, section 103 of the BBRA amended this provision by further excluding a number of individual "high-cost, low-probability" services, identified by the Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy and its administration, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the proposed and final rules for FY 2001 (65 FR 19231 through 19232, April 10, 2000, and 65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB-00-18 (Change Request #1070), issued March 2000, which is available online at <http://www.cms.gov/transmittals/downloads/ab001860.pdf>.

Section 313 of the BIPA further amended this provision by repealing its Part B aspect; that is, its applicability to services furnished to a resident during a SNF stay that Medicare Part A does not cover. (However, physical therapy, occupational therapy, and speech-language pathology services remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) We discuss this BIPA amendment in greater detail in the proposed and final rules for FY 2002 (66 FR 24020 through 24021, May 10, 2001,

and 66 FR 39587 through 39588, July 31, 2001).

In addition, section 410 of the MMA amended this provision by excluding certain practitioner and other services furnished to SNF residents by RHCs and FQHCs. We discuss this MMA amendment in greater detail in the update notice for FY 2005 (69 FR 45818 through 45819, July 30, 2004), as well as in Program Transmittal #390 (Change Request #3575), issued December 10, 2004, which is available online at <http://www.cms.gov/transmittals/downloads/r390cp.pdf>.

Further, while not substantively revising the consolidated billing requirement itself, a related provision was enacted in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA, Pub. L. 110–275). Specifically, section 149 of MIPPA amended section 1834(m)(4)(C)(ii) of the Act to add subclause (VII), which adds SNFs (as defined in section 1819(a) of the Act) to the list of entities that can serve as a telehealth “originating site” (that is, the location at which an eligible individual can receive, via a telecommunications system, services of a physician or other practitioner who is located elsewhere at a “distant site”).

As explained in the Medicare Physician Fee Schedule (PFS) final rule for Calendar Year (CY) 2009 (73 FR 69726, 69879, November 19, 2008), a telehealth originating site receives a facility fee which is always separately payable under Part B outside of any other payment methodology. Section 149(b) of MIPPA amended section 1888(e)(2)(A)(ii) of the Act to exclude telehealth services furnished under section 1834(m)(4)(C)(ii)(VII) of the Act from the definition of “covered skilled nursing facility services” that are paid under the SNF PPS. Thus, a SNF “ * * * can receive separate payment for a telehealth originating site facility fee even in those instances where it also receives a bundled per diem payment under the SNF PPS for a resident’s covered Part A stay” (73 FR 69881). By contrast, under section 1834(m)(2)(A) of the Act, a telehealth distant site service is payable under Part B to an eligible physician or practitioner only to the same extent that it would have been so payable if furnished without the use of a telecommunications system. Thus, as explained in the CY 2009 Physician Fee Schedule final rule (73 FR 69726), eligible distant site physicians or practitioners can receive payment for a telehealth service that they furnish—

* * * only if the service is separately payable under the PFS when furnished in a

face-to-face encounter at that location. For example, we pay distant site physicians or practitioners for furnishing services via telehealth only if such services are not included in a bundled payment to the facility that serves as the originating site (73 FR 69880).

This means that in those situations where a SNF serves as the telehealth originating site, the distant site professional services would be separately payable under Part B only to the extent that they are not already included in the SNF PPS bundled per diem payment and subject to consolidated billing. Thus, for a type of practitioner whose services are not otherwise excluded from consolidated billing when furnished during a face-to-face encounter, the use of a telehealth distant site would not serve to unbundle those services. In fact, consolidated billing does exclude the professional services of physicians, along with those of most of the other types of telehealth practitioners that the law specifies at section 1842(b)(18)(C) of the Act, that is, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse midwives, and clinical psychologists (see section 1888(e)(2)(A)(ii) of the Act and 42 CFR 411.15(p)(2)). However, the services of clinical social workers, registered dietitians and nutrition professionals remain subject to consolidated billing when furnished to a SNF’s Part A resident and, thus, cannot qualify for separate Part B payment as telehealth distant site services in this situation. Additional information on this provision appears in Program Transmittal #1635 (Change Request #6215), issued November 14, 2008, which is available online at <http://www.cms.gov/transmittals/downloads/R1635CP.pdf>. To date, the Congress has enacted no further legislation affecting the consolidated billing provision.

V. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In accordance with section 1888(e)(7) of the Act, as amended by section 203 of the BIPA, Part A pays CAHs on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, effective with cost reporting periods beginning on or after July 1, 2002, the swing-bed services of non-CAH rural hospitals are paid under the SNF PPS. As explained in the final rule for FY 2002 (66 FR 39562, July 31, 2001), we selected this effective date consistent with the statutory provision to integrate swing-bed rural hospitals

into the SNF PPS by the end of the SNF transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have come under the SNF PPS as of June 30, 2003. Therefore, all rates and wage indexes outlined in earlier sections of this notice for the SNF PPS also apply to all non-CAH swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS and the transmission software (RAVEN–SB for Swing Beds) appears in the final rule for FY 2002 (66 FR 39562, July 31, 2001) and in the final rule for FY 2010 (74 FR 40288, August 11, 2009). As finalized in the FY 2010 SNF PPS final rule (74 FR 40356–57), effective October 1, 2010, non-CAH swing-bed rural hospitals will be required to complete an MDS 3.0 swing-bed assessment which is limited to the required demographic, payment, and quality items. The latest changes in the MDS for swing-bed rural hospitals appear on the SNF PPS Web site, www.cms.gov/snfpps.

VI. Collection of Information Requirements

The information collection requirements referenced in this notice with comment period are approved under OMB#’s 0938–0739 and 0938–0872.

VII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (September 19, 1980, RFA, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize

net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This notice is an economically significant rule under Executive Order 12866, because we estimate the FY 2011 impact of the standard update will be to increase payments to SNFs by approximately \$542 million. As discussed in the final rule for FY 2010 (74 FR 40358, August 11, 2009), we estimate that there will be no aggregate impact on payments as a result of the implementation of the RUG-IV model, which is introduced on a budget neutral basis. Similarly, there would be no impact with HR-III, as we are introducing this on a budget neutral basis. Furthermore, we are also considering this a major rule as defined in the Congressional Review Act (5 U.S.C. 804(2)).

The update set forth in this notice applies to payments in FY 2011. Accordingly, the analysis that follows describes the impact of each system on an annual basis. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities as that term is used in the RFA includes small businesses, nonprofit organizations, and small government jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of \$13.5 million or less in any 1 year. For purposes of the RFA, approximately 51 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards, with total revenues of \$13.5 million or less in any 1 year. (For details, see the Small Business Administration's final rule that sets forth standards for health care industries, at 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity. In addition, approximately 29 percent of SNFs are nonprofit organizations.

This notice updates the SNF PPS rates published in the final rule for FY 2010 (74 FR 40288, August 11, 2009) and the associated correction notice (74 FR 48865, September 25, 2009), thereby increasing net payments by an estimated

\$542 million. As indicated in Tables 10A and 10B, the effect on facilities will be an aggregate positive impact of 1.7 percent. We note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2011 wage indexes and the degree of Medicare utilization.

Guidance issued by the Department of Health and Human Services on the proper assessment of the impact on small entities in rulemakings, utilizes a revenue impact of 3 to 5 percent as a significance threshold under the RFA. While this notice is considered economically significant, its relative impact on SNFs overall is small because Medicare is a relatively minor payer source for nursing home care. We estimate that Medicare covers approximately 10 percent of service days, and approximately 20 percent of payments. However, the distribution of days and payments is highly variable, with the majority of SNFs having significantly lower Medicare utilization. As indicated in Tables 10A and 10B, the effect on facilities is projected to be an aggregate positive impact of 1.7 percent. As the overall impact is positive on the industry as a whole, and on small entities specifically, the Secretary has determined that this notice would not have a significant impact on a substantial number of small entities. Therefore, in view of the positive economic impact on small entities, it is not necessary to consider regulatory alternatives.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. The notice will affect small rural hospitals that (a) furnish SNF services under a swing-bed agreement or (b) have a hospital-based SNF. We anticipate that the impact on small rural hospitals will be similar to the impact on SNF providers overall. Therefore, the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100

million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately \$135 million. This notice would not impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of \$135 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice would have no substantial direct effect on State and local governments, preempt State law, or otherwise have Federalism implications.

B. Anticipated Effects

This notice sets forth updates of the SNF PPS rates contained in the final rule for FY 2010 (74 FR 40288, August 11, 2009) and the associated correction notice (74 FR 48865, September 25, 2009). Based on the above, we estimate the FY 2011 impact would be a net increase of \$542 million on payments to SNFs. The impact analysis of this notice represents the projected effects of the changes in the SNF PPS from FY 2010 to FY 2011. We assess the effects by estimating payments while holding all other payment-related variables constant. Although the best data available is utilized, there is no attempt to predict behavioral responses to these changes, or to make adjustments for future changes in such variables as days or case-mix.

Certain events may occur to limit the scope or accuracy of our impact analysis, as this analysis is future-oriented and, thus, very susceptible to forecasting errors due to certain events that may occur within the assessed impact time period. Some examples of possible events may include newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of previously enacted legislation, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is that the changes may interact and, thus, the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with section 1888(e)(4)(E) of the Act, we update the payment rates for FY 2010 by a factor equal to the full market basket index percentage increase adjusted by the FY 2009 forecast error adjustment to

determine the payment rates for FY 2011. The special AIDS add-on established by section 511 of the MMA remains in effect until “* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *” We have not provided a separate impact analysis for the MMA provision. Our latest estimates indicate that there are less than 3,300 beneficiaries who qualify for the AIDS add-on payment. The impact to Medicare is included in the “total” column of Tables 10A and 10B. In updating the rates for FY 2011, we made a number of standard annual revisions and clarifications mentioned elsewhere in this notice (for example, the update to the wage and market basket indexes used for adjusting the Federal rates). These revisions would increase payments to SNFs by approximately \$542 million.

The FY 2011 impacts appear in Tables 10A and 10B. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based,

freestanding, urban, and rural categories. The urban and rural designations are based on the location of the facility under the CBSA designation. The next twenty-two rows show the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database.

The third column of the table shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column shows the distributional effect due to the RUG-IV and HR-III classification systems.

Though the aggregate impact shows no change in total payments, it is estimated that some facilities will experience payment increases while others experience payment decreases due to Medicare utilization under RUG-IV in Table 10A, and in HR-III in Table 10B.

For example, in Table 10A under RUG-IV, providers in the urban Pacific region only show increases of 0.1 percent, while providers in the urban Mountain region show a decrease of 0.8 percent. Similarly, in Table 10B under HR-III, providers in the urban East South Central region only show increases of

0.3 percent, while providers in the urban South Atlantic region show a decrease of 0.9 percent.

The fifth column shows the effect of all of the changes on the FY 2011 payments. The update of 1.7 percent, consisting of the market basket increase of 2.3 percentage points, adjusted by the negative 0.6 percentage point forecast error adjustment is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 1.7 percent, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from Tables 10A and 10B, the combined effects of all of the changes vary by specific types of providers and by location. For example, nearly all facilities would experience payment increases in FY 2011 total payments under RUG-IV, ranging from 5.2 percent in urban Outlying regions to 0.5 percent in the rural Pacific region. Of those facilities showing decreases under RUG-IV, facilities in the rural South Atlantic area of the country show the smallest decrease of 0.1 percent and facilities in the rural East North Central area show the largest decrease of 0.4 percent.

Table 10A--RUG-IV Projected Impact to the SNF PPS for

FY 2011

	Number of facilities	Update wage data	RUG-IV	Total FY 2011 change
Total	15,450	0.0%	0.0%	1.7%
Urban	10,542	0.0%	0.2%	1.9%
Rural	4,908	0.0%	-0.9%	0.7%
Hospital based urban	559	-0.1%	-1.3%	0.3%
Free standing urban	9,983	0.0%	0.3%	2.0%
Hospital based rural	413	-0.1%	-0.7%	0.9%
Freestanding rural	4,495	0.0%	-1.0%	0.7%
Urban by region:				
New England	824	-0.6%		2.0%

	Number of facilities	Update wage data	RUG-IV	Total FY 2011 change
			0.9%	
Middle Atlantic	1,466	-0.5%	1.3%	2.5%
South Atlantic	1,729	0.1%	-0.6%	1.2%
East North Central	2,033	0.3%	-0.2%	1.8%
East South Central	523	-0.6%	1.1%	2.2%
West North Central	872	0.0%	0.1%	1.9%
West South Central	1,191	0.4%	1.0%	3.1%
Mountain	473	0.0%	-0.8%	0.9%
Pacific	1,424	0.3%	0.1%	2.2%
Outlying	7	0.0%	3.5%	5.2%
Rural by region:				
New England	157	-0.2%	-1.6	-0.2%
Middle Atlantic	271	0.8%	0.6	3.1%
South Atlantic	619	-0.5%	-1.3	-0.1%
East North Central	946	-0.5%	-1.6	-0.4%
East South Central	558	0.4%	-0.3	1.9%
West North Central	1,128	-0.4%	0.0	1.3%
West South Central	835	0.7%	-1.4	1.0%
Mountain	259	0.3%	-1.2	0.8%
Pacific	135	0.5%	-1.7	0.5%
Outlying	0	---	---	---
Ownership:				
Government	834	0.0%	1.2	2.9%
Proprietary	10,572	0.0%	-0.1	1.6%
Voluntary	4,044	-0.1%	0.2	1.8%

Note: The Total column includes the 2.3 percent market basket increase, adjusted by the negative 0.6 percentage point forecast error adjustment.

Table 10B
HYBRID RUG-III
Projected Impact to the SNF PPS for FY 2011

	Number of facilities	Update wage data	HR-III	Total FY 2011 change
Total	15,450	0.0%	0.0%	1.7%
Urban	10,542	0.0%	0.1%	1.8%
Rural	4,908	0.0%	-0.2%	1.5%
Hospital based urban	559	-0.1%	2.9%	4.6%
Free standing urban	9,983	0.0%	0.0%	1.7%
Hospital based rural	413	-0.1%	3.3%	5.0%
Freestanding rural	4,495	0.0%	-0.5%	1.2%
Urban by region:				
New England	824	-0.6%	0.6%	1.7%
Middle Atlantic	1,466	-0.5%	1.3%	2.5%
South Atlantic	1,729	0.1%	-0.9%	0.9%
East North Central	2,033	0.3%	-0.0%	2.0%
East South Central	523	-0.6%	0.3%	1.5%
West North Central	872	0.0%	1.2%	3.0%
West South Central	1,191	0.4%	0.5%	2.6%
Mountain	473	0.0%	-0.7%	1.0%
Pacific	1,424	0.3%	-0.4%	1.6%
Outlying	7	0.0%	7.4%	9.2%
Rural by region:				
New England	157	-0.2%	-1.3%	0.2%
Middle Atlantic	271	0.8%	0.6%	3.1%
South Atlantic	619	-0.5%	-0.7%	0.6%
East North Central	946	-0.5%	-0.9%	0.4%
East South Central	558	0.4%	-0.6%	1.5%

	Number of facilities	Update wage data	HR-III	Total FY 2011 change
West North Central	1,128	-0.4%	2.3%	3.6%
West South Central	835	0.7%	-0.6%	1.8%
Mountain Pacific	259	0.3%	0.1%	2.1%
Pacific	135	0.5%	-0.6%	1.5%
Outlying	0	---	---	---
Ownership:				
Government	834	0.0%	2.6%	4.3%
Proprietary	10,572	0.0%	-0.4%	1.3%
Voluntary	4,044	-0.1%	1.3%	3.0%

Note: The Total column includes the 2.3 percent market basket increase, adjusted by the negative 0.6 percentage point forecast error adjustment.

C. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of

elements into the SNF PPS (for example, case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY. Accordingly, we are not pursuing alternatives with respect to the payment methodology as discussed above.

D. Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in Table 11 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this update notice. This table provides our best estimate of the change in Medicare payments under the SNF PPS as a result of the policies in this update notice based on the data for 15,307 SNFs in our database. All expenditures are classified as transfers to Medicare providers (that is, SNFs).

Table 11
Accounting Statement: Classification of Estimated Expenditures, from the 2010 SNF PPS Fiscal Year to the 2011 SNF PPS Fiscal Year

Category	Transfers
Annualized Monetized Transfers	\$542 million
From Whom To Whom?	Federal Government to SNF Medicare Providers

E. Conclusion

Overall estimated payments for SNFs in FY 2011 are projected to increase by \$542 million, or 1.7 percent, compared with those in FY 2010. We estimate that under RUG-IV, SNFs in urban and rural areas would experience a 1.9 and 0.7 percent increase, respectively, in estimated payments compared with FY 2010. Providers in the urban New

England region would show an increase in payments of 2.0 percent. We estimate that under HR-III, SNFs in urban and rural areas would experience a 1.8 and 1.5 percent increase in estimated payments, respectively, compared with FY 2010. Providers in the rural Pacific region and the East South Central region would both show increases in payments of 1.5 percent.

Finally, in accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IX. Waiver of Proposed Rulemaking

We would ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. However,

we can waive this procedure if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We believe it is unnecessary to undertake notice and comment rulemaking in this instance, as the statute requires annual updates to the SNF PPS rates, and the methodologies used to update the rates and the policies initiated in this notice have been previously subject to public comment and finalized.

As discussed in section I.F, section 10325 of the ACA requires that the Secretary postpone implementation of the RUG-IV case-mix classification system. Notwithstanding this postponement, section 10325 further specifies that the Secretary is required to implement certain components of RUG-IV effective October 1, 2010 (that

is, the changes relating to concurrent therapy and the lookback period). Because the concurrent therapy and look back period changes were already subject to notice and public comment and finalized in the FY 2010 SNF PPS final rule (74 FR 40288, August 11, 2009), we believe that these ACA requirements are largely self-implementing and require no substantive exercise of discretion by the Secretary. In addition, section 10325 of the ACA specifies that the implementation of the MDS 3.0 shall proceed as planned (see 74 FR 40342 through 40343), with an effective date of October 1, 2010. Similarly, we believe this provision is self-implementing and does not require the exercise of discretion. Thus, we find that notice and comment procedures are unnecessary.

However, as discussed in section I.F, there are some operational issues that

arise in connection with the implementation of section 10325 of the ACA in the context of the existing RUG-III case-mix classification system. Thus, we are providing a 60-day comment period for public comment.

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: *May 19, 2010.*

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Approved: *July 14, 2010.*

Kathleen Sebelius,

Secretary.

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

BILLING CODE 4120-01-P

Table A: FY 2011 Wage Index for Urban Areas Based on CBSA Labor Market Areas

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.8003
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3471
10420	Akron, OH Portage County, OH Summit County, OH	0.8843
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.9036
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8653
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9456
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.7995

Addendum – FY 2011 CBSA Wage Index Tables

In this addendum, we provide the wage index tables referred to in the preamble to this notice. Tables A and B display the CBSA-based wage index values for urban and rural providers.

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9549
12100	Atlantic City-Hamilton, NJ Atlantic County, NJ	1.1129
12220	Auburn-Opelika, AL Lee County, AL	0.7190
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9538

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9194
11020	Altoona, PA Blair County, PA	0.8620
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.8644
11180	Ames, IA Story County, IA	0.9970
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1964
11300	Anderson, IN Madison County, IN	0.9192
11340	Anderson, SC	0.8691
11460	Ann Arbor, MI Washtenaw County, MI	1.0124
11500	Anniston-Oxford, AL Calhoun County, AL	0.7918
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9361
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9001
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9659

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13380	Bellingham, WA Whatcom County, WA	1.1390
13460	Bend, OR Deschutes County, OR	1.1372
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0525
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8674
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8719
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8611
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7348
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8314
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8989
14060	Bloomington-Normal, IL McLean County, IL	0.9439
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9273

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9514
12540	Bakersfield, CA Kern County, CA	1.1707
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0255
12620	Bangor, ME Penobscot County, ME	0.9777
12700	Barnstable Town, MA Barnstable County, MA	1.2823
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8583
12980	Battle Creek, MI Calhoun County, MI	0.9656
13020	Bay City, MI Bay County, MI	0.9221
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8488

CBSA Code	Urban Area (Constituent Counties)	Wage Index
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9195
16020	Cape Girardeau-Jackson, MO-IL Alexander County, IL Bollinger County, MO Cape Girardeau County, MO	0.8983
16180	Carson City, NV Carson City, NV	1.0465
16220	Casper, WY Natrona County, WY	0.9655
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8844
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	1.0235
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.7895
16700	Charleston-North Charleston-Summerville, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9354
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9420
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9342

CBSA Code	Urban Area (Constituent Counties)	Wage Index
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.2178
14500	Boulder, CO Boulder County, CO	1.0065
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8666
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0667
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2547
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9173
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9209
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9530
15500	Burlington, NC Alamance County, NC	0.8863
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT	0.9947
15764	Grand Isle County, VT Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1250
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0386
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8749

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.7731
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9050
17660	Coeur d'Alene, ID Kootenai County, ID	0.9364
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9588
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9481
17860	Columbia, MO Boone County, MO Howard County, MO	0.8282
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8733
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.9027
18020	Columbus, IN Bartholomew County, IN	0.9434

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8829
16940	Cheyenne, WY Laramie County, WY	0.9392
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0593
17020	Chico, CA Butte County, CA	1.1533
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9699
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.7888

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8400
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9140
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7621
19500	Decatur, IL Macon County, IL	0.7916
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.8736
19740	Denver-Aurora-Broomfield, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO	1.0718
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9621
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9699
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7435

CBSA Code	Urban Area (Constituent Counties)	Wage Index
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0141
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8585
18700	Corvallis, OR Benton County, OR	1.0455
18880	Crestview-Fort Walton Beach-Destin, FL Okaloosa County, FL	0.8842
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8186
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	0.9860
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8622
19180	Danville, IL Vermilion County, IL	0.9693
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8168

CBSA Code	Urban Area (Constituent Counties)	Wage Index
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8433
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1080
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.3883
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8064
22140	Farmington, NM San Juan County, NM	0.9339
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9323
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO Flagstaff, AZ Coconino County, AZ	0.8616
22380	Flint, MI Genesee County, MI	1.2443
22420	Florence, SC Darlington County, SC Florence County, SC	1.1496
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL Fond du Lac, WI	0.8252
22540	Fond du Lac County, WI	0.8144
		0.9223

CBSA Code	Urban Area (Constituent Counties)	Wage Index
20100	Dover, DE Kent County, DE	0.9921
20220	Dubuque, IA Dubuque County, IA	0.8774
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0565
20500	Durham-Chapel Hill, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9664
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9639
20764	Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1006
20940	El Centro, CA Imperial County, CA	0.9258
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8449
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9465
21300	Elmira, NY Chemung County, NY	0.8445
21340	El Paso, TX El Paso County, TX	0.8475
21500	Erie, PA Erie County, PA	0.8360
21660	Eugene-Springfield, OR Lane County, OR	1.1384

CBSA Code	Urban Area (Constituent Counties)	Wage Index
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7717
24300	Grand Junction, CO Mesa County, CO	0.9850
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9169
24500	Great Falls, MT Cascade County, MT	0.8289
24540	Greeley, CO Weld County, CO	0.9496
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9586
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.8882
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9370
24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9644
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3686
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8877

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9892
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0160
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7599
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9362
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9474
23420	Fresno, CA Fresno County, CA	1.1422
23460	Gadsden, AL Etowah County, AL	0.7180
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9160
23580	Gainesville, GA Hall County, GA	0.9223
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9084
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8507
24140	Goldensboro, NC Wayne County, NC	0.9067

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26420	Houston-Sugar Land-Baytown, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	0.9824
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.8953
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9191
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9663
26900	Indianapolis-Carmel, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN	0.9672
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9657
27060	Ithaca, NY Tompkins County, NY	0.9842
27100	Jackson, MI Jackson County, MI	0.9155

CBSA Code	Urban Area (Constituent Counties)	Wage Index
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9254
25260	Hanford-Corcoran, CA Kings County, CA	1.1205
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9296
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9158
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.0927
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7714
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.8693
25980	Hinesville-Fort Stewart, GA ¹ Liberty County, GA Long County, GA	0.8958
26100	Holland-Grand Haven, MI Ottawa County, MI	0.8632
26180	Honolulu, HI Honolulu County, HI	1.1807
26300	Hot Springs, AR Garland County, AR	0.9151
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7852

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0619
28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	
28420	Kennewick-Pasco-Richland, WA Benton County, WA Franklin County, WA	0.9976
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8798
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA Kingston, NY Ulster County, NY	0.7588
28740	Ulster County, NY	0.9075
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.7842

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8042
27180	Jackson, TN Chester County, TN Madison County, TN	0.8404
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.8884
27340	Jacksonville, NC Onslow County, NC	0.7807
27500	Janesville, WI Rock County, WI	0.9415
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8434
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.8105
27780	Johnstown, PA Cambria County, PA	0.8090
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7757
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8214
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0292

CBSA Code	Urban Area (Constituent Counties)	Wage Index
30020	Lawton, OK Comanche County, OK	0.8285
30140	Lebanon, PA Lebanon County, PA	0.7807
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9358
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.8903
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.8817
30620	Lima, OH Allen County, OH	0.9271
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.9617
30780	Little Rock-North Little Rock-Conway, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8546
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.8794
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8563
31020	Longview, WA Cowlitz County, WA	1.0296
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.2130

CBSA Code	Urban Area (Constituent Counties)	Wage Index
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9130
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9803
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9289
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8489
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.8196
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0781
29420	Lake Havasu City-Kingman, AZ Mohave County, AZ	1.0235
29460	Lakeland-Winter Haven, FL Polk County, FL	0.8447
29540	Lancaster, PA Lancaster County, PA	0.9344
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0298
29700	Laredo, TX Webb County, TX	0.7914
29740	Las Cruces, NM Dona Ana County, NM	0.9296
29820	Las Vegas-Paradise, NV Clark County, NV	1.2099
29940	Lawrence, KS Douglas County, KS	0.8533

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31860	Mankato-North Mankato, MN Blue Earth County, MN Nicollet County, MN	0.9083
31900	Mansfield, OH Richland County, OH	0.8918
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3640
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.8837
32780	Medford, OR Jackson County, OR	1.0061
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	
32900	Merced, CA Merced County, CA	1.2359
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	1.0128
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9470
33260	Midland, TX Midland County, TX	0.9711
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0183

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31140	Louisville-Jefferson County, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Meade County, KY Nelson County, KY Olcham County, KY Shelby County, KY Spencer County, KY Trimble County, KY	0.8896
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8847
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8694
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9202
31460	Madera-Chowchilla, CA Madera County, CA	0.7986
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.1294
31700	Manchester-Nashua, NH Hillsborough County, NH	0.9869
31740	Manhattan, KS Geary County, KS Pottawatomie County, KS Riley County, KS	0.7847

CBSA Code	Urban Area (Constituent Counties)	Wage Index
34620	Muncie, IN Delaware County, IN	0.8206
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9809
34820	Myrtle Beach-North Myrtle Beach-Conway, SC Horry County, SC	0.8738
34900	Napa, CA Napa County, CA	1.4604
34940	Naples-Marco Island, FL Collier County, FL	0.9698
34980	Nashville-Davidson-Murfreesboro-Franklin, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	0.9457
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2315
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1460
35300	New Haven-Milford, CT New Haven County, CT	1.1515

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33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN Pierce County, WI St. Croix County, WI	1.1143
33540	Missoula, MT Missoula County, MT	0.8921
33660	Mobile, AL Mobile County, AL	0.7960
33700	Modesto, CA Stanislaus County, CA	1.2104
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7993
33780	Monroe, MI Monroe County, MI	0.8684
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8442
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8137
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7041
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0363

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36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McCain County, OK Oklahoma County, OK	0.8877
36500	Olympia, WA Thurston County, WA	1.1269
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9583
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9163
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9566
36980	Owensboro, KY Davies County, KY Hancock County, KY McLean County, KY	0.8370
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.2377
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9211
37380	Palm Coast, FL Flagler County, FL	0.8405
37460	Panama City-Lynn Haven-Panama City Beach, FL Bay County, FL	0.7954

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35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.9070
35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.2955
35660	Niles-Benton Harbor, MI Berrien County, MI	0.8872
35840	North Port-Bradenton-Sarasota-Venice, FL Manatee County, FL Sarasota County, FL	0.9481
35980	Norwich-New London, CT New London County, CT	1.1215
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.6354
36100	Ocala, FL Marion County, FL	0.8468
36140	Ocean City, NJ Cape May County, NJ	1.0879
36220	Odessa, TX Ector County, TX	0.9436
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9267

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38340	Pittsfield, MA Berkshire County, MA	1.0371
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9507
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4326
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	0.9899
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1476
38940	Port St. Lucie, FL Martin County, FL St. Lucie County, FL	1.0723
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.1354
39140	Prescott, AZ Yavapai County, AZ	1.2234
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0714
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9321
39380	Pueblo, CO Pueblo County, CO	0.8721

CBSA Code	Urban Area (Constituent Counties)	Wage Index
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.7455
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8299
37764	Peabody, MA Essex County, MA	1.0979
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8254
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9149
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0803
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0642
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.8012
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8605

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1570
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8827
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.0942
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8595
40420	Rockford, IL Boone County, IL Winnebago County, IL	1.0033
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0026
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9034
40660	Rome, GA Floyd County, GA	0.8635
40900	Sacramento-Arden-Arcade-Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.4053
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8728
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.1042

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39460	Punta Gorda, FL Charlotte County, FL	0.8759
39540	Racine, WI Racine County, WI	1.0580
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9811
39660	Rapid City, SD Meade County, SD Pennington County, SD	1.0442
39740	Reading, PA Berks County, PA	0.8904
39820	Redding, CA Shasta County, CA	1.4134
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0419
40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9661

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8998
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1979
41780	Sandusky, OH Erie County, OH	0.8686
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5733
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4560
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.6703

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41100	St. George, UT Washington County, UT	0.9133
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0302
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO	0.9090
41420	Salem, OR Marion County, OR Polk County, OR	1.1133
41500	Salinas, CA Monterey County, CA	1.5686
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9005
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9266
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8303

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2915
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.2162
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1909
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6740
42140	Santa Fe, NM Santa Fe County, NM	1.0847
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.6143
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.8907
42540	Scranton-Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8238
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1556
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9097
43100	Sheboygan, WI Sheboygan County, WI	0.9233
43300	Sherman-Denison, TX Grayson County, TX	0.8279
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8536

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerio Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4296

CBSA Code	Urban Area (Constituent Counties)	Wage Index
44700	Stockton, CA San Joaquin County, CA	1.2644
44940	Sumter, SC Sumter County, SC	0.7860
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9905
45104	Tacoma, WA Pierce County, WA	1.1343
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8806
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9054
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.9205
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.7748
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9432
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8952

CBSA Code	Urban Area (Constituent Counties)	Wage Index
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9091
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9299
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9948
43900	Spartanburg, SC Spartanburg County, SC	0.9383
44060	Spokane, WA Spokane County, WA	1.0571
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9130
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0251
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8371
44220	Springfield, OH Clark County, OH	0.9234
44300	State College, PA Centre County, PA	0.8779
44600	Steubenville-Weirton, OH-WV Jefferson County, OH Brooke County, WV Hancock County, WV	0.7315

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.8961
47300	Visalia-Porterville, CA Tulare County, CA	1.0738
47380	Waco, TX McLennan County, TX	0.8403
47580	Warner Robins, GA Houston County, GA	0.8028
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	0.9648

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45940	Trenton-Ewing, NJ Mercer County, NJ	1.0150
46060	Tucson, AZ Pima County, AZ	0.9480
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8793
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8843
46340	Tyler, TX Smith County, TX	0.8065
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8471
46660	Valdosta, GA Brooks County, GA Echoles County, GA Lanier County, GA Lowndes County, GA	0.7941
46700	Vallejo-Fairfield, CA Solano County, CA	1.4931
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8219
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0534

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.9566
48700	Williamsport, PA Lycoming County, PA	0.7256
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0580
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9202
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	1.0002
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.8939
49340	Worcester, MA Worcester County, MA	1.1012
49420	Yakima, WA Yakima County, WA	1.0067
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3536
49620	York-Hanover, PA York County, PA	0.9983
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8625

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.0723
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8462
48140	Wausau, WI Marathon County, WI	0.9563
48300	Wenatchee-East Wenatchee, WA Chelan County, WA Douglas County, WA	0.9615
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9934
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6675
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.8898

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.1043
49740	Yuma, AZ Yuma County, AZ	0.9283

¹At this time, there are no hospitals located in this urban area on which to base a wage index.

Table B: FY 2011 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

State Code	Nonurban Area	Wage Index
1	Alabama	0.7380
2	Alaska	1.2626
3	Arizona	0.9095
4	Arkansas	0.7222
5	California	1.2056
6	Colorado	0.9933
7	Connecticut	1.1128
8	Delaware	0.9757
10	Florida	0.8409
11	Georgia	0.7566
12	Hawaii	1.1189
13	Idaho	0.7556
14	Illinois	0.8343
15	Indiana	0.8391
16	Iowa	0.8545
17	Kansas	0.7981
18	Kentucky	0.7830
19	Louisiana	0.7712
20	Maine	0.8588
21	Maryland	0.9175
22	Massachusetts ¹	1.1769

State Code	Nonurban Area	Wage Index
23	Michigan	0.8555
24	Minnesota	0.9038
25	Mississippi	0.7620
26	Missouri	0.7655
27	Montana	0.8517
28	Nebraska	0.8911
29	Nevada	0.9350
30	New Hampshire	1.0207
31	New Jersey ¹	-----
32	New Mexico	0.8911
33	New York	0.8185
34	North Carolina	0.8359
35	North Dakota	0.6831
36	Ohio	0.8561
37	Oklahoma	0.7860
38	Oregon	1.0029
39	Pennsylvania	0.8480
40	Puerto Rico ¹	0.4047
41	Rhode Island ¹	-----
42	South Carolina	0.8413
43	South Dakota	0.8536
44	Tennessee	0.7886
45	Texas	0.7806
46	Utah	0.8649
47	Vermont	0.9591
48	Virgin Islands	0.7993
49	Virginia	0.7841
50	Washington	1.0184
51	West Virginia	0.7474
52	Wisconsin	0.9186
53	Wyoming	0.9528
65	Guam	0.9611

¹ All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2011. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2010.



Federal Register

**Thursday,
July 22, 2010**

Part IV

**Department of
Health and Human
Services**

Centers for Medicare & Medicaid Services

**Medicare Program; Hospice Wage Index
for Fiscal Year 2011; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1523-NC]

RIN 0938-AP84

Medicare Program; Hospice Wage Index for Fiscal Year 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period announces the annual update to the hospice wage index for fiscal year 2011 and continues the phase out of the wage index budget neutrality adjustment factor (BNAF), with an additional 15 percent BNAF reduction, for a total BNAF reduction in FY 2011 of 25 percent. The BNAF phase-out will continue with successive 15 percent reductions from FY 2012 through FY 2016.

DATES: *Effective Date:* These regulations are effective on October 1, 2010.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on September 20, 2010.

ADDRESSES: In commenting, please refer to file code CMS-1523-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1523-NC, P.O. Box 8012, Baltimore, MD 21244-1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1523-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier)

your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Randy Thronset, (410) 786-0131 or Katie Lucas (410) 786-7723.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on issues set forth in section III.B of this notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-1523-NC and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning

approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

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I. Background

A. General

1. Hospice Care

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling services and inpatient respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. Section 1814(i) of the Act provides payment for Medicare participating hospices.

2. Medicare Payment for Hospice Care

Our regulations at 42 CFR part 418 establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418 subpart G provides for payment in one of four prospectively-determined rate categories (routine home care, continuous home care, inpatient respite care, and general inpatient care) to hospices based on each day a qualified Medicare beneficiary is under a hospice election.

B. Hospice Wage Index

Our regulations at § 418.306(c) require each hospice's labor market to be established using the most current hospital wage data available, including any changes by OMB to the Metropolitan Statistical Areas (MSAs) definitions. OMB revised the MSA definitions beginning in 2003 with new designations called the Core Based Statistical Areas (CBSAs). For the purposes of the hospice benefit, the term "MSA-based" refers to wage index values and designations based on the previous MSA designations before 2003. Conversely, the term "CBSA-based" refers to wage index values and designations based on the OMB revised MSA designations in 2003, which now include CBSAs. In the August 11, 2004 IPPS final rule (69 FR 48916, 49026), revised labor market area definitions were adopted at § 412.64(b), which were effective October 1, 2004 for acute care hospitals. We also revised the labor market areas for hospices using the new OMB standards that included CBSAs. In the FY 2006 hospice wage index final rule (70 FR 45130), we implemented a 1-year transition policy using a 50/50 blend of the CBSA-based wage index values and the Metropolitan Statistical Area (MSA)-based wage index values for FY 2006. The one-year transition policy ended on September 30, 2006. For FY 2007 through FY 2010 we used wage index values based on CBSA designations.

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels. The original hospice wage index was based on the 1981 Bureau of Labor

Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, a committee was formulated to negotiate a wage index methodology that could be accepted by the industry and the government. This committee, functioning under a process established by the Negotiated Rulemaking Act of 1990, was comprised of national hospice associations; rural, urban, large and small hospices; multi-site hospices; consumer groups; and a government representative. On April 13, 1995, the Hospice Wage Index Negotiated Rulemaking Committee signed an agreement for the methodology to be used for updating the hospice wage index.

In the August 8, 1997 **Federal Register** (62 FR 42860), we published a final rule implementing a new methodology for calculating the hospice wage index based on the recommendations of the negotiated rulemaking committee. The committee statement was included in the appendix of that final rule (62 FR 42883).

The reduction in overall Medicare payments if a new wage index were adopted was noted in the November 29, 1995 notice transmitting the recommendations of the negotiated rulemaking committee (60 FR 61264). Therefore, the Committee also decided that for each year in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments as if the 1983 wage index had been used.

As decided upon by the Committee, budget neutrality means that, in a given year, estimated aggregate payments for Medicare hospice services using the updated hospice values will equal estimated payments that would have been made for these services if the 1983 hospice wage index values had remained in effect. Although payments to individual hospice programs may change each year, the total payments each year to hospices would not be affected by using the updated hospice wage index because total payments would be budget neutral as if the 1983 wage index had been used. To implement this policy, a BNAF would be computed and applied annually to the pre-floor, pre-reclassified hospital wage index, when deriving the hospice wage index.

The BNAF is calculated by computing estimated payments using the most recent completed year of hospice claims data. The units (days or hours) from those claims are multiplied by the updated hospice payment rates to calculate estimated payments. For the

FY 2010 Hospice Wage Index Final Rule, that meant estimating payments for FY 2010 using FY 2008 hospice claims data, and applying the FY 2010 hospice payment rates (updating the FY 2009 rates by the FY 2010 hospital market basket update). The FY 2010 hospice wage index values are then applied to the labor portion of the payment rates only. The procedure is repeated using the same claims data and payment rates, but using the 1983 BLS-based wage index instead of the updated raw pre-floor, pre-reclassified hospital wage index (note that both wage indices include their respective floor adjustments). The total payments are then compared, and the adjustment required to make total payments equal is computed; that adjustment factor is the BNAF.

The August 8, 2008 FY 2009 Hospice Wage Index final rule (73 FR 46464) implemented a phase-out of the hospice BNAF over 3 years, beginning with a 25 percent reduction in the BNAF in FY 2009, an additional 50 percent reduction for a total of 75 percent in FY 2010, and complete phase out of the BNAF in FY 2011. However, subsequent to the publication of the above rule, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (ARRA) eliminated the BNAF phase-out for FY 2009. Specifically, division B, section 4301(a) of ARRA prohibited the Secretary from phasing out or eliminating the BNAF in the Medicare hospice wage index before October 1, 2009, and instructed the Secretary to recompute and apply the final Medicare hospice wage index for FY 2009 as if there had been no reduction in the BNAF. While ARRA eliminated the BNAF phase-out for FY 2009, it neither changed the 75 percent reduction in the BNAF for FY 2010, nor prohibited the elimination of the BNAF in FY 2011 that were previously implemented in the August 8, 2008 Hospice Wage Index final rule.

In 2009 rulemaking for FY 2010, we accepted comments on the BNAF phase-out previously promulgated in 2008 rulemaking. As a result of those comments, a more gradual phase-out was promulgated in the FY 2010 final rule. Specifically, in the Hospice Wage Index for FY 2010 Final Rule, published on August 6, 2009 (74 FR 39384), we implemented a 7-year phase-out the BNAF, with a 10 percent reduction in FY 2010, an additional 15 percent reduction for a total of 25 percent in FY 2011, an additional 15 percent reduction for a total of 40 percent in FY 2012, an additional 15 percent reduction for a total of 55 percent in FY 2013, an additional 15 percent

reduction for a total of 70 percent in FY 2014, an additional 15 percent reduction for a total of 85 percent in FY 2015, and an additional 15 percent reduction for complete elimination in FY 2016.

The hospice wage index is updated annually. Our most recent annual hospice wage index final rule, published in the **Federal Register** (74 FR 39384) on August 6, 2009, set forth updates to the hospice wage index for FY 2010. As noted previously, that update also finalized a provision for a 7-year phase-out of the BNAF, which was applied to the wage index values. The BNAF was reduced by 10 percent in FY 2010, and will be reduced by an additional 15 percent in each of the next 6 years, for complete phase out in 2016.

1. Raw Wage Index Values (Pre-Floor, Pre-Reclassified Hospital Wage Index)

As described in the August 8, 1997 hospice wage index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are then subject to either a budget neutrality adjustment or application of the hospice floor to compute the hospice wage index used to determine payments to hospices.

Pre-floor, pre-reclassified hospital wage index values of 0.8 or greater are currently adjusted by a reduced BNAF. Pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by the greater of: (1) The hospice BNAF, reduced by 10 percent for FY 2010; or (2) the hospice floor (which is a 15 percent increase) subject to a maximum wage index value of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index (raw wage index) value of 0.4000, we would perform the following calculations using the budget neutrality factor (which for this example is 0.061775 less 10 percent, or 0.055598) and the hospice floor to determine County A's hospice wage index:

Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by the 10 percent reduced BNAF: $(0.4000 \times 1.055598 = 0.4222)$

Pre-floor, pre-reclassified hospital wage index value below 0.8 multiplied by the hospice floor: $(0.4000 \times 1.15 = 0.4600)$

Based on these calculations, County A's hospice wage index would be 0.4600.

The BNAF has been computed and applied annually, in full or in reduced form, to the labor portion of the hospice payment. Currently, the labor portion of the payment rates is as follows: For

Routine Home Care, 68.71 percent; for Continuous Home Care, 68.71 percent; for General Inpatient Care, 64.01 percent; and for Respite Care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. Therefore the non-labor portion of the payment rates is as follows: For Routine Home Care, 31.29 percent; for Continuous Home Care, 31.29 percent; for General Inpatient Care, 35.99 percent; and for Respite Care, 45.87 percent.

2. Changes to Core Based Statistical Area (CBSA) Designations

The annual update to the hospice wage index is published in the **Federal Register** and is based on the most current available hospital wage data, as well as any changes by the Office of Management and Budget (OMB) to the definitions of MSAs, which now include CBSA designations. The August 4, 2005 final rule (70 FR 45130) set forth the adoption of the changes discussed in the OMB Bulletin No. 03-04 (June 6, 2003), which announced revised definitions for Micropolitan Statistical Areas and the creation of MSAs and Combined Statistical Areas. In adopting the OMB CBSA geographic designations, we provided for a 1-year transition with a blended hospice wage index for all hospices for FY 2006. For FY 2006, the hospice wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based hospice wage index and 50 percent of the FY 2006 CBSA based hospice wage index. Subsequent fiscal years have used the full CBSA-based hospice wage index.

3. Definition of Rural and Urban Areas

Each hospice's labor market is determined based on definitions of MSAs issued by OMB. In general, an urban area is defined as an MSA or New England County Metropolitan Area (NECMA) as defined by OMB. Under § 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of the urban area. The urban and rural area geographic classifications are defined in § 412.64(b)(1)(ii)(A) through (C), and have been used for the Medicare hospice benefit since implementation.

In the August 22, 2007 FY 2008 Inpatient Prospective Payment System (IPPS) final rule with comment period (72 FR 47130), § 412.64(b)(1)(ii)(B) was revised such that the two "New England deemed Counties" that had been considered rural under the OMB definitions (Litchfield County, CT and Merrimack County, NH) but deemed urban, were no longer considered urban effective for discharges occurring on or

after October 1, 2007. Therefore, these two counties are now considered rural in accordance with § 412.64(b)(1)(ii)(C).

The requirement to adjust payments to reflect local differences in wages is codified in § 418.306(c) of our regulations; however there had been no explicit reference to § 412.64 in § 418.306(c) before implementation of the August 8, 2008 FY 2009 Hospice Wage Index final rule. Although § 412.64 had not been explicitly referred to, the hospice program has used the definition of "urban" in § 412.64(b)(1)(ii)(A) and (b)(1)(ii)(B), and the definition of "rural" as any area outside of an urban area in § 412.64(b)(1)(ii)(C). With the implementation of the August 8, 2008 FY 2009 Wage Index final rule, we now explicitly refer to those provisions in § 412.64 to make it absolutely clear how we define "urban" and "rural" for purposes of the hospice wage index.

When the raw pre-floor, pre-reclassified hospital wage index was adopted for use in deriving the hospice wage index, it was decided not to take into account IPPS geographic reclassifications. This policy of following OMB designations of rural or urban, rather than considering some Counties to be "deemed" urban, is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the hospice wage index.

4. Areas Without Hospital Wage Data

When adopting OMB's new labor market designations in FY 2006, we identified some geographic areas where there were no hospitals, and thus, no hospital wage index data on which to base the calculation of the hospice wage index. Beginning in FY 2006, we adopted a policy to use the FY 2005 pre-floor, pre-reclassified hospital wage index value for rural areas when no hospital wage data were available. We also adopted the policy that for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the State would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. Consequently, in subsequent fiscal years, we applied the average pre-floor, pre-reclassified hospital wage index data from all urban areas in that state, to urban areas without a hospital. From FY 2007 to FY 2010, the only such CBSA was 25980, Hinesville-Fort Stewart, Georgia.

Under the CBSA labor market areas, there are no hospitals in rural locations

in Massachusetts and Puerto Rico. Since there was no rural proxy for more recent rural data within those areas, in the FY 2006 hospice wage index proposed rule (70 FR 22394, 22398), we proposed applying the FY 2005 pre-floor, pre-reclassified hospital wage index value to rural areas where no hospital wage data were available. In the FY 2006 final rule and in the FY 2007 update notice, we applied the FY 2005 pre-floor, pre-reclassified hospital wage index data for areas lacking hospital wage data in both FY 2006 and FY 2007 for rural Massachusetts and rural Puerto Rico.

In the FY 2008 final rule (72 FR 50214, 50217) we considered alternatives to our methodology to update the pre-floor, pre-reclassified hospital wage index for rural areas without hospital wage data. We indicated that we believed that the best imputed proxy for rural areas, would: (1) Use pre-floor, pre-reclassified hospital data; (2) use the most local data available to impute a rural pre-floor, pre-reclassified hospital wage index; (3) be easy to evaluate; and, (4) be easy to update from year-to-year.

Therefore, in FY 2008 through FY 2010, in cases where there was a rural area without rural hospital wage data, we used the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. This approach does not use rural data; however, the approach uses pre-floor, pre-reclassified hospital wage data, is easy to evaluate, is easy to update from year-to-year, and uses the most local data available. In the FY 2008 rule (72 FR at 50217), we noted that in determining an imputed rural pre-floor, pre-reclassified hospital wage index, we interpret the term "contiguous" to mean sharing a border. For example, in the case of Massachusetts, the entire rural area consists of Dukes and Nantucket counties. We determined that the borders of Dukes and Nantucket counties are contiguous with Barnstable and Bristol counties. Under the adopted methodology, the pre-floor, pre-reclassified hospital wage index values for the counties of Barnstable (CBSA 12700, Barnstable Town, MA) and Bristol (CBSA 39300, Providence-New Bedford-Fall River, RI-MA) would be averaged resulting in an imputed pre-floor, pre-reclassified rural hospital wage index for FY 2008. We noted in the FY 2008 final hospice wage index rule that while we believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type, such as a Critical Access Hospital, that does not

submit the appropriate wage data), if a similar situation arose in the future, we would re-examine this policy.

We also noted that we do not believe that this policy would be appropriate for Puerto Rico, as there are sufficient economic differences between hospitals in the United States and those in Puerto Rico, including the payment of hospitals in Puerto Rico using blended Federal/Commonwealth-specific rates. Therefore we believe that a separate and distinct policy for Puerto Rico is necessary. Any alternative methodology for imputing a pre-floor, pre-reclassified hospital wage index for rural Puerto Rico would need to take into account the economic differences between hospitals in the United States and those in Puerto Rico. Our policy of imputing a rural pre-floor, pre-reclassified hospital wage index based on the pre-floor, pre-reclassified hospital wage index(es) of CBSAs contiguous to the rural area in question does not recognize the unique circumstances of Puerto Rico. While we have not yet identified an alternative methodology for imputing a pre-floor, pre-reclassified hospital wage index for rural Puerto Rico, we will continue to evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources. For FY 2008 through FY 2010, we have used the most recent pre-floor, pre-reclassified hospital wage index available for Puerto Rico, which is 0.4047.

5. CBSA Nomenclature Changes

The Office of Management and Budget (OMB) regularly publishes a bulletin that updates the titles of certain CBSAs. In the FY 2008 Final Rule (72 FR 50218) we noted that the FY 2008 rule and all subsequent hospice wage index rules and notices would incorporate CBSA changes from the most recent OMB bulletins. The OMB bulletins may be accessed at <http://www.whitehouse.gov/omb/bulletins/index.html>.

6. Wage Data From Multi-Campus Hospitals

Historically, under the Medicare hospice benefit, we have established hospice wage index values calculated from the raw pre-floor, pre-reclassified hospital wage data (also called the IPPS wage index) without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. The wage adjustment established under the Medicare hospice benefit is based on the location where services are furnished without any reclassification.

For FY 2010, the data collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2005 were used to compute the 2009

raw pre-floor, pre-reclassified hospital wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. This 2009 raw pre-floor, pre-reclassified hospital wage index was used to derive the applicable wage index values for the hospice wage index because these data (FY 2005) are the most recent complete cost data.

Beginning in FY 2008, the IPPS apportioned the wage data for multi-campus hospitals located in different labor market areas (CBSAs) to each CBSA where the campuses were located (see the FY 2008 IPPS final rule with comment period 72 FR 47317 through 47320)). We are continuing to use the raw pre-floor, pre-reclassified hospital wage data as a basis to determine the hospice wage index values because hospitals and hospices both compete in the same labor markets, and therefore, experience similar wage-related costs. We note that the use of raw pre-floor, pre-reclassified hospital (IPPS) wage data, used to derive the FY 2011 hospice wage index values, reflects the application of our policy to use that data to establish the hospice wage index. The FY 2011 hospice wage index values presented in this notice with comment period were computed consistent with our raw pre-floor, pre-reclassified hospital (IPPS) wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments for hospice). As implemented in the August 8, 2008 FY 2009 Hospice Wage Index final rule, for the FY 2009 Medicare hospice benefit, the hospice wage index was computed from IPPS wage data (submitted by hospitals for cost reporting periods beginning in FY 2004 (as was the FY 2008 IPPS wage index)), which allocated salaries and hours to the campuses of two multi-campus hospitals with campuses that are located in different labor areas, one in Massachusetts and another in Illinois. Thus, in FY 2009 and subsequent fiscal years, hospice wage index values for the following CBSAs have been affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI-MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974), and Lake County-Kenosha County, IL-WI (CBSA 29404).

7. Hospice Payment Rates

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1

percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent fiscal years will be the market basket percentage for the fiscal year. It has been longstanding practice to use the inpatient hospital market basket as a proxy for a hospice market basket.

Historically, the rate update has been published through a separate administrative instruction issued annually in the summer to provide adequate time to implement system change requirements. Providers determine their payments by applying the hospice wage index in this notice with comment period to the labor portion of the published hospice rates.

II. Provisions of the Notice With Comment Period

A. FY 2011 Hospice Wage Index

1. Background

The hospice final rule published in the **Federal Register** on December 16, 1983 (48 FR 56008) provided for adjustment to hospice payment rates to reflect differences in area wage levels. We apply the appropriate hospice wage index value to the labor portion of the hospice payment rates based on the geographic area where hospice care was furnished. As noted earlier, each hospice's labor market area is based on definitions of MSAs issued by the OMB. For this notice with comment period, we used the pre-floor, pre-reclassified hospital wage index, based solely on the CBSA designations, as the basis for determining wage index values for the FY 2011 hospice wage index.

As noted above, our hospice payment rules utilize the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. We are again using the pre-floor and pre-reclassified hospital wage index data as the basis to determine the hospice wage index, which is then used to adjust the labor portion of the hospice payment rates based on the geographic area where the beneficiary receives hospice care. We believe the use of the pre-floor, pre-reclassified hospital wage index data, as a basis for the hospice wage index, results in the appropriate adjustment to the labor portion of the costs. For the FY 2011 update to the hospice wage index, we are continuing to use the most recent pre-floor, pre-reclassified hospital wage index available at the time of publication.

2. Areas Without Hospital Wage Data

In adopting the CBSA designations, we identified some geographic areas where there are no hospitals, and no hospital wage data on which to base the calculation of the hospice wage index. These areas are described in section I.B.4 of this notice with comment period. Beginning in FY 2006, we adopted a policy that, for urban labor markets without an urban hospital from which a pre-floor, pre-reclassified hospital wage index can be derived, all of the urban CBSA pre-floor, pre-reclassified hospital wage index values within the State would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index to use as a reasonable proxy for these areas. Currently, the only CBSA that would be affected by this policy is CBSA 25980, Hinesville-Fort Stewart, Georgia. We are continuing this policy for FY 2011.

Currently, the only rural areas where there are no hospitals from which to calculate a pre-floor, pre-reclassified hospital wage index are Massachusetts and Puerto Rico. In August 2007 (72 FR 50217) we adopted a methodology for imputing rural pre-floor, pre-reclassified hospital wage index values for areas where no hospital wage data are available as an acceptable proxy; that methodology is also described in section I.B.4 of this notice with comment period. In FY 2011, Dukes and Nantucket Counties are the only areas in rural Massachusetts which are affected. We are again applying this methodology for imputing a rural pre-floor, pre-reclassified hospital wage index for those rural areas without rural hospital wage data in FY 2011.

However, as we noted in section I.B.4 of this notice with comment period, we do not believe that this policy is appropriate for Puerto Rico. For FY 2011, we again use the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047. This pre-floor, pre-reclassified hospital wage index value will then be adjusted upward by the hospice 15 percent floor adjustment in the computing of the FY 2011 hospice wage index.

3. FY 2011 Wage Index With an Additional 15 Percent Reduced Budget Neutrality Adjustment Factor (BNAF)

The hospice wage index set forth in this notice with comment period would be effective October 1, 2010 through September 30, 2011. We are not modifying the hospice wage index methodology. In accordance with our regulations and the agreement signed

with other members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using the most current hospital data available. For this notice with comment period, the FY 2010 hospital wage index was the most current hospital wage data available for calculating the FY 2011 hospice wage index values. We used the FY 2010 pre-floor, pre-reclassified hospital wage index data for this calculation.

As noted above, for FY 2011, the hospice wage index values will be based solely on the adoption of the CBSA-based labor market definitions and the hospital wage index. We continue to use the most recent pre-floor and pre-reclassified hospital wage index data available (based on FY 2006 hospital cost report wage data). A detailed description of the methodology used to compute the hospice wage index is contained in the September 4, 1996 hospice wage index proposed rule (61 FR 46579), the August 8, 1997 hospice wage index final rule (62 FR 42860), and the August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384).

The August 6, 2009 FY 2010 Hospice Wage Index final rule finalized a provision to phase out the BNAF over 7 years, with a 10 percent reduction in the BNAF in FY 2010, and an additional 15 percent reduction over each of the next 6 years, with complete phaseout in FY 2016. Therefore, in accordance with the August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384), the BNAF for FY 2011 was reduced by an additional 15 percent for a total BNAF reduction of 25 percent (10 percent from FY 2010 and 15 percent for FY 2011).

An unreduced BNAF for FY 2011 is computed to be 0.060562 (or 6.0562 percent). A 25 percent reduced BNAF, which is subsequently applied to the pre-floor, pre-reclassified hospital wage index values greater than or equal to 0.8, is computed to be 0.045422 (or 4.5422 percent). Pre-floor, pre-reclassified hospital wage index values which are less than 0.8 are subject to the hospice floor calculation; that calculation is described in section I.B.1.

The hospice wage index for FY 2011 is shown in Addenda A and B. Specifically, Addendum A reflects the FY 2011 wage index values for urban areas under the CBSA designations. Addendum B reflects the FY 2011 wage index values for rural areas under the CBSA designations.

4. Effects of Phasing Out the BNAF

The full (unreduced) BNAF calculated for FY 2011 is 6.0562 percent. As implemented in the August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384), for FY 2011 we are reducing

the BNAF by an additional 15 percent, for a total BNAF reduction of 25 percent (a 10 percent reduction in FY 2010 plus a 15 percent reduction in FY 2011), with additional reductions of 15 percent per year in each of the next 5 years until the BNAF is phased out in FY 2016.

For FY 2011, this is mathematically equivalent to taking 75 percent of the full BNAF value, or multiplying 0.060562 by 0.75, which equals 0.045422 (4.5422 percent). The BNAF of 4.5422 percent reflects a 25 percent reduction in the BNAF. The 25 percent reduced BNAF (4.5422 percent) was applied to the pre-floor, pre-reclassified hospital wage index values of 0.8 or greater in the FY 2011 hospice wage index.

The hospice floor calculation would still apply to any pre-floor, pre-reclassified hospital wage index values less than 0.8. Currently, the hospice floor calculation has 4 steps. First, pre-floor, pre-reclassified hospital wage index values that are less than 0.8 are multiplied by 1.15. Second, the minimum of 0.8 or the pre-floor, pre-reclassified hospital wage index value times 1.15 is chosen as the preliminary hospice wage index value. Steps 1 and 2 are referred to in this notice with comment period as the hospice 15 percent floor adjustment. Third, the pre-floor, pre-reclassified hospital wage index value is multiplied by the BNAF. Finally, the greater result of either step 2 or step 3 is the final hospice wage index value. The hospice floor calculation is unchanged by the BNAF reduction. We note that steps 3 and 4 will become unnecessary once the BNAF is eliminated.

We examined the effects of an additional 15 percent reduction in the BNAF, for a total BNAF reduction of 25 percent, on the FY 2011 hospice wage index compared to remaining with the 10 percent reduced BNAF which was used for the FY 2010 hospice wage index. The FY 2011 BNAF reduction of an additional 15 percent (for a total BNAF reduction of 25 percent) resulted in approximately a 0.9 percent reduction in most hospice wage index values. The elimination of the BNAF in FY 2016 would result in an estimated final reduction of the FY 2016 hospice wage index values of approximately 4.3 percent compared to FY 2011 hospice wage index values.

Those CBSAs whose pre-floor, pre-reclassified hospital wage index values had the hospice 15 percent floor adjustment applied before the BNAF reduction would not be affected by this phase-out of the BNAF. These CBSAs, which typically include rural areas, are protected by the hospice 15 percent

floor adjustment. We have estimated that 19 CBSAs are already protected by the hospice 15 percent floor adjustment, and are therefore completely unaffected by the BNAF reduction. There are 148 hospices in these 19 CBSAs.

Additionally, some CBSAs with pre-floor, pre-reclassified wage index values less than 0.8 will become newly eligible for the hospice 15 percent floor adjustment as a result of the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent). Areas where the hospice floor calculation would have yielded a wage index value greater than 0.8 if the 10 percent reduction in BNAF were maintained, but which will have a final wage index value less than 0.8 after the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent) is applied, will now be eligible for the hospice 15 percent floor adjustment. These CBSAs will see a smaller reduction in their hospice wage index values since the hospice 15 percent floor adjustment will apply. We have estimated that 5 CBSAs will have their pre-floor, pre-reclassified hospital wage index value become newly protected by the hospice 15 percent floor adjustment due to the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent). Because of the protection given by the hospice 15 percent floor adjustment, these CBSAs will see smaller percentage decreases in their hospice wage index values than those CBSAs that are not eligible for the hospice 15 percent floor adjustment. This will affect those hospices with lower hospice wage index values, which are typically in rural areas. There are 196 hospices located in these 5 CBSAs.

Finally, the hospice wage index values only apply to the labor portion of the payment rates; the labor portion is described in section I.B.1 of this notice with comment period. Therefore the projected reduction in payments due solely to the additional 15 percent reduction of the BNAF (for a total BNAF reduction of 25 percent) is estimated to be 0.6 percent, as calculated from the difference in column 3 and column 4 of Table 1 in section VII of this notice with comment period. In addition, the estimated effects of the phase-out of the BNAF will be mitigated by any hospital market basket updates in payments. The hospital market basket update for FY 2011 is 2.6 percent; this 2.6 percent does not reflect the provision in the Affordable Care Act which reduced the hospital market basket update by 0.25 percentage point since that reduction does not apply to hospices. The final update will be communicated through

an administrative instruction. The combined effects of the updated wage data, an additional 15 percent reduction of the BNAF (for a total BNAF reduction of 25 percent), and a hospital market basket update of 2.6 percent for FY 2011 are an overall estimated increase in payments to hospices in FY 2011 of 1.8 percent (column 5 of Table 1 in section VII of this notice with comment period).

III. Information and Updates on Issues Not Proposed

A. Changes to Hospice Certification and Recertification Requirements

On March 23, 2010, President Obama signed into law the Affordable Care Act (Pub. L. 111–148). Section 3132 of this law requires hospices to adopt some of MedPAC's hospice program eligibility recertification recommendations, including a requirement for a physician or nurse practitioner to have a face-to-face visit with patients prior to the 180 day recertification, and to attest that such a visit took place. Please see the Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices Proposed Rule, which we expect to publish shortly, for a detailed discussion of the new statutory requirements, and for our proposals related to implementation for hospices, including proposed regulatory text changes of the hospice certification requirements. In the Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices Proposed Rule, we also expect to propose rules related to the timing of the completion of certifications and recertifications, to the inclusion of benefit period dates on the certification or recertification, and to the physician's signature and date requirements for the certification or recertification.

Please do not send comments on any of these proposals to us under this Hospice Wage Index Notice. Instead, please follow the instructions in the Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices Proposed Rule to comment on the hospice proposals described in that proposed rule. We will respond to those comments in the Home Health Prospective Payment System Rate Update for Calendar Year 2011; Changes in Certification Requirements for Home Health Agencies and Hospices Final Rule.

B. Solicitation of Comments on the Hospice Aggregate Cap

In the FY 2010 hospice wage index proposed rule, at 74 FR 18920–18922, we solicited comments on the current methodology of calculating the aggregate hospice cap. As a result of that solicitation, we received a number of comments regarding the hospice cap methodology, with several major themes emerging. Many commenters wanted more timely notification of cap overpayments. Many also requested that hospices have access to patients' full hospice utilization history. According to commenters, having this information would enable hospices to better manage their aggregate cap, and to accurately apportion patients when they have been in more than 1 hospice. Some commenters asked that we wage-adjust the annual cap amount to account for geographic differences in costs. Other commenters asked that we modernize the cap, apportioning hospice patients over consecutive years, with some suggesting we allow a new cap amount for readmitted patients who experience a break in hospice utilization. A few encouraged us not to raise the cap or do away with the cap, as it is the only limitation on hospice spending, and curbs excesses from the minority of hospices with questionable admission practices.

We noted, in FY 2010 rulemaking, that there have been some technological advances in our data systems which we believe might enable us to modernize the cap calculation process while providing information facilitating the ability of hospices to better manage their cap. For this notice with comment period, we provide additional details regarding policy options that we are considering for modernizing the cap calculation methodology. We are soliciting comments on the policy options we are considering, as well as comments/suggestions for other possible options/alternatives to modernize the cap calculation methodology, to be considered in possible future rulemaking.

1. Hospice Provider and Medicare Contractor Access to a National Database Containing Full Utilization History

One policy option which we are considering would address industry concerns about the timeliness of cap-related information, and hospices' comments about their inability to see a patient's full hospice utilization history. Hospices currently have the ability to query a beneficiary's hospice utilization history; however, the process can be

cumbersome and can involve multiple steps to see the complete history. Because the query system is linked to the Common Working File, it is not as easily changed to provide a more streamlined process for providers to get a complete beneficiary hospice utilization history.

CMS has recently redesigned a national Provider Statistical and Reimbursement Report (PS&R) database; the PS&R currently accumulates statistical and reimbursement data from Medicare claims, and is normally used in preparing and settling cost reports of various Medicare provider types. Because the PS&R is built from claims data, it could theoretically include any information normally found on a claim.

We believe this new PS&R database, if tailored to hospice needs, may be able to provide hospices with more streamlined information related to their patients' prior hospice utilization, thus enabling providers to better manage their aggregate cap. We are investigating the possibility that the PS&R report include each patient's total days of hospice care, with from and through dates for every hospice election, along with a provider identifier, for multiple years. Additionally, we are investigating whether this database could also include total payments for patients for services provided during a specific time period (*i.e.*, the cap year). Specifically, we envision that providers could use this national PS&R data to accurately estimate their own cap while waiting for the "official" cap calculation from their Medicare contractor, and use their estimated information in their internal cap management.

In addition to possibly enabling hospice providers to more easily obtain access to their patients' full hospice utilization history, we believe that the national database and associated improved data processing technologies will enable Medicare contractors to adopt a more efficient automation approach in calculating each provider's cap. This might allow contractors to send providers the results of their cap calculations sooner.

The improved technology could provide an opportunity for CMS to consider revising the cap calculation methodology to apportion hospice patients with long stays over more than one year. Below, we present some policy options which we are considering related to calculation methodology, along with cap issues related to timing.

a. Option 1: Multi-Year Apportioning

In this option, patients who received hospice care in more than 1 cap

accounting year would be apportioned across years on a patient-by-patient basis. A multi-year apportionment on a patient-by-patient basis raises issues regarding the timing of cap calculations. If, for example, the Medicare contractor is required to wait until all of a hospice's Medicare beneficiaries in a given year die so that the contractor can calculate mathematically exact multi-year apportionments, the determination and notification of the cap and overpayment might be delayed for years; alternatively, the fiscal intermediary might issue a tentative determination subject to finalization at a later time (which would lead to significant uncertainty, among other things) or a "final" determination subject to potentially numerous revisions in future years (which would also lead to significant uncertainty, among other things). In light of these issues, under one possible approach, the number of years which the beneficiary would be apportioned in the standard cap calculation process would be established by the Secretary. In examining data from claims, we found that 99.98 percent of all Medicare hospice beneficiaries who died in 2007 began hospice care in 2006 or 2007. Similarly, we found that 96.83 percent of all Medicare hospice beneficiaries who died in 2008 began hospice care in 2007 or 2008. Therefore, the Secretary could establish that hospice patients will be apportioned for cap calculation purposes in the year of election plus one additional year. In this example, if a patient's hospice election spans more than the election year, the standard cap calculation methodology would apportion the patient over the election year and one subsequent year, based on the number of days the patient received hospice care in each of the two years, also factoring in the different hospices which provided care to the patient during these two years, with the fractional shares of the patient summing to 1.

A number of commenters suggested we allow apportioning of hospice care over two or more years; this suggestion was partly due to concerns over a hospice admitting a patient who had received hospice care elsewhere in a previous year, and therefore could not be counted in the admitting hospice's cap calculation. As such, we are also considering a process where a hospice provider could request the Medicare contractor recalculate a provider's cap using a longer apportioning timeframe than that established in the standard calculation process. While any hospice provider could request a recalculation,

we would envision this process to be most beneficial for providers who admit patients with prior, long lengths of stay at another hospice. Where the recalculation involves patients served by more than one hospice, a re-apportionment of these patients would be required. Therefore, a recalculation would be necessary for each hospice which provided care to any patients included in the recalculation.

As described in 42 CFR 405.1885(b) contractors may only re-open and revise a hospice's cap determination within 3 years of the date of receipt of the determination of program reimbursement letter. Counting beneficiaries across multiple years would be subject to re-opening regulations. We believe that a standard cap calculation methodology which adopts a multi-year apportionment (such as apportioning patients in the year of election and one subsequent year), coupled with the ability for providers to request a recalculation to include a longer apportionment timeframe, while also providing hospices access to their patients' full utilization history is responsive to commenters' suggestions. It is a streamlined, "easy for hospices to replicate" process that might facilitate better internal management.

b. Option 2: Deferring Major Changes to the Standard Aggregate Cap Calculation Methodology, While Allowing Providers To Request Recalculation of Their Cap to Apportion Patients Across Multiple Years

We are considering coupling changes to the aggregate cap with overall hospice payment reform. As we described in last year's Hospice Wage Index Final Rule (74 FR 39384), we are gearing up for hospice payment reform. MedPAC has suggested that the current payment system includes financial incentives which may create program vulnerabilities, and recommended that we reform the hospice payment system. We have been collecting additional data on hospice claims to analyze hospice resource use with the goal of reforming the payment system in the near future. Therefore, we are also considering an option which would defer changes to the current standard cap calculation methodology until we deploy the reformed payment system. This option would allow us to analyze how spending limits should be used to mitigate misuse of the benefit, in the context of broader hospice payment reform. Under this option, we would generally continue to calculate hospice aggregate caps using the current methodology, but we would allow

hospice providers to request the Medicare contractor recalculate their cap, apportioning patients across multiple years, as described in Option 1. This option also would provide hospices access to the redesigned PS&R database as described in Option 1, thereby providing easier access to their full utilization history.

Similar to the recalculation process described in Option 1, this option would be subject to regulatory requirements regarding re-opening and revision of a previous cap determination.

2. Other Issues

a. Aligning Timeframes

Aligning the cap year timeframe to coincide with the hospice rate update year would likely simplify hospice recordkeeping and better match the counting of beneficiaries with associated Medicare payments. The hospice rate update year, which also corresponds with the Federal fiscal year, runs from October 1st to September 30th; the inpatient and aggregate cap year currently runs from November 1st to October 31st; and the beneficiary counting timeframe for purposes of the current hospice aggregate cap calculation runs from September 28th to September 27th.

The current cap accounting year timeframe provides for process efficiencies given the current methodology for calculating the aggregate cap, while allowing for counting the beneficiary in the reporting period where he or she is expected to use most of the days of covered hospice care (48 FR 38158). If we apportion beneficiaries across more than one year, we believe that there would no longer be an advantage to defining the cap accounting year differently from the hospice rate update year.

For the inpatient cap, this would mean using the October 1st to September 30th timeframe for counting actual total Medicare patient days, total Medicare GIP and respite days, allowable Medicare GIP and respite days, and total actual Medicare payments for inpatient care provided during the cap year. For the aggregate cap, this would mean computing the total actual Medicare payments based upon services provided during the October 1st to September 30th timeframe. In doing so, all aspects of the inpatient and aggregate cap calculations would focus on the hospice rate update and Federal fiscal year, rather than on multiple different timeframes. Note that payments are counted based on the date

the services are provided, not based on when the payments are actually made.

Shifting the cap accounting year timeframes to coincide with the hospice rate update year would simplify the new cap calculation methodology. In the year of transition, we could allow 3 extra days to count beneficiaries. For example, if these changes were to occur beginning with the 2012 cap year, we could count beneficiaries from September 28, 2012 to September 30, 2013, which is 12 months plus 3 days, in that cap year's calculation. In counting payments, we could count the payments for services provided in October twice: Once in the previous cap calculation, using the original timeframes, and again in the transition year cap calculation, using the fiscal year timeframes. In each year we would still have 12 months of payments (in this example, November 2011 to October 2012 in the last year using the original timeframes, and October 2012 to September 2013 in the transition year), but in the transition year would have 12 months plus 3 days of headcount in the aggregate cap calculation, which would be advantageous to hospices.

If we shift the cap accounting year to match the hospice rate update year, it would also affect our calculation of the annual cap amount. Section 1814(i)(2)(B) of the Social Security Act (the Act) requires us to update the \$6,500 cap amount by the same percentage as the percentage increase or decrease in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (CPI-U) from March 1984 to the "fifth month of the accounting year". By changing the cap accounting year to coincide with the hospice rate update year and Federal fiscal year, we would use the CPI-U for February when updating the cap amount, instead of the current process which uses the March CPI-U to update the cap amount.

b. Uniform Schedule for Mailing Cap Determination Letters

Currently we do not require contractors to mail hospice cap determination letters on a particular date. However, if we adopted a cap methodology which required adjusting prior year cap reports, we would likely need to require contractors to mail cap determination letters on a uniform schedule, to avoid problems where one contractor does so more quickly than another. Without a uniformly applied schedule for mailing the cap determination letters, hospices could receive the letters at various times during the year. If we were to require

contractors to mail cap determination letters on a specific date, providers would be on an equal footing with regard to their cap notification. Finally, adopting this option would also create an environment more conducive to financial and business planning, as providers would know when to expect the report.

We are soliciting public comment on the above suggested changes, and any other suggestions for ways to streamline the cap calculation. Please submit your cap-related comments in accordance with the instructions given on pages 2–6 of this notice with comment period.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice. We find it is unnecessary to undertake notice and comment rulemaking for the update in this notice because the update does not make any substantive changes in policy, but merely reflects the application of previously established methodologies which permit no discretion on the part of the Secretary. Therefore, under 5 U.S.C. 553(b)(3)(B), for good cause, we waive notice and comment procedures.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice with comment period as required by Executive Order 12866 on Regulatory

Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)). We estimated the impact on hospices, as a result of the changes to the FY 2011 hospice wage index and of reducing the BNAF by an additional 15 percent, for a total BNAF reduction of 25 percent (10 percent in FY 2010 and 15 percent in FY 2011). The BNAF reduction is part of a 7-year BNAF phase-out that was finalized in previous rulemaking (74 FR 39384, dated August 6, 2009), and is not a policy change put forward in this notice with comment period.

As discussed previously, the methodology for computing the hospice wage index was determined through a negotiated rulemaking committee and promulgated in the August 8, 1997 hospice wage index final rule (62 FR 42860). The BNAF, which was promulgated in the August 8, 1997 rule, is being phased out. This rule updates the hospice wage index in accordance with the August 6, 2009 FY 2010 Hospice Wage Index final rule (74 FR 39384), which finalized a 10 percent reduced BNAF for FY 2010 as the first year of a 7-year phase-out of the BNAF, to be followed by an additional 15 percent per year reduction in the BNAF in each of the next 6 years. Total phase-out will be complete by FY 2016.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). We have determined that this is an economically significant notice with comment period under Executive Order 12866.

Column 4 of Table 1 shows the combined effects of the updated wage data (the 2010 pre-floor, pre-reclassified hospital wage index) and of the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent), comparing estimated payments for FY 2011 to estimated payments for FY 2010. The FY 2010 payments used for comparison have a 10 percent reduced BNAF applied. We estimate that the total hospice payments for FY

2011 will decrease by \$110 million as a result of the application of the updated wage data (\$–30 million) and the total 25 percent reduction in the BNAF (\$–80 million). This estimate does not take into account any hospital market basket update, which is 2.6 percent for FY 2011. This 2.6 percent does not reflect the provision in the Affordable Care Act which reduced the hospital market basket update by 0.25 percentage point since that reduction does not apply to hospices. The hospital market basket update and associated payment rates will be communicated through an administrative instruction. The effect of a 2.6 percent hospital market basket update on payments to hospices is approximately \$330 million. Taking into account a 2.6 percent hospital market basket update (+\$330 million), in addition to the updated wage data (\$–30 million) and the total 25 percent reduction in the BNAF (\$–80 million), it is estimated that hospice payments would increase by \$220 million in FY 2010 (\$330 million – \$110 million = \$220 million). The percent change in payments to hospices due to the combined effects of the updated wage data, the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent), and the hospital market basket update of 2.6 percent is reflected in column 5 of the impact table (Table 1).

We estimate that this notice with comment period is “economically significant” as measured by the \$100 million threshold, and hence also a major notice with comment period under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the Notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that almost all hospices are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than \$7.0 million to \$34.5 million in any 1 year). While the Small Business Administration (SBA) does not define a size threshold in terms of annual revenues for hospices, they do define one for home health agencies (\$13.5 million; see http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf). For the purposes of this notice with

comment period, because the hospice benefit is a home-based benefit, we are applying the SBA definition of “small” for home health agencies to hospices; we will use this definition of “small” in determining if this notice with comment period has a significant impact on a substantial number of small entities (for example, hospices). Using 2008 Medicare hospice claims data, we estimate that 96 percent of hospices have Medicare revenues below \$13.5 million. As indicated in Table 1 below, there are 3,429 hospices with 2009 claims data as of February 2010.

Approximately 48.0 percent of Medicare certified hospices are identified as voluntary or government agencies and, therefore, are considered small entities. Most of these and most of the remainder are also small hospice entities because, as noted above, their revenues fall below the SBA size thresholds.

Therefore, for purposes of the RFA, approximately 96 percent of hospices are considered small businesses according to the Small Business Administration’s size standards with total revenues of \$13.5 million or less in any 1 year, and 48 percent are nonprofit organizations.

We note that the hospice wage index methodology was previously guided by consensus, through a negotiated rulemaking committee that included representatives of national hospice associations, rural, urban, large and small hospices, multi-site hospices, and consumer groups. Based on all of the options considered, the committee agreed on the methodology described in the committee statement, and after notice and comment, it was adopted into regulation in the August 8, 1997 final rule. In developing the process for updating the hospice wage index in the 1997 final rule, we considered the impact of this methodology on small hospice entities and attempted to mitigate any potential negative effects. Small hospice entities are more likely to be in rural areas, which are less affected by the BNAF reduction than entities in urban areas. Generally, hospices in rural areas are protected by the hospice floor adjustment, which lessens the effect of the BNAF reduction.

The effects of this rule on hospices are shown in Table 1. Overall, Medicare payments to all hospices will decrease by an estimated 0.8 percent, reflecting the combined effects of the updated wage data and the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent). The combined effects of the updated wage data and the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent) on small or medium sized

hospices (as defined by routine home care days rather than by the SBA definition), is -0.7 . Furthermore, when including the hospital market basket update of 2.6 percent into these estimates, the combined effects on Medicare payment to all hospices would result in an estimated increase of approximately 1.8 percent. For small and medium hospices (as defined by routine home care days), the estimated effects on revenue when accounting for the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), and the hospital market basket update are increases in payments of 1.8 percent and 1.9 percent, respectively. Overall average hospice revenue effects will be slightly less than these estimates since according to the National Hospice and Palliative Care Organization, about 16 percent of hospice patients are non-Medicare.

HHS’ practice in interpreting the RFA is to consider effects economically “significant” only if they reach a threshold of 3 to 5 percent or more of total revenue or total costs. As noted above, the combined effect of only the updated wage data and the additional 15 percent reduced BNAF (for a total BNAF reduction of 25 percent) for all hospices is -0.8 percent. Since, by SBA’s definition of “small” (when applied to hospices), nearly all hospices are considered to be small entities, the combined effect of only the updated wage data and the additional 15 percent reduced BNAF (-0.8 percent) does not exceed HHS’ 3.0 percent minimum threshold. However, HHS’ practice in determining “significant economic impact” has considered either *total* revenue or *total* costs. Total hospice revenues include the effect of the market basket update. When we consider the combined effect of the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), and the 2.6 percent 2011 market basket update, the overall impact is an increase in hospice payments of 1.8 percent for FY 2011. Therefore, the Secretary has determined that this notice with comment period does not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of

a metropolitan statistical area and has fewer than 100 beds. This notice with comment period only affects hospices. Therefore, the Secretary has determined that this notice with comment period will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately \$135 million. This notice with comment period is not anticipated to have an effect on State, local, or Tribal governments or on the private sector of \$135 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice with comment period under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have an impact on the rights, roles, and responsibilities of State, local, or Tribal governments.

B. Anticipated Effects

1. Effects on Hospices

This section discusses the impact of the projected effects of the hospice wage index, including the effects of a 2.6 percent hospital market basket update that will be communicated separately through an administrative instruction. This notice with comment period continues to use the CBSA-based pre-floor, pre-reclassified hospital wage index as a basis for the hospice wage index and continues to use the same policies for treatment of areas (rural and urban) without hospital wage data. The final FY 2011 hospice wage index is based upon the 2010 pre-floor, pre-reclassified hospital wage index and the most complete claims data available (FY 2009) with an additional 15 percent reduction in the BNAF (combined with the 10 percent reduction in the BNAF taken in FY 2010, for a total BNAF reduction of 25 percent). The BNAF reduction is part of a 7-year BNAF phase-out that was finalized in previous rulemaking (74 FR 39384, dated August 6, 2009), and is not a policy change put forward in this notice with comment period.

For the purposes of our impacts, our baseline is estimated FY 2010 payments with a 10 percent BNAF reduction, using the 2009 pre-floor, pre-reclassified hospital wage index. Our first comparison (column 3, Table 1) compares our baseline to estimated FY 2011 payments (holding payment rates constant) using the updated wage data (2010 pre-floor, pre-reclassified hospital wage index). Consequently, the estimated effects illustrated in column 3 of Table 1 show the distributional effects of the updated wage data only. The effects of using the updated wage

data combined with the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent) are illustrated in column 4 of Table 1. We have included a comparison of the combined effects of the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), the updated wage data, and a 2.6 percent hospital market basket increase for FY 2011 (Table 1, column 5). Presenting these data gives the hospice industry a more complete picture of the effects on their total revenue of the hospice wage index discussed in this rule, the BNAF

phase-out, and the FY 2011 hospital market basket update. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

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TABLE 1. Anticipated Impact on Medicare Hospice Payments of Updating the Pre-floor, Pre-Reclassified Hospital Wage Index Data, Reducing the Budget Neutrality Adjustment Factor (BNAF) by an Additional 15 Percent (for a Total BNAF Reduction of 25 Percent) and Applying a 2.6 Percent† Hospital Market Basket Update for the FY 2011 Hospice Wage Index, Compared to the FY 2010 Hospice Wage Index with a 10 Percent BNAF Reduction

	Number of Hospices (1)*	Number of Routine Home Care Days in Thousands (2)	Percent Change in Hospice Payments due to FY2011 Wage Index Change (3)	Percent Change in Hospice Payments due to Wage Index Change, additional 15% Reduction in Budget Neutrality Adjustment (4)	Percent Change in Hospice Payments due to Wage Index Change, additional 15% Reduction in Budget Neutrality Adjustment and 2.6% Market Basket Update† (5)
ALL HOSPICES	3,429	74,898	(0.2%)	(0.8%)	1.8%
Urban Hospices	2,380	64,873	(0.2%)	(0.8%)	1.8%

Rural Hospices	1,049	10,025	(0.3%)	(0.8%)	1.8%
BY REGION – URBAN:					
New England	132	2,422	0.5%	(0.1%)	2.5%
Middle Atlantic	238	7,122	(0.4%)	(1.0%)	1.6%
South Atlantic	345	14,283	(0.5%)	(1.0%)	1.5%
East North Central	327	9,256	(0.4%)	(1.0%)	1.6%
East South Central	176	4,425	(0.5%)	(1.0%)	1.6%
West North Central	180	4,282	0.1%	(0.5%)	2.1%
West South Central	459	8,617	(0.4%)	(1.0%)	1.6%
Mountain	222	5,633	1.0%	0.4%	3.0%
Pacific	264	7,606	0.2%	(0.5%)	2.1%
Outlying	37	1,227	(0.5%)	(0.5%)	2.1%
BY REGION – RURAL:					
New England	26	193	(1.3%)	(1.9%)	0.7%
Middle Atlantic	45	517	0.1%	(0.4%)	2.1%
South Atlantic	135	2,052	(0.2%)	(0.7%)	1.9%
East North Central	147	1,710	(0.7%)	(1.2%)	1.3%
East South Central	153	1,945	0.1%	(0.2%)	2.4%
West North Central	193	1,089	(0.8%)	(1.4%)	1.2%
West South Central	188	1,497	(0.6%)	(1.0%)	1.6%
Mountain	109	585	0.8%	0.3%	2.9%
Pacific	52	427	(0.3%)	(0.9%)	1.7%
Outlying	1	10	0.0%	0.0%	2.6%
ROUTINE HOME CARE DAYS:					
0- 3499 Days (small)	611	1,064	(0.2%)	(0.7%)	1.8%
3500–19,999 Days (medium)	1,715	17,219	(0.1%)	(0.7%)	1.9%
20,000+ Days (large)	1,103	56,614	(0.2%)	(0.8%)	1.8%
TYPE OF OWNERSHIP:					
Voluntary	1,188	30,642	(0.1%)	(0.7%)	1.9%
Proprietary	1,784	37,727	(0.3%)	(0.8%)	1.8%
Government**	457	6,529	(0.1%)	(0.6%)	1.9%
HOSPICE BASE:					
Freestanding	2,299	57,982	(0.2%)	(0.8%)	1.8%
Home Health Agency	569	10,230	(0.1%)	(0.7%)	1.9%
Hospital	541	6,482	(0.2%)	(0.7%)	1.8%
Skilled Nursing Facility	20	204	(0.5%)	(1.1%)	1.4%

BNAF = Budget Neutrality Adjustment Factor

Comparison is to FY 2010 data with a 10 percent BNAF reduction.

*OSCAR data as of February 25, 2010, for hospices with claims filed in FY 2009

**In previous years, there was also a category labeled "Other"; these were Other Government

hospices, and have been combined with the "Government" category.

†The 2.6 percent hospital market basket update does not reflect the provision in the Affordable Care Act which reduced the hospital market basket update by 0.25 percentage point since that reduction does not apply to hospices.

REGION KEY:

New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont;
Middle Atlantic=Pennsylvania, New Jersey, New York; **South Atlantic**=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia;
East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin; **East South Central**=Alabama, Kentucky, Mississippi, Tennessee; **West North Central**=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; **West South Central**=Arkansas, Louisiana, Oklahoma, Texas; **Mountain**=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; **Pacific**=Alaska, California, Hawaii, Oregon, Washington; **Outlying**=Guam, Puerto Rico, Virgin Islands

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Table 1 shows the results of our analysis. In column 1, we indicate the number of hospices included in our analysis as of February 25, 2010 which had also filed claims in FY 2009. In column 2, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Columns 3, 4, and 5 compare FY 2011 estimated payments with those estimated for FY 2010. The estimated FY 2010 payments incorporate a BNAF which has been reduced by 10 percent. Column 3 shows the percentage change in estimated Medicare payments for FY 2011 due to the effects of the updated wage data only, compared with estimated FY 2010 payments. The effect of the updated wage data can vary from region to region depending on the fluctuations in the wage index values of the pre-floor, pre-reclassified hospital wage index. Column 4 shows the percentage change in estimated hospice payments from FY 2010 to FY 2011 due to the combined effects of using the updated wage data and reducing the BNAF by an additional 15 percent (for a total BNAF reduction of 25 percent). Column 5 shows the percentage change in estimated hospice payments from FY 2010 to FY 2011 due to the combined effects of using updated wage data, an additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), and a 2.6 percent hospital market basket update.

Table 1 also categorizes hospices by various geographic and hospice characteristics. The first row of data displays the aggregate result of the impact for all Medicare-certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 2,380 hospices located in urban areas and 1,049 hospices located in

rural areas. The next two row groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The next grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in FY 2009. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

As indicated in Table 1, there are 3,429 hospices. Approximately 48.0 percent of Medicare-certified hospices are identified as voluntary (non-profit) or government agencies. Because the National Hospice and Palliative Care Organization estimates that approximately 83.6 percent of hospice patients in 2007 were Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As stated previously, the following discussions are limited to demonstrating trends rather than projected dollars. We used the pre-floor, pre-reclassified hospital wage indexes as well as the most complete claims data available (FY 2009) in developing the impact analysis. The FY 2011 payment rates will be adjusted to reflect the full hospital market basket, as required by section 1814(i)(1)(C)(ii)(VII) of the Act. As previously noted, we publish these rates through administrative instructions rather than in a proposed rule. The FY 2011 hospital market basket update is 2.6 percent. This 2.6 percent does not reflect the provision in the Affordable Care Act which reduced the hospital market basket update by 0.25 percentage

points since that reduction does not apply to hospices. Since the inclusion of the effect of a hospital market basket increase provides a more complete picture of projected total hospice payments for FY 2011, the last column of Table 1 shows the combined impacts of the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), and the 2.6 percent hospital market basket update. As discussed in the FY 2006 hospice wage index final rule (70 FR 45129), hospice agencies may use multiple hospice wage index values to compute their payments based on potentially different geographic locations. Before January 1, 2008, the location of the beneficiary was used to determine the CBSA for routine and continuous home care and the location of the hospice agency was used to determine the CBSA for respite and general inpatient care. Beginning January 1, 2008, the hospice wage index utilized is based on the location of the site of service. As the location of the beneficiary's home and the location of the facility may vary, there will still be variability in geographic location for an individual hospice. We anticipate that the location of the various sites will usually correspond with the geographic location of the hospice, and thus we will continue to use the location of the hospice for our analyses of the impact of the changes to the hospice wage index in this rule. For this analysis, we use payments to the hospice in the aggregate based on the location of the hospice.

The impact of hospice wage index changes has been analyzed according to the type of hospice, geographic location, type of ownership, hospice base, and size. Our analysis shows that most hospices are in urban areas and provide the vast majority of routine home care days. Most hospices are medium-sized

followed by large hospices. Hospices are almost equal in numbers by ownership with 1,645 designated as non-profit or government hospices and 1,784 as proprietary. The vast majority of hospices are freestanding.

2. Hospice Size

Under the Medicare hospice benefit, hospices can provide four different levels of care days. The majority of the days provided by a hospice are routine home care (RHC) days, representing about 97 percent of the services provided by a hospice. Therefore, the number of RHC days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. As discussed in the August 4, 2005 final rule, we currently use three size designations to present the impact analyses. The three categories are: (1) Small agencies having 0 to 3,499 RHC days; (2) medium agencies having 3,500 to 19,999 RHC days; and (3) large agencies having 20,000 or more RHC days. The FY 2011 updated wage data without any BNAF reduction are anticipated to decrease payments to small and large hospices by 0.2 percent, and to decrease payments to medium hospices by 0.1 percent (column 3); the updated wage data and the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent) are anticipated to decrease estimated payments to small and medium hospices by 0.7 percent, and to large hospices by 0.8 percent (column 4); and finally, the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), and the 2.6 percent hospital market basket update are projected to increase estimated payments by 1.8 percent for small and large hospices, and by 1.9 percent for medium hospices (column 5).

3. Geographic Location

Column 3 of Table 1 shows that the updated wage data without the BNAF reduction would result in a small reduction in estimated payments. Urban hospices are anticipated to experience a decrease of 0.2 percent, while rural hospices will experience a decrease of 0.3 percent. Urban hospices can anticipate an increase of 1.0 percent in the Mountain region, of 0.5 percent in New England, of 0.2 percent in the Pacific region, and of 0.1 percent in the West North Central region. The remaining urban regions are anticipated to experience a decrease of 0.4 percent in the Middle Atlantic, East North Central, West South Central regions, and a decrease of 0.5 in the South Atlantic,

East South Central, and Outlying regions.

Column 3 shows that for rural hospices, Outlying regions are anticipated to experience no change. The Middle Atlantic and East South Central regions are anticipated to experience an increase of 0.1 percent, while the Mountain region is anticipated to experience an increase of 0.8 percent. The remaining 6 rural regions are anticipated to experience a decrease ranging from 0.2 percent in the South Atlantic to 1.3 percent in New England.

Column 4 shows the combined effect of the updated wage data and the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent) on estimated payments, as compared to the FY 2010 estimated payments using a BNAF with a 10 percent reduction. Overall urban and rural hospices are both anticipated to experience a 0.8 percent decrease in payments. Mountain urban hospices are anticipated to see a payment increase of 0.4 percent. All other urban hospices are anticipated to experience a decrease in payment ranging from 0.1 percent in the New England region to 1.0 percent in the Middle Atlantic, South Atlantic, East North Central, East South Central, and West South Central regions.

Rural hospices are estimated to experience an increase in payments of 0.3 percent in the Mountain region, while Outlying regions are estimated to experience no change in payments. The remaining rural hospices are anticipated to experience estimated decreases in payment ranging from 0.2 percent in the East South Central region to 1.9 percent in the New England region.

Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), and the 2.6 percent hospital market basket update on estimated payments as compared to the estimated FY 2010 payments. Note that the FY 2010 payments had a 10 percent BNAF reduction applied to them. Overall, urban and rural hospices are anticipated to experience a 1.8 percent increase in payments. Urban hospices are anticipated to experience an increase in estimated payments in every region, ranging from a 1.5 percent increase in the South Atlantic region to a 3.0 percent increase in the Mountain region. Rural hospices in every region are estimated to see an increase in payments ranging from 0.7 percent in the New England region to 2.9 percent in the Mountain region.

4. Type of Ownership

Column 3 demonstrates the effect of the updated wage data on FY 2011 estimated payments with an additional 15 percent BNAF reduction, for a total BNAF reduction of 25 percent, versus FY 2010 estimated payments which included a 10 percent BNAF reduction. We anticipate that using the updated wage data would decrease estimated payments to voluntary (non-profit) and government hospices by 0.1 percent. We estimate a decrease in payments for proprietary (for-profit) hospices of 0.3 percent.

Column 4 demonstrates the combined effects of the updated wage data and of the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent). Estimated payments to voluntary (non-profit) hospices are anticipated to decrease by 0.7 percent, while government hospices are anticipated to experience decreases of 0.6 percent. Estimated payments to proprietary (for-profit) hospices are anticipated to decrease by 0.8 percent.

Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), and the 2.6 percent hospital market basket update on estimated payments, comparing FY 2011 to FY 2010 (using a BNAF with a 10 percent reduction). Estimated FY 2011 payments are anticipated to increase by 1.9 percent for voluntary (non-profit) and government hospices, and by 1.8 percent for proprietary (for-profit) hospices.

5. Hospice Base

Column 3 demonstrates the effect of using the updated wage data, comparing estimated payments for FY 2011 to FY 2010 (using a BNAF with a 10 percent reduction). Estimated payments are anticipated to decrease by 0.1 percent for home health agency based hospices. Freestanding and hospital based providers are anticipated to experience a 0.2 percent decrease in estimated payments. Hospices based out of skilled nursing facilities are anticipated to experience a decrease in estimated payments of 0.5 percent.

Column 4 shows the combined effects of the updated wage data and reducing the BNAF by an additional 15 percent (for a total BNAF reduction of 25 percent), comparing estimated payments for FY 2011 to FY 2010 (using a BNAF with a 10 percent reduction). Skilled nursing facility based hospices are estimated to see a 1.1 percent decrease, freestanding hospices are estimated to see a 0.8 percent decrease, and hospital

and home health agency based hospices are each anticipated to experience a 0.7 percent decrease in payments.

Column 5 shows the combined effects of the updated wage data, the additional 15 percent BNAF reduction (for a total BNAF reduction of 25 percent), and the 2.6 percent hospital market basket update on estimated payments, comparing FY 2011 to FY 2010 (using a BNAF with a 10 percent reduction). Estimated payments are anticipated to increase by 1.4 percent for skilled nursing based facilities, to increase by 1.8 percent for freestanding and hospital-based providers, and to increase by 1.9 percent for home health agency based providers.

6. Effects on Other Providers

This notice with comment period only affects Medicare hospice providers,

and therefore has no effect on other provider types.

7. Effects on the Medicare and Medicaid Programs

This notice with comment period only affects Medicare hospice providers, and therefore has no effect on Medicaid programs. As described previously, estimated Medicare payments to hospices in FY 2011 are anticipated to decrease by \$30 million due to the update in the wage index data itself, and to decrease by \$80 million due to the total 25 percent reduction in the BNAF. However, the market basket update of 2.6 percent is anticipated to increase Medicare payments by \$330 million. Therefore the total effect on Medicare hospice payments is estimated to be a \$220 million increase. The market basket update and associated FY 2011

payment rates will be officially communicated this summer through an administrative instruction.

C. Accounting Statement and Table

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this notice with comment period. This table provides our best estimate of the decrease in Medicare payments under the hospice benefit as a result of the changes presented in this notice with comment period on data for 3,429 hospices in our database. All expenditures are classified as transfers to Medicare providers (that is, hospices).

TABLE 2-- Accounting Statement: Classification of Estimated Expenditures, From FY 2010 to FY 2011 [in millions]

Category	Transfers
Annualized Monetized Transfers.....	\$-110
From Whom to Whom.....	Federal Government to Hospices

Note: The \$110 million reduction in transfers includes the additional 15 percent reduction in the BNAF (for a total BNAF reduction of 25 percent) and the updated wage data. It does not include the hospital market basket update, which is 2.6 percent for FY 2011. This 2.6 percent does not reflect the provision in the Affordable Care Act which reduced the hospital market basket update by 0.25 percentage point since that reduction does not apply to hospices.

In accordance with the provisions of Executive Order 12866, this notice with comment period was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 18, 2010.

Marilyn Tavenner,
Principal Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Approved: July 14, 2010.

Kathleen Sebelius,
Secretary.

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Addendum A. Final Hospice Wage Index for Urban Areas by CBSA—FY 2011

CBSA Code	Urban Area ¹ (Constituent Counties)	Wage Index ²
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.8307
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR Aguadilla Municipio, PR Añasco Municipio, PR Isabela Municipio, PR Lares Municipio, PR Moca Municipio, PR Rincón Municipio, PR San Sebastián Municipio, PR	0.3981
10420	Akron, OH Portage County, OH Summit County, OH	0.9252
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.9303
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.9176
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9826
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8376

10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	1.0048
11020	Altoona, PA Blair County, PA	0.9266
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.9084
11180	Ames, IA Story County, IA	0.9924
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.2559
11300	Anderson, IN Madison County, IN	0.9463
11340	Anderson, SC Anderson County, SC	0.9433
11460	Ann Arbor, MI Washtenaw County, MI	1.0761
11500	Anniston-Oxford, AL Calhoun County, AL	0.8000
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9711
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9468
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9923

12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9950
12540	Bakersfield, CA Kern County, CA	1.1742
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0678
12620	Bangor, ME Penobscot County, ME	1.0615
12700	Barnstable Town, MA Barnstable County, MA	1.3191
12940	Baton Rouge, LA Ascension Parish, LA East Baton Rouge Parish, LA East Feliciana Parish, LA Iberville Parish, LA Livingston Parish, LA Pointe Coupee Parish, LA St. Helena Parish, LA West Baton Rouge Parish, LA West Feliciana Parish, LA	0.8552
12980	Battle Creek, MI Calhoun County, MI	1.0454
13020	Bay City, MI Bay County, MI	0.9688
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8764
13380	Bellingham, WA Whatcom County, WA	1.1913
13460	Bend, OR Deschutes County, OR	1.1966

12060	Atlanta-Sandy Springs-Marietta, GA Barrow County, GA Bartow County, GA Butts County, GA Carroll County, GA Cherokee County, GA Clayton County, GA Cobb County, GA Coweta County, GA Dawson County, GA DeKalb County, GA Douglas County, GA Fayette County, GA Forsyth County, GA Fulton County, GA Gwinnett County, GA Haralson County, GA Heard County, GA Henry County, GA Jasper County, GA Lamar County, GA Meriwether County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	1.0027
12100	Atlantic City-Hamilton, NJ Atlantic County, NJ	1.2079
12220	Auburn-Opelika, AL Lee County, AL	0.8508
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9836

14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8854
14600	Bradenton-Sarasota-Venice, FL Manatee County, FL Sarasota County, FL	1.0177
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.1244
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.3373
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9430
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9595
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	1.0182
15500	Burlington, NC Alamance County, NC	0.9146
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	1.0565
15764	Cambridge-Newton-Frammingham, MA Middlesex County, MA	1.1790
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0845
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.9213
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9488
16020	Cape Girardeau-Jackson, MO-IL Alexander County, IL Bollinger County, MO Cape Girardeau County, MO	0.9458
16180	Carson City, NV Carson City, NV	1.1009
16220	Casper, WY	0.9952

13644	Bethesda-Frederick-Rockville, MD Frederick County, MD Montgomery County, MD	1.0766
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.9180
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.9179
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8943
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.8000
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8775
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.9454
14060	Bloomington-Normal, IL McLean County, IL	0.9804
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9741
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.2740
14500	Boulder, CO Boulder County, CO	1.0732

16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0947
17020	Chico, CA Butte County, CA	1.1707
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN Franklin County, IN Ohio County, IN Boone County, KY Bracken County, KY Campbell County, KY Gallatin County, KY Grant County, KY Kenton County, KY Pendleton County, KY Brown County, OH Butler County, OH Clermont County, OH Hamilton County, OH Warren County, OH	0.9914
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.8342
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8000
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9319
17660	Coeur d'Alene, ID Kootenai County, ID	0.9654

16300	Natrona County, WY Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.9392
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	1.0567
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8511
16700	Charleston-North Charleston-Summerville, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9700
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9904
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9798
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.9232
16940	Cheyenne, WY Laramie County, WY	0.9768

19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	1.0301
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.9060
19180	Danville, IL Vermilion County, IL	0.9135
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8701
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8660
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9629
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.8153
19500	Decatur, IL Macon County, IL	0.8358
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.9268
19740	Denver-Aurora-Broomfield, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO	1.1218

17780	College Station-Bryan, TX Brazos County, TX Burlison County, TX Robertson County, TX	0.9929
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	1.0267
17860	Columbia, MO Boone County, MO Howard County, MO	0.9009
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.9188
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscooke County, GA	0.9120
18020	Columbus, IN Bartholomew County, IN	0.9969
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0560
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.9088
18700	Corvallis, OR Benton County, OR	1.1502
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8410

21060	Imperial County, CA Elizabethtown, KY Hardin County, KY Larue County, KY Elkhart-Goshen, IN Elkhart County, IN Elmira, NY Chemung County, NY El Paso, TX El Paso County, TX Erie, PA Erie County, PA Eugene-Springfield, OR Lane County, OR Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY Fairbanks, AK Fairbanks North Star Borough, AK Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR Fargo, ND-MN Cass County, ND Clay County, MN Farmington, NM San Juan County, NM Fayetteville, NC Cumberland County, NC Hoke County, NC Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO Flagstaff, AZ Coconino County, AZ Flint, MI	0.8769 0.9920 0.8720 0.8929 0.9178 1.1535 0.8909 1.1619 0.4359 0.8543 0.8247 0.9783 0.9174 1.3042 1.1744
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19780	Jefferson County, CO Park County, CO Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA Detroit-Livonia-Dearborn, MI Wayne County, MI Dothan, AL Geneva County, AL Henry County, AL Houston County, AL Dover, DE Kent County, DE Dubuque, IA Dubuque County, IA Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI Durham-Chapel Hill, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC Eau Claire, WI Chippewa County, WI Eau Claire County, WI Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ El Centro, CA	1.0087 1.0171 0.8000 1.0382 0.9272 1.0923 1.0055 1.0002 1.1563 0.9164
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23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9710
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8840
24140	Goldsboro, NC Wayne County, NC	0.9467
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.8128
24300	Grand Junction, CO Mesa County, CO	1.0163
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9595
24500	Great Falls, MT Cascade County, MT	0.8733
24540	Greeley, CO Weld County, CO	1.0013
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	1.0058
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9474
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9828
24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	1.0433
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.4068

22500	Genesee County, MI Florence, SC Darlington County, SC Florence County, SC	0.8483
22520	Florence-Muscie Shoals, AL Colbert County, AL Lauderdale County, AL	0.8361
22540	Fond du Lac, WI Fond du Lac County, WI	1.0099
22660	Fort Collins-Loveland, CO Larimer County, CO	1.0637
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0855
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.8218
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.9156
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9421
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9930
23420	Fresno, CA Fresno County, CA	1.1779
23460	Gadsden, AL Etowah County, AL	0.8641
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9386
23580	Gainesville, GA Hall County, GA	0.9537

26420	Houston-Sugar Land-Baytown, TX Austin County, TX Brazoria County, TX Chambers County, TX Fort Bend County, TX Galveston County, TX Harris County, TX Liberty County, TX Montgomery County, TX San Jacinto County, TX Waller County, TX	1.0288
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9510
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9476
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9865
26900	Indianapolis-Carmel, IN Boone County, IN Brown County, IN Hamilton County, IN Hancock County, IN Hendricks County, IN Johnson County, IN Marion County, IN Morgan County, IN Putnam County, IN Shelby County, IN Iowa City, IA Johnson County, IA Washington County, IA	1.0185
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9982
27060	Ithaca, NY Tompkins County, NY	1.0571
27100	Jackson, MI Jackson County, MI	0.9116

25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.9182
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9372
25260	Hanford-Corcoran, CA Kings County, CA	1.1510
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9708
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9435
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.1702
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.8012
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9409
25980	Hinesville-Fort Stewart, GA ³ Liberty County, GA Long County, GA	0.9438
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9091
26180	Honolulu, HI Honolulu County, HI	1.2192
26300	Hot Springs, AR Garland County, AR	0.9413
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.8233

28140	Kansas City, MO-KS Franklin County, KS Johnson County, KS Leavenworth County, KS Linn County, KS Miami County, KS Wyandotte County, KS Bates County, MO Caldwell County, MO Cass County, MO Clay County, MO Clinton County, MO Jackson County, MO Lafayette County, MO Platte County, MO Ray County, MO	1.0119
28420	Kennewick-Pasco-Richland, WA Benton County, WA Franklin County, WA	1.0923
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.9097
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.8362
28740	Kingston, NY Ulster County, NY	0.9792
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.8239
29020	Kokomo, IN Howard County, IN Tipton County, IN	1.0310
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	1.0365

27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8558
27180	Jackson, TN Chester County, TN Madison County, TN	0.8971
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9519
27340	Jacksonville, NC Onslow County, NC	0.8391
27500	Janesville, WI Rock County, WI	0.9619
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.9105
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.8073
27780	Johnstown, PA Cambria County, PA	0.8607
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.8073
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8661
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0730
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0636

30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9293
30620	Lima, OH Allen County, OH	0.9805
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.9997
30780	Little Rock-North Little Rock-Conway AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8948
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.9401
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8415
31020	Longview, WA Cowlitz County, WA	1.1193
31084	Los Angeles-Long Beach-Santa Ana, CA Los Angeles County, CA	1.2586
31140	Louisville-Jefferson County, KY-IN Clark County, IN Floyd County, IN Harrison County, IN Washington County, IN Bullitt County, KY Henry County, KY Jefferson County, KY Meade County, KY Nelson County, KY Oldham County, KY Shelby County, KY Spencer County, KY	0.9371

29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9598
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8903
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.8348
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0951
29420	Lake Havasu City - Kingman, AZ Mohave County, AZ	1.1047
29460	Lakeland-Winter Haven, FL Polk County, FL	0.8771
29540	Lancaster, PA Lancaster County, PA	0.9622
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	1.0214
29700	Laredo, TX Webb County, TX	0.8445
29740	Las Cruces, NM Dona Ana County, NM	0.9345
29820	Las Vegas-Paradise, NV Clark County, NV	1.2681
29940	Lawrence, KS Douglas County, KS	0.8970
30020	Lawton, OK Comanche County, OK	0.8203
30140	Lebanon, PA Lebanon County, PA	0.8488
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	1.0005
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9498

31900	Mansfield, OH Richland County, OH	0.9513
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.4260
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.9254
32780	Medford, OR Jackson County, OR	1.0527
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9689
32900	Merced, CA Merced County, CA	1.2674
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	1.0406
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9734
33260	Midland, TX Midland County, TX	0.9980
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0612
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN Carver County, MN Chisago County, MN Dakota County, MN Hennepin County, MN Isanti County, MN Ramsey County, MN Scott County, MN Sherburne County, MN Washington County, MN Wright County, MN	1.1599

31180	Trimble County, KY Lubbock, TX Crosby County, TX Lubbock County, TX	0.9148
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8908
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	1.0272
31460	Madera-Chowchilla, CA Madera County, CA	0.8319
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.1744
31700	Manchester-Nashua, NH Hillsborough County, NH	1.0633
31740	Manhattan, KS Geary County, KS Pottawatomie County Riley County	0.8236
31860	Mankato-North Mankato, MN Blue Earth County Nicollet County	0.9594

34980	Nashville-Davidson--Murfreesboro-Franklin, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN	1.0129
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.3044
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1938
35300	New Haven-Milford, CT New Haven County, CT	1.2069
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA	0.9505

	Pierce County, WI St. Croix County, WI	
33540	Missoula, MT	0.9624
33660	Missoula County, MT	
33660	Mobile, AL	0.8139
33700	Mobile County, AL	
33700	Modesto, CA	1.3070
33740	Stanislaus County, CA	
33740	Monroe, LA	0.8104
33740	Ouachita Parish, LA	
33740	Union Parish, LA	
33780	Monroe, MI	0.9289
33780	Monroe County, MI	
33860	Montgomery, AL	0.8681
33860	Autauga County, AL	
33860	Elmore County, AL	
33860	Lowndes County, AL	
33860	Montgomery County, AL	
34060	Morgantown, WV	0.8843
34060	Monongalia County, WV	
34060	Preston County, WV	
34100	Morristown, TN	0.8000
34100	Grainger County, TN	
34100	Hamblen County, TN	
34100	Jefferson County, TN	
34580	Mount Vernon-Anacortes, WA	1.0927
34580	Skagit County, WA	
34620	Muncie, IN	0.8767
34620	Delaware County, IN	
34740	Muskegon-Norton Shores, MI	1.0269
34740	Muskegon County, MI	
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	0.9127
34820	Horry County, SC	
34900	Napa, CA	1.5109
34900	Napa County, CA	
34940	Naples-Marco Island, FL	1.0101
34940	Collier County, FL	

	Cass County, NE Douglas County, NE Sarp County, NE Saunders County, NE Washington County, NE	
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9358
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9568
36980	Owensboro, KY Daviss County, KY Hancock County, KY McLean County, KY	0.8737
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.2860
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9472
37380	Palm Coast, FL Flagler County, FL	1.0039
37460	Panama City-Lynn Haven-Panama City Beach, FL Bay County, FL	0.8702
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.8066
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8816
37764	Peabody, MA Essex County, MA	1.1365
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8690
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9571

35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY	1.3596
35660	Niles-Benton Harbor, MI Berrien County, MI	0.9307
35980	Norwich-New London, CT New London County, CT	1.1917
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.7149
36100	Ocala, FL Marion County, FL	0.8945
36140	Ocean City, NJ Cape May County, NJ	1.0621
36220	Odessa, TX Ector County, TX	1.0310
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9786
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK	0.9304
36500	Olympia, WA Thurston County, WA	1.2055
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA	1.0044

38940	Port St. Lucie, FL Martin County, FL St. Lucie County, FL	1.0345
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.1725
39140	Prescott, AZ Yavapai County, AZ	1.0581
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.1272
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9982
39380	Pueblo, CO Pueblo County, CO	0.8959
39460	Punta Gorda, FL Charlotte County, FL	0.9173
39540	Racine, WI Racine County, WI	0.9799
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	1.0102
39660	Rapid City, SD Meade County, SD Pennington County, SD	1.0502
39740	Reading, PA Berks County, PA	0.9684
39820	Redding, CA Shasta County, CA	1.4677
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0752

37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.1227
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.1113
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.8000
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.9017
38340	Pittsfield, MA Berkshire County, MA	1.1142
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9659
38660	Ponce, PR Juana Diaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4853
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0650
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.2020

	Winnebago County, IL	
40484	Rockingham County, NH Strafford County, NH	1.0585
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9247
40660	Rome, GA Floyd County, GA	0.9320
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.4712
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.9536
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.1612
41100	St. George, UT Washington County, UT	0.9656
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0652
41180	St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO	0.9515

40060	Richmond, VA Amelia County, VA Caroline County, VA Charles City County, VA Chesterfield County, VA Cumberland County, VA Dinwiddie County, VA Goochland County, VA Hanover County, VA Henrico County, VA King and Queen County, VA King William County, VA Louisa County, VA New Kent County, VA Powhatan County, VA Prince George County, VA Sussex County, VA Colonial Heights City, VA Hopewell City, VA Petersburg City, VA Richmond City, VA	0.9953
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1798
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.9065
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1642
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.9120
40420	Rockford, IL Boone County, IL	1.0613

41780	Sandusky, OH Erie County, OH	0.9292
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.6595
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.5451
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.7149
41980	San Juan-Caguas-Guaynabo, PR Aguas Buenas Municipio, PR Aibonito Municipio, PR Arecibo Municipio, PR Barceloneta Municipio, PR Barranquitas Municipio, PR Bayamón Municipio, PR Caguas Municipio, PR Camuy Municipio, PR Canóvanas Municipio, PR Carolina Municipio, PR Cataño Municipio, PR Cayey Municipio, PR Ciales Municipio, PR Cidra Municipio, PR Comerio Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR	0.5017

41420	St. Louis City, MO Salem, OR Marion County, OR Polk County, OR	1.1472
41500	Salinas, CA Monterey County, CA	1.5898
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9524
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9804
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.8273
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.9259
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.2286

43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8764
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9507
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9391
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	1.0130
43900	Spartanburg, SC Spartanburg County, SC	0.9765
44060	Spokane, WA Spokane County, WA	1.0918
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9979
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0844
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8837
44220	Springfield, OH Clark County, OH	0.9613
44300	State College, PA Centre County, PA	0.9509
44700	Stockton, CA San Joaquin County, CA	1.2891
44940	Sumter, SC Sumter County, SC	0.8522

	Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Rio Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.3120
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.2516
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.2768
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.7495
42140	Santa Fe, NM Santa Fe County, NM	1.1180
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.6613
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9454
42540	Seranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8755
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.2103
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9787
43100	Sheboygan, WI Sheboygan County, WI	0.9582
43300	Sherman-Denison, TX Grayson County, TX	0.8430

	Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.9093
46340	Tyler, TX Smith County, TX	0.8690
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8844
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8305
46700	Vallejo-Fairfield, CA Solano County, CA	1.5612
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8420
47220	Vineland-Miliville-Bridgeton, NJ Cumberland County, NJ	1.0671
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC Gloucester County, VA Isle of Wight County, VA James City County, VA Mathews County, VA Surry County, VA York County, VA Chesapeake City, VA Hampton City, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	0.9367

45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	1.0229
45104	Tacoma, WA Pierce County, WA	1.1703
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8788
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.9390
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.9473
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8482
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9974
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.9436
45940	Trenton-Ewing, NJ Mercer County, NJ	1.1031
46060	Tucson, AZ Pima County, AZ	0.9937
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK	0.9055

48300	Wenatchee-East Wenatchee, WA Chelan County, WA Douglas County, WA	1.0160
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	1.0328
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.7899
48620	Wichita, KS Butler County, KS Harvey County, KS Sedwick County, KS Sumner County, KS	0.9428
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.9615
48700	Williamsport, PA Lycoming County, PA	0.8235
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.1034
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9394
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	1.0221
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9360
49340	Worcester, MA Worcester County, MA	1.1593
49420	Yakima, WA Yakima County, WA	1.0401
49500	Yauco, PR Guánica Municipio, PR	0.3850

47300	Visalia-Porterville, CA Tulare County, CA	1.0685
47380	Waco, TX McLennan County, TX	0.8758
47580	Warner Robins, GA Houston County, GA	0.9152
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	1.0251
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV	1.1376
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8905
48140	Wausau, WI Marathon County, WI	0.9869
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.8000

	Guayanilla Municipio, PR	
	Peñuelas Municipio, PR	
	Yaucos Municipio, PR	0.9721
49620	York-Hanover, PA	
	York County, PA	0.9073
49660	Youngstown-Warren-Boardman, OH-PA	
	Mahoning County, OH	
	Trumbull County, OH	
	Mercer County, PA	
49700	Yuba City, CA	1.1777
	Sutter County, CA	
	Yuba County, CA	
49740	Yuma, AZ	0.9558
	Yuma County, AZ	

¹This column lists each CBSA area name and each county or county equivalent, in the CBSA area. Counties not listed in this Table are considered to be rural areas. Wage index values for these areas are found in Addendum B.

²Wage index values are based on FY 2006 hospital cost report data before reclassification. These data form the basis for the pre-floor, pre-reclassified hospital wage index. The budget neutrality adjustment factor (BNAF) or the hospice floor is then applied to the pre-floor, pre-reclassified hospital wage index to derive the hospice wage index. Wage index values greater than or equal to 0.8 are subject to a BNAF. The hospice floor calculation is as follows: wage index values below 0.8 are adjusted to be the greater of a) the 25 percent reduced BNAF OR b) the minimum of the pre-floor, pre-reclassified hospital wage index value x 1.15, or 0.8000.

For the FY 2011 hospice wage index, the BNAF was reduced by a total of 25 percent.

³Because there are no hospitals in this CBSA, the wage index value is calculated by taking the average of all other urban CBSAs in Georgia.

Addendum B. Final Hospice Wage Index for Rural Areas by CBSA— FY 2011

State Code	Nonurban Area	Wage Index
1	Alabama	0.8000
2	Alaska	1.2199
3	Arizona	0.9189
4	Arkansas	0.8000

5	California	1.2598
6	Colorado	1.0380
7	Connecticut	1.1597
8	Delaware	1.0360
9	District of Columbia ²	-----
10	Florida	0.8955
11	Georgia	0.8000
12	Hawaii	1.1618
13	Idaho	0.8084
14	Illinois	0.8690
15	Indiana	0.8916
16	Iowa	0.9016
17	Kansas	0.8538
18	Kentucky	0.8168
19	Louisiana	0.8000
20	Maine	0.8969
21	Maryland	0.9546
22	Massachusetts ¹	1.2231
23	Michigan	0.9177
24	Minnesota	0.9576
25	Mississippi	0.8000
26	Missouri	0.8019
27	Montana	0.8780
28	Nebraska	0.9100
29	Nevada	1.0113
30	New Hampshire	1.0409
31	New Jersey ²	-----
32	New Mexico	0.9344
33	New York	0.8645
34	North Carolina	0.8923
35	North Dakota	0.8168
36	Ohio	0.8892
37	Oklahoma	0.8002
38	Oregon	1.0701
39	Pennsylvania	0.8683
40	Puerto Rico ³	0.4654

41	Rhode Island ²	-----
42	South Carolina	0.8775
43	South Dakota	0.8897
44	Tennessee	0.8163
45	Texas	0.8111
46	Utah	0.8743
47	Vermont	1.0206
48	Virgin Islands	0.8000
49	Virginia	0.8226
50	Washington	1.0688
51	West Virginia	0.8000
52	Wisconsin	0.9624
53	Wyoming	0.9968
65	Guam	1.0048

¹There are no hospitals in the rural areas of Massachusetts, so the wage index value used is the average of the contiguous Counties.

²There are no rural areas in this State or District.

³Wage index values are obtained using the methodology described in this notice with comment period.



Federal Register

**Thursday,
July 22, 2010**

Part V

Securities and Exchange Commission

**17 CFR Parts 240, 270, 274, et al.
Concept Release on the U.S. Proxy
System; Proposed Rule**

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 270, 274, and 275

[Release Nos. 34-62495; IA-3052; IC-29340; File No. S7-14-10]

RIN 3235-AK43

Concept Release on the U.S. Proxy System

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Commission is publishing this concept release to solicit comment on various aspects of the U.S. proxy system. It has been many years since we conducted a broad review of the system, and we are aware of industry and investor interest in the Commission's consideration of an update to its rules to promote greater efficiency and transparency in the system and enhance the accuracy and integrity of the shareholder vote. Therefore, we seek comment on the proxy system in general, including the various issues raised in this release involving the U.S. proxy system and certain related matters.

DATES: Comments should be received on or before October 20, 2010.

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/concept.shtml>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-14-10 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File Number S7-14-10. This file number should be included on the subject line if e-mail is used. To help us 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/concept.shtml>). Comments are also available for Web site viewing and

copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; 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:

Raymond A. Be or Lawrence A. Hamermesh, Division of Corporation Finance, at (202) 551-3500, Susan M. Petersen or Andrew Madar, Division of Trading & Markets, at (202) 551-5777, Holly L. Hunter-Ceci or Brian P. Murphy, Division of Investment Management, at (202) 551-6825, or Joshua White, Division of Risk, Strategy, and Financial Innovation, at (202) 551-6655, 100 F Street, NE., Washington, DC 20549.

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I. Introduction

Regulation of the proxy solicitation process is one of the original responsibilities that Congress assigned to the Commission in 1934. The Commission has actively monitored the proxy process since receiving this

authority and has considered changes when it appeared that the process was not functioning in a manner that adequately protected the interests of investors.¹ In recent years, a number of our proxy-related rulemakings have been spurred by the Internet and other technological advances that enable more efficient communications. For example, we have adopted the “notice and access” model for the delivery of proxy materials,² as well as rules to facilitate the use of electronic shareholder forums.³ Perceived deficiencies in the proxy distribution process have prompted other proxy-related rulemakings, such as rules to reinforce the obligation of issuers to distribute proxy materials to banks and brokers on a timely basis⁴ and to permit the “householding” of proxy materials.⁵ We have also periodically revised our rules requiring certain types of disclosures in the proxy statement, such as information on executive compensation and corporate governance matters.⁶ We also have pending a proposal to adopt rules that would require, under certain circumstances, a company to include in its proxy materials a shareholder’s or

group of shareholders’, nominees for director.⁷

During many of these previous proxy-related rulemakings, commentators raised concerns about the proxy system as a whole.⁸ In addition, the Commission’s staff often receives complaints from individual investors about the administration of the proxy system.⁹ We believe that these concerns and complaints merit attention because they address a subject of considerable importance—the corporate proxy—which, given the wide dispersion of shareholders, is the principal means by which shareholders can exercise their voting rights.

Accordingly, in this release, we are reviewing and seeking public comment as to whether the U.S. proxy system as a whole operates with the accuracy, reliability, transparency, accountability, and integrity that shareholders and issuers should rightfully expect. With over 600 billion shares voted every year at more than 13,000 shareholder meetings,¹⁰ shareholders should be served by a well-functioning proxy system that promotes efficient and accurate voting. Moreover, recent developments, such as the revisions to Rule 452 of the New York Stock Exchange (“NYSE”) limiting the ability of brokers to vote uninstructed shares in uncontested director elections¹¹ and other corporate governance trends such as increased adoption of a majority voting standard for the election of

directors¹² have highlighted the importance of accuracy and accountability in the voting process.

The manner in which proxy materials are distributed and votes are processed and recorded involves a level of complexity not generally understood by those not involved in the process. This complexity stems, in large part, from the nature of share ownership in the United States, in which the vast majority of shares are held through securities intermediaries such as broker-dealers or banks; this structure supports prompt and accurate clearance and settlement of securities transactions, yet adds significant complexity to the proxy voting process.¹³ As a result, the proxy system involves a wide array of third-party participants in addition to companies and their shareholders, including brokers, banks, custodians, securities depositories, transfer agents, proxy solicitors, proxy service providers, proxy advisory firms, and vote tabulators.¹⁴ The use of some of these third parties improves efficiencies in processing and distributing proxy materials to shareholders, while at the same time the increased reliance on these third parties—some of which are not directly regulated by federal or state securities regulators—adds complexity to the proxy system and makes it less

¹ For a history of the Commission’s efforts to regulate the proxy process since 1934, see Jill E. Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 Vand. L. Rev. 1129 (Oct. 1993).

² 17 CFR 240.14a–16; Shareholder Choice Regarding Proxy Materials, Release No. 34–56135 (July 26, 2007) [72 FR 42222] (“Notice and Access Release”); Amendments to Rules Requiring Internet Availability of Proxy Materials, Release No. 33–9108 (Feb. 22, 2010) [75 FR 9074].

³ 17 CFR 240.14a–17; Electronic Shareholder Forums, Release No. 34–57172 (Jan. 18, 2008) [73 FR 4450]. These amendments clarified that participation in an electronic shareholder forum that could potentially constitute a solicitation subject to the proxy rules is exempt from most of the proxy rules if all of the conditions to the exemption are satisfied. In addition, the amendments state that a shareholder, issuer, or third party acting on behalf of a shareholder or issuer that establishes, maintains or operates an electronic shareholder forum will not be liable under the federal securities laws for any statement or information provided by another person participating in the forum. The amendments did not provide an exemption from Rule 14a–9 [17 CFR 240.14a–9], which prohibits fraud in connection with the solicitation of proxies.

⁴ See 17 CFR 14b–1 and 14b–2; Timely Distribution of Proxy and Other Soliciting Material, Release No. 34–33768 (Mar. 16, 1994) [59 FR 13517].

⁵ Delivery of Proxy Statements and Information Statements to Households, Release No. 33–7912 (Oct. 27, 2000) [65 FR 65736]. “Householding” permits a securities intermediary to send only one copy of proxy materials to multiple accounts within the same household under specified conditions. *Id.*

⁶ See, e.g., Proxy Disclosure Enhancements, Release No. 33–9089 (Dec. 16, 2009) [74 FR 68334] and Executive Compensation and Related Person Disclosure, Release No. 33–8732A (Aug. 9, 2006) [71 FR 53158].

⁷ See Facilitating Shareholder Director Nominations, Release Nos. 33–9046, 34–60089, IC–287665 (June 10, 2009) [74 FR 29024].

⁸ See, e.g., Request for Rulemaking Concerning Shareholder Communications, April 12, 2004–Business Roundtable Petition 4–493 (“BRT Petition”); comment letter to Release No. 33–9046, note 7, above, from Altman Group; comment letters to Security Holder Director Nominations, Release No. 34–48626 (Oct. 14, 2003) [68 FR 60784] from Intel and Geogeson Shareholder Communications.

⁹ Most commonly submitted to the Commission’s Office of Investor Education and Advocacy, these complaints raise issues such as, for example, technical problems with electronic voting platforms offered by proxy service providers and failures by issuers to respond to shareholder complaints about proxy-related matters.

¹⁰ See Broadridge 2009 Key Statistics and Performance Ratings, available at <http://www.broadridge.com/investor-communications/us/2009ProxyStats.pdf>.

¹¹ Order Approving Proposed Rule Change, as modified by Amendment No. 4, to Amend NYSE Rule 452 and Corresponding Listed Company Manual Section 402.08 to Eliminate Broker Discretionary Voting for the Election of Directors, Except for Companies Registered under the Investment Company Act of 1940, and to Codify Two Previously Published Interpretations that Do Not Permit Broker Discretionary Voting for Material Amendments to Investment Advisory Contracts with an Investment Company, Release No. 34–60215 (July 1, 2009) [74 FR 33293] (Commission approval of amendments to NYSE Rule 452).

¹² Historically, many corporate directors were elected under a plurality standard, which required only that a candidate receive more votes than other candidates, but not a majority of the votes. Since there ordinarily are not more candidates than seats, the election threshold has historically been low and shareholder participation was less important to electing directors. See American Bar Association Section of Business Law, Report of the Committee on Corporate Laws on Voting by Shareholders for the Election of Directors (Mar. 13, 2006), available at <http://www.abanet.org/buslaw/committees/CL270000pub/directoringvoting/20060313000001.pdf>. From 2005 to 2007, however, a majority of companies in the S&P 500 index adopted a voting policy, through bylaw amendments or changes in corporate governance principles, that requires directors who do not receive a majority of votes cast at the meeting in favor of their election to tender their resignation to the board, which resignation the board may or may not accept. See Claudia H. Allen, *Study of Majority Voting in Director Elections* (Nov. 12, 2007), available at <http://www.ngelaw.com/files/upload/majoritystudy111207.pdf>.

¹³ See Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of such Securities Pursuant to Section 12(m) of the Securities Exchange Act of 1934, Dec. 3, 1976 (the “Street Name Study”).

¹⁴ The focus of this release is the U.S. proxy system. We recognize, however, that many U.S. persons hold shares in non-U.S. issuers. While this release does not address the processes and procedures followed by participants when non-U.S. issuers distribute proxy-related materials to U.S. persons, we are interested in information about those processes and procedures. We also seek comment about whether we should consider regulatory responses to issues that may arise in that area.

transparent to shareholders and to issuers. Studies of the proxy systems in other jurisdictions, including the United Kingdom and the European Union, have made similar observations.¹⁵

We begin this concept release with an overview of the U.S. proxy system. We then outline some of the concerns that have been raised regarding the accuracy, reliability, transparency, accountability, and integrity of this system, as well as possible regulatory responses to these concerns. These concerns generally relate to three principal questions:

- Whether we should take steps to enhance the accuracy, transparency, and efficiency of the voting process;
- Whether our rules should be revised to improve shareholder communications and encourage greater shareholder participation; and
- Whether voting power is aligned with economic interest and whether our disclosure requirements provide investors with sufficient information about this issue.

In reviewing the performance of the proxy system, the Commission's staff has recently had numerous discussions with a variety of participants in the proxy voting process, and we appreciate the insights these participants have provided.¹⁶ While we set forth a number

¹⁵ A report from the United Kingdom has characterized its voting process as one in which the chain of accountability is complex, where there is a lack of transparency and where there are a large number of different participants, each of whom may give a different priority to voting. *See* Review of the impediments to voting UK shares: Report by Paul Myners to the Shareholder Voting Working Group (Jan. 2004) ("Myners Report"). The European Union also has considered issues related to proxy voting and has enacted rules and legislation in response. As a result, the European Union passed a directive on the exercise of certain rights of shareholders in listed companies in July 2007, which covers many of the matters discussed in this release. *See* Directive 2007/36/EC of the European Parliament and of the Council (July 11, 2007) ("Shareholder Rights Directive"). The Shareholder Rights Directive addresses the issues of record dates, transparency, electronic communications, conflicts of interest, financial intermediaries and other parties involved in the proxy voting process.

¹⁶ Beginning in September of 2009, the Commission's staff has met with representatives of the following groups and individuals to discuss issues about the U.S. proxy system: The Altman Group; Broadridge Financial Solutions, Inc.; Broadridge Steering Committee; Council of Institutional Investors ("CII"); Edwards, Angell, Palmer & Dodge; Glass, Lewis & Co.; the Hong Kong Securities & Futures Commission; International Corporate Governance Network ("ICGN"); InvestShare; McKenzie Partners; Mediant Communications; Moxy Vote; National Investor Relations Institute ("NIRI"); Proxy Governance, Inc.; RiskMetrics Group; Professor Edward Rock; Shareholder Communications Coalition; Securities Industry and Financial Markets Association ("SIFMA"); Society of Corporate Secretaries and Governance Professionals; Sodali; Target Corp.; TIAA-CREF; the U.K. Financial Reporting Council; and Weil, Gotshal & Manges, LLP. The staff has also been in communication with other regulators,

of general and specific questions, we welcome comments on any other concerns related to the proxy process that commentators may have, and we specifically invite comment on any costs, burdens or benefits that may result from possible regulatory responses identified in this release. We recognize that the various aspects of the proxy system that we address in this release are interconnected, and that changes to one aspect may affect other aspects, as well as complement or frustrate other potential changes.¹⁷ We encourage the public to consider these relationships when formulating comments. Interested persons are also invited to comment on whether alternative approaches, or a combination of approaches, would better address the concerns raised by the current process.

We are mindful that, while we have recently amended—and are considering amending—a number of our rules that relate to the proxy process, further amendments to those rules or additional guidance about our views on their application may be appropriate to address concerns raised by the application of those rules. Although the discussion in this release generally focuses on the broader proxy system, we remain interested in ways to improve our proxy disclosure, solicitation, and distribution rules. We seek public comment on the concerns about those rules.

II. The Current Proxy Distribution and Voting Process

A fundamental tenet of state corporation law is that shareholders have the right to vote their shares to elect directors and to approve or reject major corporate transactions at shareholder meetings.¹⁸ Under state

including the Federal Reserve, FDIC, Office of the Comptroller of Currency, and Office of Thrift Supervision. Several of the above-listed parties provided written materials to the staff, which we are including in the public comment file for this release. The SEC Investor Advisory Committee has also recommended an inquiry into data-tagging proxy information, as described in Section IV.C below.

¹⁷ For example, the feasibility of establishing a means of vote confirmation may depend on whether and to what extent we continue to allow beneficial owners to object to the disclosure of their identities to issuers. *See* Sections III.B and IV.A, below.

¹⁸ *See, e.g.*, Del. Code Ann. tit. 8, §§ 211 and 212; Model Bus. Corp. Act §§ 7.01 and 7.21. While voting in the election of directors is largely the exclusive right of stockholders, state law may permit the corporation to grant voting rights to holders of other securities, such as debt. *See, e.g.*, Del. Code Ann. tit. 8, § 221. For a brief review of the rationale for voting by shareholders, *see* Frank H. Easterbrook and Daniel R. Fischel, *The Economic Structure of Corporate Law* (1991). We refer to Delaware law frequently because of the large

law, shareholders can appoint a proxy to vote their shares on their behalf at shareholder meetings,¹⁹ and the major national securities exchanges generally require their listed companies to solicit proxies for all meetings of shareholders.²⁰ Because most shareholders do not attend public company shareholder meetings in person, voting occurs almost entirely by the use of proxies that are solicited before the shareholder meeting,²¹ thereby resulting in the corporate proxy becoming "the forum for shareholder suffrage."²² Issuers with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") and issuers that are registered under the Investment Company Act of 1940 ("Investment Company Act") are required to comply with the federal proxy rules in Regulation 14A when soliciting proxies from shareholders.²³

A. Types of Share Ownership and Voting Rights

The proxy solicitation process starts with the determination of who has the right to receive proxy materials and vote on matters presented to shareholders for a vote at shareholder meetings. The method for making this determination depends on the way the shares are owned. There are two types of security holders in the U.S.—registered owners and beneficial owners.

1. Registered Owners

Registered owners (also known as "record holders") have a direct relationship with the issuer because their ownership of shares is listed on records maintained by the issuer or its transfer agent.²⁴ State corporation law

percentage of public companies incorporated under that law. The Delaware Division of Corporations reports that over 50% of U.S. public companies are incorporated in Delaware. We refer to the Model Business Corporation Act as well because the corporate statutes of many states adopt or closely track its provisions.

¹⁹ *See, e.g.*, Del Code Ann. tit. 8, § 212(b); Model Bus. Corp. Act § 7.22(b).

²⁰ *See, e.g.*, NYSE Listed Company Manual § 402.04(a); Nasdaq Listing Rule 5620(b).

²¹ Although voting rights in public companies are exercised only at the meeting of shareholders, the votes cast at the meeting are almost entirely by proxy and the voting decisions have been made during the proxy solicitation process.

²² *Roosevelt v. E.I. duPont de Nemours & Co.*, 958 F.2d 416, 422 (D.C. Cir. 1992).

²³ 17 CFR 240.14a-1 *et seq.*; 17 CFR 270.20a-1. However, securities of foreign private issuers are exempt from the proxy rules. *See* 17 CFR 240.3a12-3.

²⁴ The Uniform Commercial Code ("UCC") defines the term "registered form," as applied to a certificated security, as a form in which the security certificate specifies a person entitled to the security, and a transfer of the security may be registered on books maintained for that purpose by or on behalf

generally vests the right to vote and the other rights of share ownership in registered owners.²⁵ Because registered owners have the right to vote, they also have the authority to appoint a proxy to act on their behalf at shareholder meetings.²⁶

Registered owners can hold their securities either in certificated form²⁷ or in electronic (or “book-entry”) form through a direct registration system (“DRS”),²⁸ which enables an investor to

of the issuer, or the security certificate so states. UCC 8–102(a)(13) (1994). Rule 14a–1 under the Exchange Act [17 CFR 240.14a–1] defines the term “record holder” for purposes of Rules 14a–13, 14b–1 and 14b–2 [17 CFR 240.14a–13, 14b–1, 14b–2] to mean any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank. Additionally, the Commission’s transfer agent rules refer to registered owners as security holders, which means owners of securities registered on the master security holder file of the issuer. Rule 17Ad–9 under the Exchange Act [17 CFR 240.17Ad–9] defines master security holder file as the official list of individual security holder accounts.

²⁵ See, e.g., Del. Code Ann. tit. 8, § 219(c); Model Bus. Corp. Act § 1.40(21); but see Model Bus. Corp. Act § 7.23 (permitting corporations to establish procedures by which beneficial owners become entitled to exercise rights, including voting rights, otherwise exercisable by shareholders of record).

²⁶ See, e.g., Del. Code Ann. tit. 8, § 212(b); Model Bus. Corp. Act § 7.22(b).

²⁷ A securities certificate evidences that the owner is registered on the books of the issuer as a shareholder. State commercial laws specify rules concerning the transfer of the rights that constitute securities and the establishment of those rights against the issuer and other parties. See Official comment to Article 8–101, The American Law Institute and National Conference of Commissioners of Uniform State Laws, Uniform Commercial Code, 1990 Official Text with Comments (West 1991).

²⁸ For more information about DRS generally, see Securities Transactions Settlement, Release No. 33–8398 (Mar. 11, 2004) [69 FR 12922]. For a detailed description of DRS and the DRS facilities administered by DTC, see Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Procedures to Establish a Direct

have his or her ownership of securities recorded on the books of the issuer without having a physical securities certificate issued.²⁹ Under DRS, an investor can electronically transfer his or her securities to a broker-dealer to effect a transaction without the risk, expense, or delay associated with the use of securities certificates. Investors holding their securities in DRS retain the rights of registered owners, without having the responsibility of holding and safeguarding securities certificates.

2. Beneficial Owners

The vast majority of investors in shares issued by U.S. companies today

Registration System, Release No. 34–37931 (Nov. 7, 1996) [61 FR 58600] (order granting approval to establish DRS) and Notice of Filing of Amendment and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Implementation of the Profile Modification System Feature of the Direct Registration System, Release No. 34–41862 (Sept. 10, 1999) [64 FR 51162] (order approving implementation of the Profile Modification System).

²⁹ DRS is an industry initiative aimed at dematerializing equities in the U.S. market. Dematerialization of securities occurs where there are no paper certificates available, and all transfers of ownership are made through book-entry movements. Immobilization of securities occurs where the underlying certificate is kept in a securities depository (or held in custody for the depository by the issuer’s transfer agent) and transfers of ownership are recorded through electronic book-entry movements between the depository’s participants’ accounts. Securities are partially immobilized (as is the case with most U.S. equity securities traded on an exchange or securities association) when the street name positions are immobilized at the securities depository but certificates are still available to investors directly registered on the issuer’s books. Although most options, municipal, government and many debt securities trading in the U.S. markets are currently dematerialized, many equity and some debt securities remain immobilized or partially immobilized at the Depository Trust Company (“DTC”). For more information about DTC, see Section II.B.2.a, below. Most if not all equity securities not on deposit at DTC but trading publicly in the U.S. markets remain fully certificated.

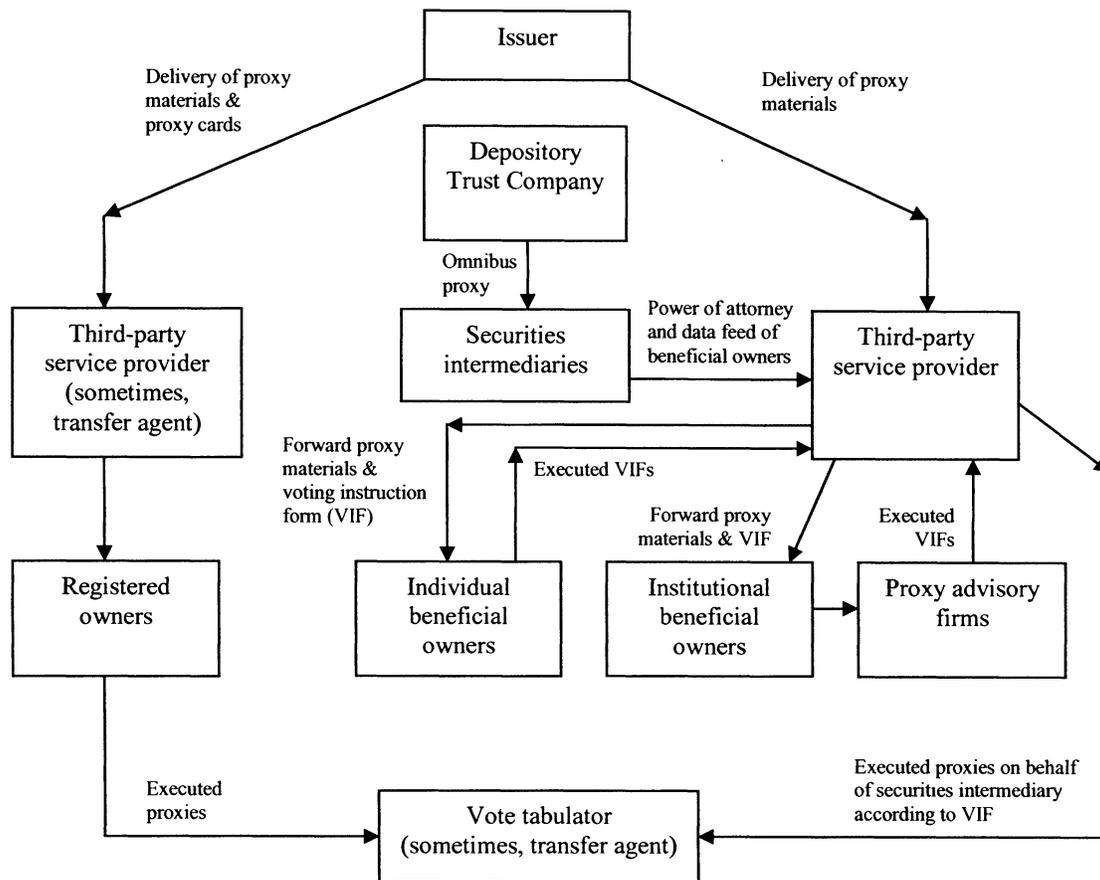
are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker-dealer or bank.³⁰ This is often referred to as owning in “street name.” A beneficial owner does not own the securities directly. Instead, as a customer of the securities intermediary, the beneficial owner has an entitlement to the rights associated with ownership of the securities.³¹

B. The Process of Soliciting Proxies

The following diagram illustrates the flow of proxy materials that typically occurs during a solicitation. The steps illustrated in the diagram and descriptions of the relevant parties are discussed below.

³⁰ For purposes of Commission rules pertaining to the transfer of certain securities, a “securities intermediary” is defined under Exchange Act Rule 17Ad–20 [17 CFR 240.17Ad–20] as a clearing agency registered under Exchange Act Section 17A [15 USC 78q–1] or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others in its capacity as such. The UCC defines the term slightly differently, but for purposes of this release, this distinction is irrelevant. See UCC 8–102(a)(14) (1994).

³¹ The rights and interests that a customer has against a securities intermediary’s property are created by the agreements between the customer and the securities intermediary, as well as by the UCC, as adopted in the relevant jurisdiction. Under the UCC, beneficial owners have a “securities entitlement” to the fungible bulk of securities held by the broker-dealer or bank. An “entitlement holder” is defined as a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. UCC 8–503 (1994). A securities intermediary is obligated to provide the entitlement holder with all of the economic and governance rights that comprise the financial asset and that the entitlement holder can look only to that intermediary for performance of the obligations. See generally UCC 8–501 *et seq.* (1994).

Diagram 1: The Flow of Proxy Materials

1. Distributing Proxy Materials to Registered Owners

It is a relatively simple process for an issuer to send proxy materials to registered owners because their names and addresses are listed in the issuer's records, which are usually maintained by a transfer agent. As the left side of Diagram 1 illustrates, proxy materials are sent directly from the issuer through its transfer agent or third-party proxy service provider to all registered owners in paper or electronic form.³² Registered owners execute the proxy card and

³² Commission rules provide, generally, that proxy materials can be provided electronically to shareholders who have affirmatively consented to electronic delivery. See Use of Electronic Media for Delivery Purposes, Release No. 33-7233 (Oct. 6, 1995) [60 FR 53458]. In addition, the Commission has adopted the notice and access model that permits issuers to send shareholders a Notice of Internet Availability of Proxy Materials in lieu of the traditional paper packages including the proxy statement, annual report and proxy card. See Notice and Access Release, note 2, above. These two concepts work in tandem. Although an issuer electing to send a Notice in lieu of a full package generally would be required to send a paper copy of that Notice, it may send that Notice electronically to a shareholder who has provided an affirmative consent to electronic delivery.

return it to the issuer's transfer agent or vote tabulator for tabulation.

2. Distributing Proxy Materials to Beneficial Owners

As the right side of Diagram 1 illustrates, the process of distributing proxy materials to beneficial owners is more complicated than it is for registered owners. The indirect system of ownership in the U.S. permits securities intermediaries to hold securities for their customers, and there can be multiple layers of securities intermediaries leading to one beneficial owner. This potential for multiple tiers of securities intermediaries presents a number of challenges in the distribution of proxy materials.

a. The Depository Trust Company

In most cases, the chain of ownership for beneficially owned securities of U.S. companies begins with the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository.³³ Most large U.S. broker-

³³ DTC provides custody and book-entry transfer services of securities transactions in the U.S. market

dealers and banks are DTC participants, meaning that they deposit securities with, and hold those securities through, DTC.³⁴ DTC's nominee, Cede & Co., appears in an issuer's stock records as the sole registered owner of securities deposited at DTC. DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by DTC participants.³⁵ Rather, each

involving equities, corporate and municipal debt, money market instruments, American depository receipts, and exchange-traded funds. In accordance with its rules, DTC accepts deposits of securities from its participants (*i.e.*, broker-dealers and banks), credits those securities to the depositing participants' accounts, and effects book-entry movements of those securities. For more information about DTC, see <http://www.dtcc.com/about/subs/dtc.php>.

³⁴ Participants in DTC are usually broker-dealers or banks. Currently, there are approximately 400 DTC participants. See <http://www.dtcc.com/customer/directories/dtc/dtc.php>. Other jurisdictions have entities similar to the DTC. For example, Canada has the Clearing and Depository Services Inc., which is its national securities depository and clearing and settlement entity.

³⁵ See UCC 8-503(b) (1994) (a beneficial owner's property interest with respect to shares "is a pro rata property interest in all interests in that financial asset held by the securities intermediary").

participant owns a pro rata interest in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant—such as an individual investor—owns a pro rata interest in the shares in which the DTC participant has an interest.

Once an issuer establishes a date for the shareholder meeting and a record date for shareholders entitled to vote on matters presented at the meeting, it sends a formal announcement of these dates to DTC, which DTC forwards to all of its participants.³⁶ The issuer then requests from DTC a “securities position listing”³⁷ as of the record date, which identifies the participants having a position in the issuer’s securities and the number of securities held by each participant.³⁸ DTC must promptly respond by providing the issuer with a list of the number of shares in each DTC participant’s account as of the record date.³⁹ The record date securities position listing establishes the number of shares that a participant is entitled to vote through its DTC proxy.⁴⁰

For each shareholder meeting, DTC executes an “omnibus proxy”⁴¹ transferring its right to vote the shares held on deposit to its participants.⁴² In

³⁶ NYSE-listed issuers are also required to provide the NYSE with notification of the record and meeting dates. See NYSE Listed Company Manual § 401.02.

³⁷ Exchange Act Rule 17Ad-8 defines a “securities position listing” as a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer’s securities and of the participant’s respective positions in such securities as of a specified date. 17 CFR 240.17Ad-8(a).

³⁸ Pursuant to Exchange Act Rule 17Ad-8, DTC may charge issuers requesting securities position listings a fee designed to recover the reasonable costs of providing the list. 17 CFR 240.17Ad-8(b). An issuer or its agent, generally a transfer agent or authorized third-party service provider, can subscribe to DTC’s service that allows the subscriber to obtain the securities position listing once or on a weekly, monthly, or more frequent basis.

³⁹ Upon request, a registered clearing agency must furnish a securities position listing promptly to each issuer whose securities are held in the name of the clearing agency or its nominee. 17 CFR 140.17Ad-8(b).

⁴⁰ In addition to the shares held in its DTC account, some participants may also own additional securities at other securities depositories, through custodians, or in registered form.

⁴¹ Rather than issue each participant a separate proxy to vote its shares, DTC drafts a single proxy (the “omnibus proxy”) granting to each of the multiple participants listed in the proxy the right to vote the number of shares attributed to it in the omnibus proxy.

⁴² As noted in recent litigation, the execution by DTC of an omnibus proxy is neither automatic nor legally required, but occurs as a matter of common practice. *Kurz v. Holbrook*, 989 A.2d 140, 170 (Del. Ch. 2010), *rev’d on other grounds*, *Crown EMAK Partners, LLC v. Kurz*, 992 A.2d 377 (Del. 2010) (“There does not appear to be any authority governing when a DTC omnibus proxy is issued,

this manner, broker-dealer and bank participants in DTC obtain the right to vote directly the shares that they hold through DTC.

b. Securities Intermediaries: Broker-Dealers and Banks

Once the issuer identifies the DTC participants holding positions in its securities, it is required to send a search card⁴³ to each of those participants, as well as other securities intermediaries that are registered owners, to determine whether they are holding shares for beneficial owners and, if so, the number of sets of proxy packages needed to be forwarded to those beneficial owners. This process may involve multiple tiers of securities intermediaries holding securities on behalf of other securities intermediaries, with search cards distributed to each securities intermediary in the chain of ownership.

Commission rules require broker-dealers to respond to the issuer within seven business days with the approximate number of customers of the broker-dealer who are beneficial owners of the issuer’s securities.⁴⁴ The Commission’s rules also require banks to follow a similar process except that banks must respond to the issuer within one business day with the names and addresses of all respondent banks⁴⁵ and must respond within seven business days with the approximate number of customers of the bank who are beneficial owners of shares.⁴⁶

Once the search card process is complete, the issuer should know the approximate number of beneficial owners owning shares through each securities intermediary. The issuer must then provide the securities intermediary, or its third-party proxy service provider, with copies of its proxy materials (including, if

who should ask for it, or what event triggers it. The parties tell me that DTC has no written policies or procedures on the matter.”)

⁴³ The search card must request: (1) The number of beneficial owners; (2) the number of proxy soliciting materials and annual reports needed for forwarding by the intermediaries to their beneficial owner customers; and (3) the name and address of any agent appointed by the bank or broker-dealer to process a request for a list of beneficial owners. The search card must be sent out at least 20 business days prior to the record date unless impracticable, in which case it must be sent as many days before the record date as practicable. 17 CFR 240.14a-13(a).

⁴⁴ 17 CFR 240.14b-1(b)(1).

⁴⁵ A respondent bank is a bank that holds securities through another bank that is the record holder of those securities. See *Facilitating Shareholder Communications*, Release No. 34-23276 (May 29, 1986) [51 FR 20504].

⁴⁶ 17 CFR 240.14b-2(b)(1) and 17 CFR 240.14b-2(b)(2). Banks are required to execute omnibus proxies in favor of respondent banks. 17 CFR 240.14b-2(b)(2).

applicable, a Notice of Internet Availability of Proxy Materials) for forwarding to those beneficial owners. The securities intermediary must forward these proxy materials to beneficial owners no later than five business days after receiving such materials.⁴⁷ Securities intermediaries are entitled to reasonable reimbursement for their costs in forwarding these materials.⁴⁸

Instead of receiving and executing a proxy card (as registered owners receive and do), the beneficial owner receives a “voting instruction form” or “VIF” from the securities intermediary, which permits the beneficial owner to instruct the securities intermediary how to vote the beneficially owned shares. Although the VIF does not give the beneficial owner the right to attend the meeting, a beneficial owner typically can attend the meeting by requesting the appropriate documentation from the securities intermediary.

C. Proxy Voting Process

Once the proxy materials have been distributed to the registered owners and beneficial owners of the securities, the means by which shareholders vote their shares differs. As Diagram 1 illustrates, registered owners execute the proxy card and return it to the vote tabulator, either by mail, by phone, or through the Internet. Beneficial owners, on the other hand, indicate their voting instructions on the VIF and return it to the securities intermediary or its proxy service provider, either by mail, by phone, or through the Internet.⁴⁹ The securities intermediary, or its proxy service provider, tallies the voting instructions

⁴⁷ 17 CFR 240.14b-1(b)(2) and 17 CFR 240.14b-2(b)(3). The exchanges have rules that regulate the process and procedures by which member firms must transmit proxy materials to beneficial owners, collect voting instructions from beneficial owners, and vote shares held in the member firm’s name. See, e.g., NYSE Rules 450 through 460 and FINRA Rule 2251.

⁴⁸ 17 CFR 240.14a-13(a)(5). In addition, most of the exchanges have rules specifying the maximum rates that member firms may charge listed issuers as reasonable reimbursement. For example, the NYSE rule includes a schedule of “fair and reasonable rates of reimbursement” of member broker-dealers for their out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with issuers’ proxy solicitations of beneficial owners. NYSE Rule 465 Supplemental Material. The other exchanges have similar rules. See the discussion on proxy distribution fees in Section III.D below.

⁴⁹ Beneficial owners’ voting instructions submitted by telephone account for a very small percentage of votes received by proxy service providers; for the shares of most beneficial owners who do not vote through a proprietary service for institutional investors, voting instructions are conveyed by paper or via the Internet, in approximately the same proportion. See Broadridge 2009 Key Statistics and Performance Ratings, note 10, above.

that it receives from its customers. As discussed in further detail in Section IV.A of this release, the securities intermediary, or its proxy service provider, then executes and submits to the vote tabulator a proxy card for all securities held by the securities intermediary's customers.⁵⁰

In certain situations, a broker-dealer may use its discretion to vote shares if it does not receive instructions from the beneficial owner of the shares. Historically, broker-dealers were generally permitted to vote shares on uncontested matters, including uncontested director elections, without instructions from the beneficial owner.⁵¹ The NYSE recently revised this rule to prohibit broker-dealers from voting uninstructed shares with regard to any election of directors.⁵²

D. The Roles of Third Parties in the Proxy Process

Issuers, securities intermediaries, and shareholders often retain third parties to perform a number of proxy-related functions, including forwarding proxy materials, collecting voting instructions, voting shares, soliciting proxies, tabulating proxies, and analyzing proxy issues.

1. Transfer Agents

Issuers are required to maintain a record of security holders for state law purposes⁵³ and often hire a transfer

agent⁵⁴ to maintain that record.⁵⁵ Transfer agents, as agents of the issuer, are obliged to confirm to a vote tabulator (if the transfer agent does not itself perform the tabulation function) matters such as the amount of shares outstanding, as well as the identity and holdings of registered owners entitled to vote. Transfer agents are required to register with the Commission, which inspects and currently regulates some of their functions.⁵⁶

2. Proxy Service Providers

To facilitate the proxy material distribution and voting process for beneficial owners, securities intermediaries typically retain a proxy service provider to perform a number of processing functions, including forwarding the proxy materials by mail or electronically and collecting voting instructions.⁵⁷ To enable the proxy service provider to perform these functions, the securities intermediary gives the service provider an electronic data feed of a list of beneficial owners

⁵⁴ Section 3(a)(25) of the Exchange Act defines a "transfer agent" as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (1) countersigning such securities upon issuance, (2) monitoring the issuance of such securities with a view to preventing unauthorized issuance, (3) registering the transfer of securities, (4) exchanging or converting such securities, or (5) transferring record ownership of securities by bookkeeping entry without the physical issuance of securities certificates. For more information about the role of transfer agents, see <http://www.stai.org>.

⁵⁵ Exchange Act Rules 17Ad-6, 17Ad-7, 17Ad-9, 17Ad-10, and 17Ad-11 govern how transfer agents acting for issuers of securities registered under Section 12 of the Exchange Act (or that would have to be registered but for the exemption under Section 12(g)(2)(b)(i) and (ii) of the Exchange Act) must maintain certain records of the issuer, including, but not limited to, the official record of ownership (*i.e.*, the "masterfile") and the official record of the number of securities issued and outstanding (*i.e.*, the "control book" or the "registrar"). These rules do not address the distribution of issuer communications, including proxy materials, or the remittance of proxies or voting instructions. To a lesser extent, the UCC, as adopted by states, also governs certain aspects of transfer agent activity relating to rights of issuers, shareholders, securities intermediaries, and those holding through securities intermediaries, some of which relate to the right to vote. The application of the UCC in this context is beyond the scope of this release.

⁵⁶ Persons acting as transfer agents for any security registered under Section 12 of the Exchange Act or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of Section 12 must register with the Commission (or, for transfer agents that are banks, with their appropriate regulatory agency) and pursuant to Section 17A of the Exchange Act must comply with Commission rules and regulations. 15 U.S.C. 78q-1(c)(1) and (d)(1).

⁵⁷ A single proxy service provider, Broadridge Financial Services, Inc. ("Broadridge"), states that it currently handles over 98% of the U.S. market for such proxy vote processing services. See <http://www.broadridge.com/investor-communications/us/institutions/proxy-disclosure.asp>.

and the number of shares held by each beneficial owner on the record date. The proxy service provider, on behalf of the intermediary, then requests the appropriate number of proxy material sets from the issuer for delivery to the beneficial owners. Upon receipt of the packages, the proxy service provider, on behalf of the intermediary, mails either the proxy materials with a VIF, or a Notice of Internet Availability of Proxy Materials,⁵⁸ to beneficial owners. Although we do not directly regulate such proxy service providers, our regulations governing the proxy process-related obligations of securities intermediaries apply to the way in which proxy service providers perform their services because they act as agents for, and on behalf of, those intermediaries and typically vote proxies on behalf of those intermediaries pursuant to a power of attorney.

3. Proxy Solicitors

Issuers sometimes hire third-party proxy solicitors to identify beneficial owners holding large amounts of the issuers' securities and to telephone shareholders to encourage them to vote their proxies consistent with the recommendations of management. This often occurs when there is a contested election of directors, and issuer's management and other persons are competing for proxy authority to vote securities in the election (commonly referred to as a "proxy contest"). In addition, an issuer may hire a proxy solicitor in uncontested situations when voting returns are expected to be insufficient to meet state quorum requirements or when an important matter is being considered. Issuers and other soliciting persons are required to disclose the use of such services and estimated costs for such services in their proxy statements.⁵⁹

4. Vote Tabulators

Under many state statutes, an issuer must appoint a vote tabulator (sometimes called "inspectors of elections" or "proxy tabulators") to collect and tabulate the proxy votes as well as votes submitted by shareholders in person at a meeting.⁶⁰ We understand that often the issuer's transfer agent will act as the vote tabulator because most

⁵⁸ A Notice is sent pursuant to provisions in Rule 14a-16. 17 CFR 240.14a-16.

⁵⁹ Item 4 of 17 CFR 240.14a-101. If similar services are performed by employees of the issuer, however, the estimated costs of such services need to be disclosed only if the employees are specially engaged for the solicitation.

⁶⁰ See, e.g., Del. Code Ann. tit. 8, § 231; Model Bus. Corp. Act § 7.29.

⁵⁰ As noted above, the securities intermediary receives the right to execute a proxy through the omnibus proxy executed in its favor by DTC and the other securities intermediaries in the chain of ownership through which it holds the securities. Although Rule 14b-2(b)(3) [17 CFR 240.14b-2(b)(3)] explicitly permits a bank to execute a proxy in favor of its beneficial owners, and nothing in our rules prohibits a broker-dealer from doing so, it is our understanding that these intermediaries usually solicit voting instructions from their beneficial owner and execute proxies on behalf of their beneficial owners rather than executing proxies that delegate their voting authority to those beneficial owners. Beneficial owners may, however, request a proxy and attend the shareholder meeting. It is our understanding that both banks and broker-dealers will issue a proxy that the beneficial owner may use to attend a meeting if requested to do so.

⁵¹ See NYSE Rule 452.

⁵² NYSE Rule 452 and NYSE Listed Issuer Manual § 402.08(B). This prohibition does not apply to issuers registered under the Investment Company Act.

⁵³ E.g., Del. Code Ann. tit. 8, § 219(a); Model Bus. Corp. Act § 16.01(c).

major transfer agents have the infrastructure to communicate with registered holders, proxy service providers, and securities intermediaries, while also being able to reconcile the identity of voters that are registered owners and the number of votes to the issuer's records. However, sometimes the issuer will hire an independent third party to perform this function, often to certify important votes. The vote tabulator is ultimately responsible for determining that the correct number of votes has been submitted by each registered owner.⁶¹ In addition, proxies submitted by securities intermediaries that are not registered owners, but have been granted direct voting rights through DTC's omnibus proxy, are reconciled with DTC's securities position listing. Although the Commission does regulate transfer agents (which often serve as vote tabulators) in their roles as transfer agents, the Commission does not currently regulate vote tabulators or the function of tabulating proxies by transfer agents.

5. Proxy Advisory Firms

Institutional investors typically own securities positions in a large number of issuers. Therefore, they are presented annually with the opportunity to vote on many matters and often must exercise fiduciary responsibility in voting.⁶² Some institutional investors may retain an investment adviser to manage their investments, and may also delegate proxy voting authority to that adviser. To assist them in their voting decisions, investment advisers (or institutional investors if they retain voting authority) frequently hire proxy advisory firms to provide analysis and voting recommendations on matters appearing on the proxy. In some cases, proxy advisory firms are given authority to execute proxies or voting instructions on behalf of their client. Some proxy advisory firms also provide consulting services to issuers on corporate governance or executive compensation matters, such as helping to develop an executive compensation proposal to be submitted for shareholder approval. Some proxy advisory firms may also qualitatively rate or score issuers, based on judgments about the issuer's

⁶¹ *Id.* As noted above, transfer agents, who already possess the list of record owners, often tabulate the vote, so they possess the necessary information to make this determination. It is our understanding that, when the vote tabulator is an entity other than the transfer agent, the issuer or its transfer agent typically will provide the vote tabulator with the list of record owners to enable the vote tabulator to make this determination.

⁶² See Section V.A.1, below.

governance structure, policies, and practices. As discussed in more detail elsewhere in this release, some of the activities of a proxy advisory firm can constitute a solicitation, which is governed by our proxy rules.⁶³ Some, but not all, proxy advisory firms operating in our markets are currently registered with us as investment advisers.⁶⁴

III. Accuracy, Transparency, and Efficiency of the Voting Process

Investor and issuer interests may be undermined when perceived defects in the proxy system—or uncertainties about whether there are any such defects—are believed to impair its accuracy, transparency, and cost-efficiency. Because even the perception of such defects can lead to lack of confidence in the proxy process, we seek to explore concerns that have been expressed about the accuracy, transparency, and efficiency of that process and ways in which those concerns might be addressed.

A. Over-Voting and Under-Voting

On occasion, vote tabulators (including transfer agents acting in that capacity) receive votes from a securities intermediary that exceed the number of shares that the securities intermediary is entitled to vote. The extent to which such votes are accepted depends on instructions from the issuer, state law, and the vote tabulator's internal policies. For example, it is our understanding that some vote tabulators accept votes from a DTC participant on a "first-in" basis up to the aggregate amount indicated in DTC's records—that is, once the votes cast by the participant exceed the number of positions indicated on the securities position listing, the vote tabulator will refuse to accept any votes subsequently remitted. Conversely, other vote tabulators, we understand, refuse to accept any votes from a securities intermediary if the aggregate number of votes submitted exceeds the vote tabulator's records for that intermediary.

In an attempt to address issuers' concerns about the potential for over-voting, securities intermediaries and their service providers have implemented systems that compare the number of votes submitted by a securities intermediary to its ownership positions as reflected in DTC's records and notify that securities intermediary when it has submitted votes in excess of its ownership positions. The securities intermediary may then adjust its vote to

⁶³ *Id.*

⁶⁴ *Id.*

reflect the correct number of votes before the service provider submits that vote to the vote tabulator.⁶⁵ The corrected information is then sent to the vote tabulator. The means by which securities intermediaries reconcile these differences has raised some concern regarding the accuracy of the vote, including whether the votes are being allocated to the beneficial owners in the correct amounts.

1. Imbalances in Broker Votes

For securities held at DTC, a DTC participant may vote only the number of securities held by that participant in its DTC account on the record date for a shareholder meeting. Sometimes the number of securities of a particular issuer held in the DTC participant's account will be less than the number of securities that the DTC participant has credited in its own books and records to its customers' accounts. Although there may be many reasons why the number of securities held by a broker-dealer at DTC does not match the total number of securities credited to the broker-dealer's customers' accounts, as discussed in more detail below, this situation principally arises in connection with lending transactions and "fails to deliver"⁶⁶ in the clearance and settlement system.

Because of the way broker-dealers track securities lending transactions,⁶⁷ if all of a broker-dealer's customers owning a particular issuer's securities actually voted, the broker-dealer may receive voting instructions for more securities than it is entitled to vote. Moreover, the existing clearance and settlement system was not designed to assign particular shares of a security to a particular investor, due to netting and holding securities in fungible bulk.⁶⁸ Thus, it is not currently possible to match a particular investor's vote to a specific securities position held at a securities depository. When a broker-dealer has fewer positions or shares reflected on the securities position listing⁶⁹ than it has reflected on its books and records, the broker-dealer must determine if and how it should allocate the votes it has among its customer and proprietary accounts and

⁶⁵ SIFMA and individual broker-dealers have suggested several different methodologies as to how this may be accomplished, but we do not believe there is consensus among the industry participants or a standard operating procedure currently in place.

⁶⁶ See Section III.A.1.b, below.

⁶⁷ We understand that because securities are held in fungible bulk, broker-dealers typically do not allocate loaned securities to a particular account.

⁶⁸ See Section IV.A.1, below.

⁶⁹ See Section I.B.2.a, above, for a discussion of securities position listings.

then reconcile the actual voting instructions it receives with the number of securities the broker-dealer is permitted to vote with the issuer. Depending on a variety of factors, this process can lead to over-voting or under-voting by beneficial owners.

a. Securities Lending

When a customer purchases shares on margin, a portion of the securities in the customer's account may be used to collateralize the margin loan.⁷⁰ As part of the customer's margin agreement, the customer typically agrees to allow the broker-dealer to use those securities to raise money to fund the margin loan. Consequently, broker-dealers may lend out customers' margin securities. In addition, broker-dealers may enter into stock loan arrangements with investors (typically institutional investors or other broker-dealers) whereby the broker-dealer borrows the investors' fully-paid securities.⁷¹

Stock loan agreements typically transfer to the borrower the right to vote the borrowed securities.⁷² Thus, for example, when an institutional investor, such as a fund, lends its portfolio securities to a borrower, the right to vote those securities also transfers to the borrower.⁷³ As a result, the institutional investor that lends its portfolio securities generally loses its ability to vote those securities, unless and until the loan is terminated and the securities are returned before the record date in question.⁷⁴

Even though a broker-dealer has the ability to lend its customers' margin securities pursuant to a stock loan agreement, because shares are held in fungible bulk, it may not be practical to inform a customer when an actual loan has been made and it may be unclear which lending investor has lost the right

⁷⁰ A broker-dealer must maintain possession and control of all fully-paid and excess margin securities. 17 CFR 240.15c3-3(b)(1).

⁷¹ When borrowing fully-paid securities, Exchange Act Rule 15c3-3(b)(3) requires, among other things, that a broker-dealer enter into a separate written agreement with the customer and provide the customer with a schedule of the securities actually borrowed as well as the collateral provided to the customer. 17 CFR 240.15c3-3(b)(3).

⁷² See Master Securities Lending Agreement at 6, available at www.sifma.org/services/stdforms/pdf/master_sec_loan.pdf.

⁷³ If an institutional lender lends out portfolio securities after the record date for a particular shareholder vote, the lender would normally retain the right to vote the proxies for that particular shareholder vote.

⁷⁴ If the lending broker-dealer attempts to recall the loan, the borrowing broker-dealer may not be able to return the securities in a timely manner because, among other things, it may have reloaned or sold the security to another party and is unable to obtain shares to return to the lending broker-dealer.

to vote. Therefore, a customer may expect to vote all of its securities because it does not necessarily know whether its securities have in fact been loaned. If the lending broker-dealer does not allocate a certain number of shares to a lending investor as having been borrowed, but instead sends a VIF indicating that the lending investor has the right to vote all of the securities credited to its account, including the loaned margin securities, both the lending and borrowing broker-dealers may submit voting instructions from two customers for a single share, which may give rise to an over-voting situation.

b. Fails to Deliver

An imbalance between a securities intermediary's position reflected on the securities position listing and the position reflected in its own books and records may also occur because of fails to deliver in the clearance and settlement system.⁷⁵ Every day the NSCC, a registered clearing agency, nets each of its members' trades to a single buy or sell obligation for each issue traded.⁷⁶ Because NSCC acts as a central counterparty for its members' trades, its members are obligated to deliver securities to, and entitled to receive securities from, NSCC at settlement, and not to or from other broker-dealers. Although the delivery of securities usually occurs as expected on the settlement date, there are occasions when broker-dealers fail to make timely delivery, often for reasons outside of their control.⁷⁷

⁷⁵ Fails to deliver in all equity securities have declined significantly since the adoption of Interim Final Temporary Rule 204T in October 2008. See Amendments to Regulation SHO, Release No. 34-58773 (Oct. 14, 2008) [73 FR 61706]. See also Memorandum from the Staff Re: Impact of Recent SHO Rule Changes on Fails to Deliver, Nov. 4, 2009, available at <http://www.sec.gov/spotlight/shortsales/oeamemo110409.pdf> (stating, among other things, that the average daily number of aggregate fails to deliver for all securities decreased from 2.21 billion to 0.25 billion for a total decline of 88.5% when comparing a pre-Rule to post-Rule period); Memorandum from the Staff Re: Impact of Recent SHO Rule Changes on Fails to Deliver, Nov. 26, 2008, available at <http://www.sec.gov/comments/s7-30-08/s73008-37.pdf>; Memorandum from the Staff Re: Impact of Recent SHO Rule Changes on Fails to Deliver, Mar. 20, 2009, available at <http://www.sec.gov/comments/s7-30-08/s73008-107.pdf>.

⁷⁶ NSCC nets securities in its "Continuous Net Settlement" system pursuant to rules and procedures approved by the Commission. For more information on NSCC's rules and procedures, see www.dtcc.com/legal/rules_proc/nscc_rules.pdf. See Section IV.A.1, below, for additional information about the role of NSCC.

⁷⁷ For example, broker-dealers may fail to deliver securities because of: (1) Delays by customers delivering to the broker-dealer the shares being sold; (2) a broker-dealer's inability to purchase or borrow shares needed for settlement; or (3) a broker-

Pursuant to NSCC rules, if an NSCC broker-dealer member "fails to deliver" the securities it owes to NSCC on the settlement date, NSCC will allocate this fail to one of many contra-side broker-dealers due to receive securities without trying to attribute the fail to the specific broker-dealer that originally traded with the broker-dealer that failed to deliver.⁷⁸ The broker-dealer to which the fail is allocated will not receive the securities and will not be credited with this position at DTC until delivery is actually made.

Even though the broker-dealer has not actually received the securities, the broker-dealer usually will credit its customers' accounts with the purchased securities on settlement date. If the broker-dealer's fail-to-receive position continues through the record date for a corporate election, DTC may not yet recognize the broker-dealer's entitlement to vote this position. As with loaned securities, the broker-dealer may still try to allocate votes to all of its customers that its records reflect as owning those securities, even though DTC has not credited the broker's account with those securities or with the corresponding right to vote those securities through DTC.

2. Current Reconciliation and Allocation Methodologies Used by Broker-Dealers To Address Imbalances

Because the ownership of individual shares held beneficially is not tracked in the U.S. clearance and settlement system, when imbalances occur, broker-dealers must decide which of their customers will be permitted to vote and how many shares each customer will be permitted to vote. Neither our rules nor SRO rules currently mandate that a reconciliation be performed, or the use of a particular reconciliation or allocation methodology. Broker-dealers have developed a number of different approaches as to how votes are "allocated" among customer accounts.⁷⁹

dealer's inability to obtain transfer of title of securities in time for settlement. For more information on fails to deliver in the U.S. clearance and settlement system, see Short Sales, Release No. 34-50103 (July 28, 2004) [69 FR 48008] and Amendments to Regulation SHO, Release No. 34-60388 (July 27, 2009) [74 FR 38266].

⁷⁸ If a broker-dealer fails to deliver securities to NSCC, NSCC allocates this fail to a broker-dealer member that is due to receive the securities.

⁷⁹ For more information on proxy processing and broker-dealer's reconciliation and allocation processes, see "Briefing Paper: Roundtable on Proxy Voting Mechanics," (May 24, 2007), available at <http://www.sec.gov/spotlight/proxyprocess/proxyvotingbrief.htm> ("Roundtable Briefing Paper"), or "Unofficial Transcript of the Roundtable Discussion on Proxy Voting Mechanics," (May 24, 2007), available at http://www.sec.gov/news/openmeetings/2007/openmtg_trans052407.pdf

We understand that these approaches are often influenced by whether the broker-dealers' customers are primarily retail or institutional investors.

Most broker-dealers have adopted a reconciliation method to balance the aggregate number of shares they are entitled to vote with the aggregate number of shares credited to customer and proprietary accounts.⁸⁰ The primary reconciliation methods are: (1) Pre-mailing reconciliation ("pre-reconciliation"); (2) post-mailing reconciliation ("post-reconciliation"); and (3) a hybrid form of the pre-reconciliation and post-reconciliation methods.⁸¹ These methods are described in more detail below. If the broker-dealer finds that it is holding fewer shares at DTC than it has credited to customer and proprietary accounts, it may choose to give up its own votes, as represented by shares credited to its proprietary accounts, by allocating some or all of those votes to its customers, or it may choose to allocate to its customers only the voting rights attributable to customer accounts.

a. Pre-Reconciliation Method

A broker-dealer using the pre-reconciliation method compares the number of shares it holds in aggregate at DTC and elsewhere with its aggregate customer account position before it sends VIFs to its customers.⁸² If the aggregate number of shares it holds is less than the number of shares the broker-dealer has credited to its customer accounts, then the broker-dealer will determine which of its customers will be permitted to vote and how many votes will be allocated to each of those customers. Broker-dealers using the pre-reconciliation method request voting instructions from their customers with respect to only those customer positions to which votes have been allocated. We understand that most broker-dealers give customers with fully-paid securities and excess margin securities first priority in the distribution of votes. It is also our understanding that broker-dealers using the pre-reconciliation method tend to

have more institutional customers than retail customers.⁸³

Broker-dealers using the pre-reconciliation method have indicated that this method ensures that the votes customers cast will be counted.⁸⁴ On the other hand, given that some broker-dealers have estimated that only 20% to 30% of their retail customers usually vote, some believe that pre-reconciliation may result in an "under-vote" because investors allocated the ability to vote may not do so, and other investors who do vote may be allocated a number of votes fewer than the number of shares they beneficially own. In addition, some broker-dealers have indicated that the pre-reconciliation method is more expensive than the post-reconciliation method because post-reconciliation only needs to be performed when a broker-dealer receives voting instructions in excess of the number of shares that it holds.

b. Post-Reconciliation Method

A broker-dealer using the post-reconciliation method compares its aggregate position at DTC and elsewhere⁸⁵ with its actual aggregate customer account position only after receiving VIFs from its customers. Broker-dealers using the post-reconciliation method request voting instructions from their customers with respect to all shares credited to their customer accounts, including for those shares that may have been purchased on margin, loaned to another entity, or not received because of a fail to deliver. We understand that broker-dealers using the post-reconciliation method tend to have primarily retail customers rather than institutional customers.⁸⁶

In the event that a broker-dealer receives voting instructions from its customers in excess of its aggregate securities position, the broker-dealer adjusts its vote count prior to casting its vote with the issuer. The manner in which the adjustment is made varies among broker-dealers. Some firms simply reduce the number of proprietary position votes cast. Others allocate fewer votes to customers with securities purchased on margin or on loan.

Because of the low level of participation by retail voters, some of the broker-dealers using the post-

reconciliation method have indicated to the Commission that the number of over-vote situations is not a significant problem and can be addressed in a number of ways, including, but not limited to, the broker-dealer using its proprietary positions to redress any imbalance. The costs associated with the post-reconciliation method are generally considered to be less than those associated with the pre-reconciliation method because the broker-dealer does not have to go through the costly process of allocating votes among customers unless its customers remit VIFs for more shares than the broker-dealer is entitled to vote in the aggregate.

c. Hybrid Reconciliation Methods

Some broker-dealers have developed hybrid reconciliation methods that use aspects of both pre- and post-reconciliation methods. For example, in one hybrid reconciliation method, a broker-dealer will allocate votes to all of its customers with fully-paid securities but will also allow each margin account customer to instruct the broker-dealer that it would like to vote its shares. The broker-dealer will allocate any shares not needed to cover fully-paid account holders to those margin customers who indicated they wanted to vote, thereby giving these margin customers priority over other margin customers.⁸⁷

3. Potential Regulatory Responses

Broker-dealers have indicated to the Commission staff that most broker-dealers select an allocation and reconciliation method that best accommodates their particular customer base and best advances the firm's particular business strategy. For example, those firms focusing on retail customers generally will have more customer accounts owning smaller amounts of securities and casting relatively few votes and, as a result, may prefer the post-reconciliation method over the pre-reconciliation method.

The customers of a broker-dealer may not be aware of the allocation and reconciliation method used by the firm. We are interested in receiving views on whether it would be helpful to investors if broker-dealers publicly disclosed the allocation and reconciliation method used by the firm during each proxy season, as well as the likely effect of that method on whether the customers' voting instructions would actually be reflected in the broker-dealer's proxy sent to the vote tabulator. Such disclosure could be in writing and provided to customers upon opening an

("Roundtable Transcript"). The term "allocation" refers to the process by which a broker-dealer determines which of its customers will be allowed to vote and how many shares will be allotted to each of those customers.

⁸⁰ Not all broker-dealers have developed policies and procedures to address the reconciliation and allocation of votes among their customers because historically broker-dealers have usually had enough shares on deposit at DTC to provide a vote to all customers wanting to vote.

⁸¹ Roundtable Transcript, note 79, above.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ The aggregate number of shares the broker-dealer is entitled to vote may constitute more than just its position on deposit at DTC. For example, the broker-dealer may have additional securities on deposit at a foreign depository or in certificated form.

⁸⁶ Roundtable Transcript, note 79, above.

⁸⁷ *Id.*

account and on an annual basis, and made available to the general public on the broker-dealer's Web site. This disclosure could help investors to decide if a particular broker-dealer's method suits their investment goals. Alternatively, we are interested in receiving views on whether it would be beneficial to investors if broker-dealers were required to use a particular reconciliation method.

Given the lack of empirical data on whether over-voting or under-voting is occurring and if so, to what extent, we also would like to receive views on whether investors, issuers, and the proxy system overall would benefit from having additional data from proxy participants regarding over-voting and under-voting to determine whether further regulatory action should be considered. This data would allow us to determine the scope of the problem, if any, and give us detailed information that would further assist us in determining whether current regulations are effective or additional regulation is appropriate. Such information may also indicate if one particular method is working better for investors and the market than other methods.

4. Request for Comment

- What are the advantages or disadvantages of the various methods of allocation or reconciliation currently used by securities intermediaries and the effectiveness of such methods?

- Is there any evidence, statistical, anecdotal or otherwise, of material over-voting or under-voting, and if so, what is the size and impact of over-voting or under-voting? For example, is there any evidence that over-voting or under-voting has determined the outcome of a vote or materially changed the voting results?

- Are there any concerns caused by over-voting or under-voting that are not described above? Are there particular concerns regarding the impact of either over-voting or under-voting with respect to specific types of voting decisions, such as merger transactions, the election of directors where a majority vote is required, or shareholder advisory votes regarding executive compensation? What, if any, alternatives should we consider to the current system, and what would be the costs and benefits of any alternative process?

- Would requiring broker-dealers to disclose their allocation and reconciliation process adequately address the concerns related to over-voting and under-voting by beneficial owners?

- Would information about vote allocation and reconciliation methods

be helpful to investors or adequately address any concerns related to those processes?

- Would a particular type of vote allocation and reconciliation method better protect investors' interests?

- Do the varying methods of vote allocation affect the potential to audit votes cast by beneficial holders?

- Should investors who have fully paid for their securities be allocated voting rights over those who purchased the securities on margin? Should beneficial holders be allocated voting rights over broker-dealer proprietary accounts?

- Should brokers be required to disclose the effect of share lending programs on the ability of retail investors to cast votes?

- Does the current system of settlement and clearance of securities transactions in the U.S. create any problems or inefficiencies in the proxy process in regard to matters other than over-voting or under-voting? If so, what are they, and what steps should we consider in order to address them?

B. Vote Confirmation

1. Background

A number of market participants, including both individual and institutional investors, have raised concerns regarding the inability to confirm whether an investor's shares have been voted in accordance with the investor's instructions. As discussed more fully in Section II, beneficial owners cast their votes through a securities intermediary, which, in turn, uses a proxy service provider to collect and send the votes to the vote tabulator.⁸⁸ Beneficial owners, particularly institutional investors, often want or need to confirm that their votes have been timely received by the vote tabulator and accurately recorded. Similarly, securities intermediaries want to be able to confirm to their customers that their votes have been timely received and accurately recorded. Issuers also want to be able to confirm that the votes that they receive from securities intermediaries on behalf of beneficial owners properly reflect the votes of those beneficial owners. We understand that, on occasion, errors

⁸⁸ Some securities intermediaries may not have sufficient shares on deposit at DTC to allocate a vote to every share position credited to every customer's account. In those cases, the securities intermediary may have to allocate a specific number of votes to some customers that is fewer than the number of shares credited to those customers' accounts. See Section III.A, above, for a more in-depth discussion of why and how securities intermediaries reconcile and allocate votes to their customers.

have been made when a third party fails to timely submit votes on behalf of its clients.⁸⁹

The inability to confirm voting information is caused in part because no one individual participant in the voting process—neither issuers, transfer agents, vote tabulators, securities intermediaries, nor third party proxy service providers—possesses all of the information necessary to confirm whether a particular beneficial owner's vote has been timely received and accurately recorded. A number of market participants contend that some proxy service providers, transfer agents, or vote tabulators are unwilling or unable to share voting information with each other or with investors and securities intermediaries. There are currently no legal or regulatory requirements that compel these entities to share information with each other in order to allow for vote confirmations.

The inability to confirm that votes have been timely received and accurately recorded creates uncertainty regarding the accuracy and integrity of votes cast at shareholder meetings. At a time when votes on matters presented to shareholders are increasingly meaningful and consequential to all shareholders, this lack of transparency could potentially impair confidence in the proxy system.⁹⁰ Because of the inability to ascertain the integrity of the votes cast by beneficial owners, concerns have been raised by investors that it may be difficult to assess the accuracy of the current proxy system as a whole.

2. Potential Regulatory Responses

In the Commission's view, both record owners and beneficial owners should be able to confirm that the votes they cast have been timely received and accurately recorded and included in the tabulation of votes, and issuers should be able to confirm that the votes that they receive from securities intermediaries/proxy advisory firms/

⁸⁹ See, e.g., Adam Jones, "Riddle of the Missing Unilever Votes Solved," *Financial Times*, Aug. 15, 2003; "Mum on a Recount," *Pensions & Investments*, Aug. 10, 2009, available at <http://www.pionline.com/article/20090810/PRINTSUB/308109996>; Meagan Thompson-Mann, Policy Briefing No. 3—Voting Integrity: Practices for Investors and the Global Proxy Advisory Industry, The Millstein Center for Corporate Governance and Performance, Mar. 2, 2009, at 10–11 ("Thompson-Mann Policy Briefing").

⁹⁰ The Organisation of Economic Co-operation and Development ("OECD"), consisting primarily of jurisdictions with high income and developed markets, has voiced similar concerns about this lack of transparency in several jurisdictions and recommends addressing it through legal and regulatory changes. *Corporate Governance: A Survey of OECD Countries* (2004) ("OECD Survey").

proxy service providers on behalf of beneficial owners properly reflect the votes of those beneficial owners. We understand that there may be a number of operational and legal complexities with any proposed solution and that the costs and benefits associated with any options should be carefully weighed.

One possible solution may be for all participants in the voting chain to grant to issuers, or their transfer agents or vote tabulators, access to certain information relating to voting records, for the limited purpose of enabling a shareholder or securities intermediary to confirm how a particular shareholder's shares were voted. To protect the identities of objecting beneficial owners from issuers, a system could assign each beneficial owner a unique identifying code, which could then be used to create an audit trail from beneficial owner to proxy service provider to transfer agent/vote tabulator. Issuers (or their agents, such as transfer agents or vote tabulators) would, in turn, confirm to record owners, beneficial owners, and securities intermediaries upon request that any particular votes cast by them or on their behalf have been received and voted as instructed. This process could be fully automated such that a vote confirmation could be provided by the issuer (or its agent) to the record owner or, in the case of beneficial owners, to the securities intermediary or proxy service provider and sent by e-mail to the beneficial owner.

Confirmation of the vote information may also facilitate the ability of market participants and state and federal regulatory authorities or courts to ascertain the accuracy of a particular election or the overall proxy system. Moreover, transparency of the process should promote investor confidence as well.

3. Request for Comment

- To what extent have shareholders had difficulty in confirming whether their submitted votes have been tabulated? To what extent have issuers had difficulty in determining whether the votes submitted by securities intermediaries/proxy advisory firms/proxy service providers accurately reflect the voting instructions submitted by beneficial owners?

- To what extent do investors believe that their votes have not been accurately transmitted or tabulated, and what is the basis for such belief? Is there sufficient information about the ways that investors actually place their votes, for example, by telephone, on paper, or via the Internet?⁹¹ Do investors have

concerns about whether the method they use to place their votes affects the likelihood that their vote will be accurately recorded?

- Should all participants in the voting chain grant access to their share voting records to issuers and their transfer agents/vote tabulators, for the limited purpose of enabling confirmation of a shareholder's vote? What are the benefits and costs associated with sharing such information?

- What is the best way to preserve any continuing anonymity of those investors who choose not to have their identities disclosed to the issuer?
- Would the creation of a unique identifier for each beneficial owner be feasible? Would such a system achieve the objective of allowing record owners and beneficial owners to confirm that their vote was cast in accordance with their instructions and confirm the number of shares cast on their behalf? What are the costs and benefits associated with such a system?

- Should issuers (and their agents) confirm to registered owners, beneficial owners, or securities intermediaries that the issuer has received and properly tabulated their votes? Should this confirmation be limited to an informal confirmation that votes have been counted, or should shareholders be able to obtain some form of proof that their votes have been counted? What type of documentation would constitute sufficient proof? What are the benefits and costs of such alternatives? Are there other steps that would enable beneficial owners to verify that their votes have been counted?

- Should investors also be able to obtain access to share voting records for the limited purpose of enabling an audit of the shareholder vote?

- Should issuers and securities intermediaries (and their agents) be required to reconcile and verify voting at the beneficial owner level? Would this be consistent with state law, which vests voting rights in the registered owner? Would other reconciliation and verification requirements be consistent with the purposes underlying state law?

- Should proxy participants periodically evaluate and test the effectiveness of their voting controls and procedures? If so, to whom should the results of these tests or the participants' conclusions on effectiveness be disclosed? Should disclosure be to the Commission, to clients, or also to the public?

C. Proxy Voting by Institutional Securities Lenders

Institutional securities lenders play a significant role in the proxy voting

process, and we believe that it is important to evaluate the impact of their share lending on that process, and to consider ways in which the efficacy and transparency of share voting on the part of such institutions could potentially be improved. In particular, and as discussed below, we seek to examine whether decisions to recall loaned securities in connection with shareholder votes might be more timely and better informed. We also seek to examine whether increased disclosure of the votes cast by institutional securities lenders might improve the transparency of the voting process.

1. Background

Many institutions with investment portfolios of securities—such as insurance companies, pension funds, mutual funds, and college endowments—engage in securities lending to earn additional income on securities that would otherwise be sitting idle in their portfolios. When an institution lends out its portfolio securities, all incidents of ownership relating to the loaned securities, including voting rights, generally transfer to the borrower for the duration of the loan.⁹² Accordingly, if the lender wants, or is obligated, to vote the loaned securities, the lender must terminate the loan and recall the loaned securities prior to the record date.⁹³

2. Lack of Advance Notice of Meeting Agenda

a. Background

Some institutional securities lenders have proxy voting policies that require the lender, in the event of a material vote, to get back the loaned securities in order to vote the proxies.⁹⁴ While issuers are required to provide information in the proxy statement

⁹² See, e.g., Thomas P. Lemke *et al.*, *Regulation of Investment Companies* at 8.02[1][2][vi][A] (2006) (“legal title to the [loaned] securities (along with voting rights and rights to dividends and distributions) passes to the borrower for the term of the loan; when the securities are returned, the fund regains title”). See also Master Securities Loan Agreement, note 72, above, at 7.1 (generally the borrower receives all the incidents of ownership of the borrowed securities while loan is open).

⁹³ It is not typically feasible for the lender to retain proxy voting rights while the loan is open because the borrower typically transfers the loaned securities (for example, in a short sale), and the eventual transferee needs full right and title to the acquired securities.

⁹⁴ For example, the Commission staff has agreed not to object if voting rights pass with the lending of securities provided that if the management of the lending fund has knowledge that a material event will occur with respect to a security on loan, the fund directors would be obligated to recall such loan in time to vote the proxies. See, e.g., State Street Bank & Trust Company, SEC Staff No-Action Letter (Sept. 29, 1972).

⁹¹ See note 49, above.

about the matters to be voted on at a shareholder meeting, the proxy statement typically is not mailed out until after the record date. Therefore, those institutional lenders that desire, or are obligated, to vote proxies with respect to securities on loan in the event of a material vote face the challenge of learning what matters will be voted on at shareholder meetings sufficiently in advance of the record date so that the lenders can determine whether they want to get the loaned securities back before the record date.

We understand that some institutional securities lenders may try to obtain timely information about meeting agendas through a variety of informal means, including media reports. We are also told, however, that this informal process is not an effective substitute for a formal process that would alert securities lenders to the matters to be voted on at shareholder meetings in time to terminate the loan and receive the loaned securities. We understand that, in some instances, securities lenders learn of material votes too late to recall the loans to vote the proxies.⁹⁵

b. Potential Regulatory Responses

In considering possible solutions, we note that, under Section 401.02 of the NYSE Listed Company Manual, NYSE-listed issuers must provide the exchange with notice of the record and meeting dates for shareholder meetings at least ten days prior to the record date for the meeting, unless it is not possible to do so. That notice must describe the matters to be voted upon at the meeting, unless it is accompanied by printed material being sent to shareholders which describes those matters. We understand, however, that this formal notice is not disseminated to the public and may not contain specific descriptions of all matters to be voted on at the meeting.

Consequently, one possible regulatory response is to ask the NYSE to revise its rules to require public dissemination of a notice, in advance of the record date, that contains information about the record and meeting dates as well as specific descriptions of all matters to be voted upon. Other SROs could also be asked to adopt similar rules. An alternative possibility is a requirement for all issuers subject to our proxy rules to disclose the agenda by public means, such as by filing a report on Form 8-K (or as an alternative to such a filing requirement, permitting the issuance of a press release or a posting on a corporate Web site).

In identifying these alternatives, we are mindful that it can be difficult for issuers to disclose complete meeting agendas in advance of the record date because the agenda may not be established at that time for a variety of reasons, including board consideration of initiatives proposed by management and Commission staff review of no-action requests regarding Rule 14a-8 shareholder proposals.

c. Request for Comment

- Should the Commission propose a rule to require issuers to disclose publicly the meeting agenda sufficiently in advance of the record date to permit securities lenders to determine whether any of the matters warrant a termination of the loan so that they may vote the proxies? If so, how many days would constitute sufficient notice to the public?

- What are the advantages and disadvantages, practical and as a matter of policy, to requiring issuers to provide this advance notice to the public? For instance, would the issuer know, sufficiently in advance, all of the items to be on the agenda, particularly shareholder proposals which may be the subject of a request for no-action relief being considered by the Commission's staff?⁹⁶ How could such a requirement provide notice of contested matters and other non-management proposals to be considered at the meeting? Could we address concerns by allowing issuers to publish an agenda that is "subject to change"? If so, should we limit such changes to shareholder proposals for which the issuer is seeking no-action relief? How often does uncertainty about a meeting agenda preclude issuers from disclosing the agenda in sufficient time for shareholders to recall loans before the record date?

- Would a mechanism that alerts lending shareholders to meeting agendas well in advance of record dates have positive and desirable effects on the proxy solicitation system such that the Commission should encourage and facilitate this? Would such a mechanism increase the number of lenders recalling loans, and result in greater loan instability, with adverse effects on the capital markets? If there are competing interests, which should prevail, and why?

- How could an advance notice requirement be effected? Should the Commission propose rules applicable to all issuers subject to the proxy rules? Or,

⁹⁶ When an issuer seeks to exclude a shareholder proposal submitted pursuant to Rule 14a-8, it must file its reasons with the Commission. 17 CFR 240.14a-8(j).

should the SROs amend or adopt listing standards requiring their listed issuers to provide advance notice to the public of record and meeting dates and specific descriptions of all matters to be voted on at the shareholder meeting?

- If we required advance notice, through what medium should such notice to shareholders be made? Should issuers be required to issue a press release or make a company Web site posting in addition to filing a notice with the Commission? Would such notice be sufficient for shareholders?

- We also request data regarding the recall of loaned securities by institutional shareholder lenders in order to vote the shares. Please include information regarding the circumstances in which the recalls did and did not occur, and whether the shares were ultimately voted.

3. Disclosure of Voting by Funds

a. Background

Management investment companies registered under the Investment Company Act (collectively, "funds") are required to disclose on Form N-PX how they vote proxies relating to portfolio securities.⁹⁷ In adopting this requirement in 2003, the Commission stated that "[i]nvestors in mutual funds have a fundamental right to know how the fund casts proxy votes on shareholders' behalf."⁹⁸ Indeed, the Commission required funds to disclose whether they cast their vote for or against management, in an effort to benefit fund shareholders by improving transparency and enabling them to monitor whether their funds approved or disapproved of the governance of portfolio companies.⁹⁹

As noted above, when a fund lends its portfolio securities, all incidents of ownership relating to the loaned securities, including proxy voting rights, generally transfer to the borrower for the duration of the loan.¹⁰⁰ Accordingly, the fund generally loses its ability to vote the proxies of such securities, unless and until the loan is terminated and the securities are returned to the lender prior to the record date in question.

Currently, Form N-PX requires disclosure of proxy voting information "for each matter relating to a portfolio security considered at any shareholder meeting held during the period covered by the report and with respect to which

⁹⁷ See Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Release No. IC-25932 (Jan. 31, 2003) [68 FR 6564].

⁹⁸ *Id.* at 6566.

⁹⁹ *Id.* at 6565.

¹⁰⁰ See note 92, above.

⁹⁵ See Roundtable Transcript, note 79, above.

the registrant was entitled to vote.”¹⁰¹ However, Form N-PX does not require disclosure of the number of shares for which proxies were voted, nor does the Form require disclosure with respect to portfolio securities on loan when, as is generally the case, the fund is not entitled to vote proxies relating to those securities. Thus, for example, if a fund lends out 99% of its portfolio holdings of XYZ Corporation and therefore votes only 1% of its holdings of XYZ, Form N-PX would disclose that the fund voted proxies with respect to shares of XYZ, but would not also disclose that the fund did not vote 99% of its holdings of XYZ because they were on loan.

b. Potential Regulatory Responses

We seek to examine whether Form N-PX should be amended to require disclosure of the actual number of votes cast by funds.

c. Request for Comment

- Should Form N-PX require disclosure of the actual number of shares voted? Should Form N-PX require disclosure of the number of portfolio securities for which a fund did not vote proxies because the securities were on loan or for other reasons?

- What would be the costs to funds of disclosing the actual number of proxy votes? What would be the costs to funds of disclosing the number of portfolio securities for which a fund did not vote proxies?

D. Proxy Distribution Fees

1. Background

One of the most persistent concerns that has been expressed to the Commission’s staff, particularly by issuers, involves the structure and size of fees charged for the distribution of proxy materials to beneficial owners.

a. Current Fee Schedules

Pursuant to Exchange Act Rules 14b-1 and 14b-2, respectively, broker-dealers and banks must distribute certain materials received from an issuer or other soliciting party to their customers who are beneficial owners of

¹⁰¹ See Item 1 to Form N-PX. Form N-PX requires disclosure of the following: The name of the issuer of the portfolio security; the exchange ticker symbol of the portfolio security; the Council on Uniform Securities Identification Procedures (CUSIP) number for the portfolio security; the shareholder meeting date; a brief identification of the matter voted on; whether the matter was proposed by the issuer or by a security holder; whether the fund cast its vote on the matter; how the fund cast its vote (e.g., for or against proposal, or abstain; for or withhold regarding election of directors); and whether the fund cast its vote for or against management.

securities of that issuer. These materials include proxy statements, information statements, annual reports, proxy cards, and other proxy soliciting materials.¹⁰² A broker-dealer or bank does not need to satisfy this obligation, however, unless the issuer provides “assurance of reimbursement of the broker’s or dealer’s reasonable expenses, both direct and indirect,” that the broker-dealer will incur in distributing the materials to its customers.¹⁰³

In adopting these rules, we did not determine what constituted “reasonable expenses” that were eligible for reimbursement. Rather, the SROs submitted rule filings with us pursuant to Section 19(b) of the Exchange Act to establish these amounts.¹⁰⁴ Because SROs represent both issuers and broker-dealers, we believed that SROs would be best positioned to “make a fair evaluation and allocation” of the costs associated with the distribution of shareholder materials.¹⁰⁵ Accordingly, SRO-adopted rules, approved by the Commission, establish the maximum amount that an SRO member may receive for soliciting proxies from, and distributing other issuer materials to, beneficial owners on behalf of issuers.¹⁰⁶

Since 1937, the New York Stock Exchange has required issuers, as a matter of policy, to reimburse its members for out of pocket costs of forwarding proxy materials.¹⁰⁷ Reimbursement rates were formally established by rule in 1952, and have been revised periodically since then.¹⁰⁸ Today, NYSE Rules 451 and 465 establish the fee structure for which a NYSE member organization may be

¹⁰² 17 CFR 240.14b-1(b); 17 CFR 240.14b-2(b).

¹⁰³ 17 CFR 240.14b-1(c)(2); 17 CFR 240.14b-2(c)(2).

¹⁰⁴ 15 U.S.C. 78s(b). See, e.g., Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to a One-Year Pilot Program for Transmission of Proxy and Other Shareholder Communication Material, Release No. 34-38406 (Mar. 14, 1997) [62 FR 13922]. We note that, in approving a rule filing, we must find that such filing is consistent with the Exchange Act. For example, Section 6(b)(4) of the Exchange Act requires that the rules of an exchange “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.” 15 U.S.C. 78f(b)(4).

¹⁰⁵ See Release No. 34-38406, note 104, above.

¹⁰⁶ See text accompanying notes 116 to 120, below.

¹⁰⁷ See Report and Recommendations of the Proxy Working Group to the New York Stock Exchange (“Proxy Working Group Report”), June 5, 2006, available at http://www.nyse.com/pdfs/REVISED_NYSE_Report_6_5_06.pdf, at 23.

¹⁰⁸ *Id.*

reimbursed¹⁰⁹ for expenses incurred in connection with the forwarding of proxy materials, annual reports, and other materials to beneficial owners.¹¹⁰ The NYSE initially proposed this fee structure as part of a one-year pilot program, which elicited a number of comments before the Commission approved the pilot program in 1997.¹¹¹ The pilot program was extended several times, during which time the NYSE participated in the Proxy Voting Review Committee, which was established to review the pilot fee structure.¹¹² In 2002, the NYSE proposed to implement the fee structure on a permanent basis, with some changes, in light of the recommendations of the Proxy Voting Review Committee.¹¹³ Some commentators raised concerns about the amount of the fees and the absence of competition that might help determine the appropriate level for those fees.¹¹⁴ In approving the fee structure on a permanent basis, we stated that we expected the NYSE to monitor the fees to confirm that they continued to relate to “reasonable expenses.”¹¹⁵

Currently, the rates set by the NYSE for the forwarding of an issuer’s proxy materials include:¹¹⁶

¹⁰⁹ It should be noted that the NYSE fee schedule under Rule 451 for expenses incurred in connection with proxy solicitations is the same as the fee schedule for expenses incurred in mailing interim reports or other material pursuant to Rule 465. For purposes of this release, references to fees will cite to NYSE Rule 465. Pursuant to Rule 465, member organizations are entitled to receive reimbursement for all out of pocket expenses, including clerical expenses as well as actual costs, including postage costs, the cost of envelopes, and communication expenses incurred in receiving voting returns either electronically or telephonically. See NYSE Rule 465(2) and Supplementary Material to Rule 465.20.

¹¹⁰ The vast majority of firms that distribute issuer material to beneficial owners are reimbursed at the NYSE fee schedule rates because most of the brokerage firms are NYSE members or members of other exchanges that have rules similar to the NYSE’s rules.

¹¹¹ See Release No. 34-38406, note 104, above.

¹¹² See Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth In Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines, Release No. 34-45644 (Mar. 25, 2002) [67 FR 15440] (“NYSE Fee Structure Order”).

¹¹³ *Id.*

¹¹⁴ *Id.* See also Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material, Release No. 34-41177 (Mar. 16, 1999) [64 FR 14294].

¹¹⁵ See NYSE Fee Structure Order, note 112, above.

¹¹⁶ See NYSE Supplementary Material to Rule 465.20.

- A “Base Mailing Fee” of \$0.40 for each beneficial owner account when there is not an opposing proxy (the “Base Mailing Fee”). This fee applies for each set of proxy materials, regardless of whether the materials have been mailed or the mailing has been suppressed or eliminated.

- An “Incentive Fee” of \$0.25 per beneficial owner account for issuers whose securities are held by many beneficial owners and \$0.50 per account for issuers with few beneficial owners.¹¹⁷ This fee, which is in addition to the Base Mailing Fee, applies when the need to mail materials in paper format has been eliminated, for instance, by eliminating duplicative mailings to multiple accounts at the same address.¹¹⁸

- A “Nominee Coordination Fee” of \$20 per “nominee”—*i.e.*, securities intermediaries that are either registered holders or identified on the DTC securities position listing—which is paid to a proxy service provider that coordinates the mailings for multiple securities intermediaries.

- An additional “Nominee Coordination Fee” of \$0.05 per beneficial owner account for issuers whose securities are held by many beneficial owners¹¹⁹ and \$0.10 per account for issuers with few beneficial owners.¹²⁰

¹¹⁷ The Incentive Fee is \$0.25 for each account for issuers whose shares are held in at least 200,000 nominee accounts, and \$0.50 for each account for issuers whose shares are held in fewer than 200,000 accounts. According to the NYSE, the cost to service large issuers, *i.e.*, issuers whose shares are held in at least 200,000 nominee accounts, is less than the cost to service small issuers because of economies of scale, which justifies a smaller Incentive Fee for large issuers. See NYSE Fee Structure Order, note 112, above.

¹¹⁸ NYSE Rule 465 includes the following examples as being eligible for the Incentive Fee: “multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.”

¹¹⁹ The per-account Nominee Coordination Fee is \$0.05 for each account for each issuer’s securities for issuers whose shares are held in at least 200,000 beneficial owner accounts held by nominees, and \$0.10 for each account for each issuer’s securities for issuers whose shares are held in fewer than 200,000 beneficial owner accounts held by nominees. See NYSE Fee Structure Order, note 112, above. According to the NYSE, as with Incentive Fees, the cost to service large issuers is less than the cost to service small issuers because of economies of scale, which justifies a smaller Nominee Coordination Fee per account for large issuers. *Id.*

¹²⁰ For example, if an issuer’s securities are held in 10,000 beneficial owner accounts holding in street name, and those accounts are divided among ten securities intermediaries, the fees discussed above would be assessed as follows:

Base Mailing Fee of 10,000 accounts × \$0.40 per account, or \$4,000;

While a member organization, such as a securities intermediary, may seek reimbursement for less than the approved rates, it may not seek reimbursement for an amount higher than the approved rates listed in Rule 465, or for items or services not enumerated in Rule 465, “without the prior notification to and consent of the person soliciting proxies or the issuer.”¹²¹

When the fees were approved in 2002, we expected the NYSE “to continue its ongoing review of the proxy fee process, including considering alternatives to SRO standards that would provide a more efficient, competitive, and fair process.”¹²² We also indicated that market participants should consider ways in which market forces could determine reasonable rates of reimbursement, rather than have these rates be set by the NYSE under its rules.¹²³

In 2006, the Proxy Working Group considered the NYSE’s current fee structure and indicated that Rule 465’s fees “may be expensive to issuers but generally result[] in shareholders receiving and being able to vote proxies in a timely manner. This is an important benefit of the current system.”¹²⁴ The Proxy Working Group also noted, however, that “issuers and shareholders deserve periodic confirmation that the system is performing as cost-effectively, efficiently and accurately as possible, with the proper level of responsibility and accountability in the system.”¹²⁵ The Proxy Working Group also recommended that the NYSE should “continue to explore alternative systems * * * such that a competitive system, with fees set by the free market, could eventually succeed the current system.”¹²⁶ The Proxy Working Group recommended that the NYSE engage an independent third party to analyze and make recommendations regarding the structure and amount of fees paid under Rule 465 and to study the performance

Incentive Fee of 5,000 accounts suppressed × \$0.50 per account, or \$2,500 (assuming 50% of the accounts are eligible for the incentive fee);

Nominee Coordination Fee of 10 securities intermediaries × \$20 per intermediary, or \$200; and
Additional Nominee Coordination Fee of 10,000 accounts × \$0.10 per account, or \$1,000.

¹²¹ See NYSE Supplementary Material to Rule 465.23.

¹²² See NYSE Fee Structure Order, note 112, above. In the NYSE Order, we also stated that we expected NYSE to “periodically review these fees to ensure they are related to ‘reasonable expenses * * * in accordance with the [Exchange] Act, and propose changes where appropriate.” *Id.*

¹²³ *Id.*

¹²⁴ Proxy Working Group Report, note 107, above, at 5.

¹²⁵ *Id.*, at 26.

¹²⁶ *Id.*, at 29.

of the proxy service provider that currently has the largest market share and the business process by which the distribution of proxies occurs. To date, this review has not been done. Subsequently, the Proxy Working Group’s Cost and Pricing Subcommittee considered the changes brought about through the notice and access model and decided that the notice and access fees were not covered under current NYSE fee rules and concluded that they should allow participants to negotiate their own fees.¹²⁷

After the NYSE fee structure for proxy distribution was established on a permanent basis in 2002, other SROs adopted similar rules. For example, the NYSE Amex LLC (“Amex”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) revised their rules (Amex Rule 576, Amex Section 722 of the Amex Company Guide, and NASD IM-2260, respectively) to adopt similar provisions.¹²⁸

b. Notice and Access Model

Neither the NYSE nor any other SRO has established maximum fees that member firms may charge issuers for deliveries of proxy materials using the notice and access method. The majority of broker-dealers have contracts with one proxy service provider to distribute proxies to beneficial owners.¹²⁹ If an issuer elects the “notice-only” delivery option for any or all accounts, that proxy service provider currently charges an “Incremental Fee,” ranging from \$0.05 to \$0.25 per account for positions

¹²⁷ See August 27, 2007 Addendum to the Report and Recommendations of the Proxy Working Group to the New York Stock Exchange dated June 5, 2006 (“Proxy Working Group Addendum”), available at <http://www.nyse.com/pdfs/PWGAddendumfinal.pdf>.

¹²⁸ See Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Amending Exchange Rules 576 and 585, and Sections 722 and 725 of the Amex Company Guide, Release No. 34-46146 (June 28, 2002) [67 FR 44902] and Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Amendment to NASD Interpretive Material 2260, Release No. 34-47392 (Feb. 21, 2003) [68 FR 9730]. NASD Rule 2260 and NASD IM-2260 were recently renumbered as FINRA Rule 2251 in the Consolidated FINRA Rulebook. See Order Granting Approval of Proposed Rule Change to Adopt FINRA Rule 2251 (Forwarding of Proxy and Other Issuer-Related Materials) in the Consolidated FINRA Rulebook, Release No. 34-61052 (Nov. 23, 2009) [74 FR 62857].

¹²⁹ Broadridge, as the service provider for most U.S. broker-dealers holding customer accounts, distributes the vast majority of proxy mailings to beneficial owners. See Proxy Working Group Report, note 107, above, at 24 (“ADP [(now Broadridge) is] the agent for almost all banks and brokerage houses.”).

in excess of 6,000,¹³⁰ in addition to the other fees permitted to be charged under NYSE Rule 465. This Incremental Fee is charged to all accounts, even if the issuer has elected to continue “full set” delivery to some accounts. Several issuers have expressed concerns about these fees associated with the notice and access model.

c. Current Practice Regarding Fees Charged

As noted above, broker-dealers generally outsource their delivery obligations to proxy service providers.¹³¹ The proxy service provider enters into a contract with the broker-dealer and acts as a billing and collection agent for that broker-dealer. As such, the proxy service provider bills issuers on behalf of the broker-dealer with which it has contracted, collects the fees from the issuer to which the broker-dealer is entitled pursuant to SRO rules, and pays to the broker-dealer any difference between the fee that the broker-dealer is entitled to collect and the amount that the broker-dealer has agreed to pay the proxy service provider for its services.¹³²

It is our understanding that Broadridge currently bills issuers, on behalf of its broker-dealer clients, the maximum fees allowed by NYSE Rule 465.¹³³ However, we understand that the fees that Broadridge charges its large broker-dealer clients for its services sometimes are less than the maximum NYSE fees charged to issuers on the broker-dealers’ behalf, resulting in funds being remitted from Broadridge to a subset of its broker-dealer clients. This practice raises the question as to whether the fees in the NYSE schedule currently reflect “reasonable reimbursement.” While the issuer pays the proxy distribution fees, the issuer has little or no control over the process by which the proxy service provider is selected, the terms of the contract between the broker-dealer and the proxy service provider, or the fees that are

¹³⁰ The Incremental Fee for 1 to 6,000 positions is \$1,500. Above 6,000 positions, the fee is charged on a per-account basis, and varies according to the number of positions. As such, the Incremental Fee ranges from \$.25 per account for 6,001 to 10,000 positions to \$.05 per account for greater than 500,000 positions. See Broadridge Fee Schedule, at http://www.broadridge.com/notice-and-access/pdfs/Reference_Rev1_31.pdf.

¹³¹ See NYSE Fee Structure Order, note 112, above. According to the NYSE, this shift was attributable to the fact that member firms believed that proxy distribution “was not a core broker-dealer business and that capital could be better used elsewhere.” *Id.*

¹³² See Release No. 34–38406, note 104, above. See also Broadridge Form 10-K for the fiscal year ended June 30, 2009, at 4.

¹³³ See Broadridge Fee Schedule, note 130, above.

incurred through the proxy distribution process.

Several other issues concerning the appropriateness of fees have also been raised in recent years. For example, it is our understanding that, once a paper mailing is suppressed, the securities intermediary, or its agent, collects the Incentive Fee, not only for the year in which the shareholder makes that election, but also for every subsequent year, even though the continuing role of the securities intermediary, or its agent, in eliminating these paper mailings is limited to keeping track of the shareholder’s election.¹³⁴ Further, it is our understanding that, with respect to certain managed accounts, where hundreds or thousands of beneficial owners may delegate their voting decisions to a single investment manager, the Base Mailing Fee and the Incentive Fee are assessed for all accounts, even though only one set of proxy materials is transmitted to the investment manager.¹³⁵

In summary, many issues have been raised about fees, focusing mostly on whether the current fee structure for delivering proxy materials to beneficial owners reflects reasonable rates of reimbursement.

2. Potential Regulatory Responses

We have previously recognized the potential benefits of allowing the marketplace, rather than SRO rules and guidelines, to determine reasonable rates of reimbursement for the distribution of proxy materials. As noted above, at the time of adoption of the current fee structure, we did not expect that the discussion of reasonable rates of reimbursement would end. Rather, we noted that market forces should ultimately determine competitive and reasonable rates of reimbursement, and urged the NYSE to identify ways to achieve this goal, consistent with the continued

¹³⁴ This Incentive Fee is intended to encourage securities intermediaries to reduce proxy distribution costs on behalf of issuers because intermediaries otherwise may have no motivation to reduce an issuer’s forwarding costs. See SIFMA, Report on the Shareholder Communications Process with Street Name Holders, and the NOBO–OBO Mechanism (June 10, 2010) (“SIFMA Report”), at 14 (describing categories of ongoing costs of maintaining current e-mail addresses and related databases and systems), available in the public comment file to this release.

¹³⁵ See letter from Thomas L. Montrone of The Securities Transfer Association to Chairman Mary Schapiro, dated June 2, 2010 (stating that “We believe that many issuers are being assessed unreasonable fees under Rule 465 related to share ownership in separate managed accounts (“SMAs”) in which the investor has delegated responsibility for management of the account and is not being provided with any proxy materials”), available in the public comment file to this release.

protection of shareholder voting rights in a competitive marketplace for proxy distribution.¹³⁶ While the Proxy Working Group did suggest ways to re-evaluate the NYSE’s current fee structure, such as conducting “cost studies, commission audits and surveys of various constituencies involved,”¹³⁷ to date those suggestions have not been implemented. A proxy distribution process that fosters competition could give issuers, which are responsible for reimbursing only reasonable proxy distribution costs, more control over that process and remove the Commission and SROs from the business of setting rates. However, we understand that, without a competitive market, there may be a continued need for regulated fees.

In addition, we recognize the importance of maintaining a proxy distribution system that is efficient, reliable, and accurate. We note that various groups have previously attested to the efficiency, reliability, and accuracy of the current proxy distribution system.¹³⁸ However, given developments in the securities market overall and proxy solicitation rules, such as the notice and access model, it appears to be an appropriate time for SROs to review their existing fee schedules to determine whether they continue to be reasonably related to the actual costs of proxy solicitation.

One alternative that has been suggested by a commentator is the creation of a central data aggregator that is given the right to collect beneficial owner information from securities intermediaries, but is required to provide that information to any agent designated by the issuer.¹³⁹ The aggregator would be entitled to structured compensation for its activities. This could create competition among service providers for the distribution of the proxy materials by making the beneficial owner

¹³⁶ See NYSE Fee Structure Order, note 112, above.

¹³⁷ See Proxy Working Group Report, note 107, above, at 26–27.

¹³⁸ See, e.g., letter from Donald D. Kittell, Securities Industry Association, to Nancy M. Morris, Secretary, Commission, dated Feb. 13, 2006 (“The current system for delivering proxies to 80 percent of shareholders—those holding in ‘street name’—has proven to be very efficient and cost-effective.”) available in the public comment file to this release. See also Proxy Working Group Report, note 107, above, at 25 (citing to letter from Richard H. Koppes, Facilitator, Proxy Voting Review Committee, to Sharon Lawson, Senior Special Counsel, Commission, dated Feb. 28, 2002).

¹³⁹ See Shareholder Communications Coalition, *Public Issuer Proxy Voting: Empowering Individual Investors and Encouraging Open Shareholder Communications* (Aug. 4, 2009) (“SCC Discussion Draft”), at 6, available in the public comment file to this release.

information available to all service providers, allowing them to compete in providing services to forward proxy materials. This would also place the choice of proxy service provider in the hands of the entity that must pay for the distribution—the issuer—rather than the securities intermediary, which has no incentive to reduce costs.

Some of the other potential regulatory responses discussed in this release also would affect the current system of distributing proxy materials and, therefore, the process of setting proxy distribution fees. For instance, adopting a system under which securities intermediaries grant proxies to underlying beneficial owners (as discussed in Section III.A) would permit issuers to negotiate fees and services with proxy service providers because the issuers would be directly soliciting proxies from those beneficial owners.

3. Request for Comment

- Does the current fee/rebate structure reflect reasonable expenses? Why or why not? If not, how should these rates be revised?
- Should the fee structure allow for reimbursement of the Incentive Fee on an ongoing basis once the paper mailings have already been eliminated?
- How are proxy distribution fees billed with respect to separately managed accounts? Should certain kinds of accounts, such as separately managed accounts, where multiple beneficial owners may delegate their voting decisions to a single investment manager, be eligible for different treatment under the current fee structure?
- Are separately managed accounts different from “wrap” accounts for which issuers may not be charged suppression fees for providing proxy communication services to holders of WRAP accounts?¹⁴⁰
- Does the current fee structure discourage issuers from communicating with beneficial owners beyond delivery of the required proxy materials?
- Should there be an independent third-party audit of the current fee structure, as recommended by the Proxy Working Group?
- Do broker-dealers using a proxy service provider incur costs that justify rebates from the proxy service provider? If so, what are the costs, can they be quantified, and are they commensurate with the payments received from the proxy service provider? Do these costs exist only for larger broker-dealers or for

broker-dealers of all sizes? Should the current rebates between Broadridge and larger broker-dealers be permitted under the current fee structure? Should current contractual arrangements between proxy service providers and their clients affect the determination of whether fees are fair and reasonable?

- Currently, SRO rules do not set rates for reimbursement of expenses associated with the notice and access model. In the absence of SRO rules, on what basis do market participants currently determine whether the reimbursement of expenses associated with the notice and access model is, in fact, reasonable?
- Should the current fee structure that is set forth in SRO rules be revised to include fees for notice and access delivery? If so, what fees for the notice and access model might constitute “reasonable reimbursement?”
- Does the current proxy distribution system—in which the proxy service provider is selected by a broker-dealer but paid by the issuer—create a lack of incentives to reduce costs for issuers? Should the issuer have more control over the selection and payment of the proxy service provider, and if so, what alternatives to the current system would facilitate this? What are the potential benefits and drawbacks of such alternatives?
- What factors are currently affecting the level of competition in the market for proxy service providers and their fees? What principles should guide the Commission’s current consideration of competition among proxy service providers? Would multiple competing service providers affect the quality of service?
- What steps would be necessary to enable prices to be based on competitive market forces? What are the potential benefits and drawbacks of moving to a system where prices are determined by competitive market forces? What effect, if any, would this have in terms of accuracy, accountability, reliability, cost, and efficiency of the proxy distribution system? Would a market-based model increase or decrease costs for issuers? Would cost increases or decreases be more likely for small to midsize issuers?
- If issuers were able to solicit proxies directly from beneficial owners, what effect would that likely have on proxy distribution costs? Would costs be reduced through the introduction of competition and better alignment of economic incentives? Or, could the loss of economies of scale increase costs? Would each issuer likely negotiate fees on its own with a proxy service

provider? Would the impact be different for large, medium, or small issuers?

- What are the practical and legal implications of deregulating fees in light of the existing contracts between proxy service providers and broker-dealers? For example, would these contracts need to be re-negotiated?
- What are the potential merits and drawbacks of having a central data aggregator collect beneficial owner information from securities intermediaries? How would reimbursement to the aggregator, as the distributor of information, be determined?
- Would changes to the OBO/NOBO mechanism, or the creation of a central data aggregator, encourage competition in the proxy distribution sector? Would competition increase or lower costs? Would competition increase or decrease accountability?
- A number of investors have complained about the services of proxy service providers (and transfer agents performing similar functions). How are investors’ interests addressed, if at all, in the selection of proxy service providers? Are the interests of investors in this process given adequate weight?

IV. Communications and Shareholder Participation

We first examine a number of concerns relating to the ability of issuers to communicate with shareholders, the level of shareholder participation in the proxy voting process, and the ability of investors to obtain and evaluate information pertinent to voting decisions. Because of the importance of shareholder voting, as discussed above, we seek additional information about ways in which issuer communications with shareholders, shareholder participation and shareholder use of information might be improved.

A. Issuer Communications With Shareholders

1. Background

The first area of concern that we address arises out of the practice of holding securities in street name—that is, interposing securities intermediaries between issuers and the beneficial owners of their securities. This practice developed in order to facilitate the prompt and accurate processing of an increasingly large volume of securities transactions.¹⁴¹ The efficiency of the

¹⁴⁰ It is our understanding that a wrap account is a certain type of account that is managed by an outside investment manager.

¹⁴¹ For a history of the U.S. shareholder system, see Alan L. Beller & Janet L. Fisher, *The OBO/NOBO Distinction in Beneficial Ownership: Implications for Shareowner Communications and Voting* (February 2010), available at <http://www.cii.org/UserFiles/file/>

clearance and settlement system in the U.S. is due in large part to the ability to “net” transactions, whereby contracts to buy or sell securities between broker-dealers are replaced with net obligations to a registered clearing agency, the National Securities Clearing Corporation (“NSCC”). To make netting possible, securities must be held in fungible bulk at DTC.

There is broad consensus¹⁴² that the enormous volume of transactions cleared and settled in the U.S., which currently involve transactions valued at over \$1.48 quadrillion annually,¹⁴³ requires a centralized netting facility (*i.e.*, NSCC) and a depository (*i.e.*, DTC) that facilitates book-entry settlement of securities transactions. It is our understanding that this approach to clearance and settlement has produced significant efficiencies, lower costs, and risk management advantages. At the same time, however, the practice of holding securities in fungible bulk has made it more difficult for issuers to identify their beneficial owners and to communicate directly with them.

In light of recent developments in corporate governance, including the elimination of the broker discretionary vote on uncontested elections of directors, commentators have claimed a greater need for issuers to be able to communicate with their shareholders.¹⁴⁴ These commentators have argued that the number of contested issues in shareholder meetings has increased, that voting outcomes are under more pressure, and that, as a result, certain changes should be made to our rules in order to facilitate communications by issuers with their beneficial owners.¹⁴⁵ More broadly, commentators have questioned

whether the current system of share ownership and the Commission’s communications and proxy rules adequately serve the needs of investors and issuers.¹⁴⁶

The history of our efforts to address the impediments to communication associated with our securities ownership system goes back more than three decades.

In 1976, we reported to Congress on the effects of the practice of holding securities in street name.¹⁴⁷ While we concluded that the practice of registering securities in nominee (that is, DTC or a securities intermediary) and street name was consistent with the purposes of the Exchange Act, we recognized that issuers were experiencing difficulties in communicating with their shareholders who hold securities in nominee and street name. In an effort to enhance communication, we revised the proxy rules to require issuers, as more fully described above, to do the following:

- Inquire of securities intermediaries whether other persons beneficially owned the securities they held of record; and
- Supply securities intermediaries with a sufficient number of sets of proxy materials to forward to beneficial owners.¹⁴⁸

To promote direct communication between issuers and their beneficial owners, we adopted rules in 1983, effective in 1985, to require broker-dealers and banks to provide issuers, at their request, with lists of the names and addresses of beneficial owners who did not object to having such information provided to issuers.¹⁴⁹ These owners are often referred to as “non-objecting beneficial owners” or “NOBOs.” When a beneficial owner objects to disclosure of its name and address to the issuer—often referred to as “objecting beneficial owners” or “OBOs”—the beneficial owner may be contacted only by the securities intermediary (or the intermediary’s agent) with the customer relationship with the beneficial owner.¹⁵⁰ According to one estimate, 70% to 80% of all public issuers’ shares are held in street name, and 75% of those shares, or 52% to 60% of all shares, are held by OBOs.¹⁵¹ It is our understanding that some types of large institutional investors, such as mutual funds¹⁵² and retirement plans, often choose OBO status.¹⁵³

We understand that there are concerns about the cost and efficiency of the current system of communications between issuers and investors, including the following:¹⁵⁴

¹⁴⁶ In 2004, the BRT Petition urged the Commission “to conduct a thorough review of the current shareholder communications system.” BRT Petition, note 8, above. The petition recommended that “the Commission require brokers and banks to provide issuers with contact information for all beneficial owners and permit the direct mailing of all communications (including proxy materials) to beneficial owners.” *Id.* See also Marcel Kahan & Edward B. Rock, *The Hanging Chads of Corporate Voting*, 96 Georgetown Law Journal 1227 (2008); J. Robert Brown Jr., *The Shareholder Communication Rules and the Securities and Exchange Commission: An Exercise in Regulatory Utility or Futility*, 13 Journal of Corporation Law 683 (1988); David C. Donald, *The Rise and Effects of the Indirect Holding System: How Corporate America Ceded Its Shareholders to Intermediaries* (Sept. 26, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1017206.

¹⁴⁷ Street Name Study, note 13, above.

¹⁴⁸ Notice of Adoption of Amendments to Rules 14a-3, 14c-3 and 14c-7 under the Exchange Act to Improve the Disclosure in, and the Dissemination of, Annual Reports to Security Holders and to Improve the Dissemination of Annual Reports on Form 10-K or 12-K Filed with the Commission Under the Exchange Act, Release No. 34-11079 (Oct. 31, 1974) [39 FR 40766]. These requirements, which were originally included in Rule 14a-3(d), are currently set forth in Rule 14a-13 [17 CFR 240.14a-13]. Facilitating Shareholder Communications, Release No. 34-22533 (Oct. 15, 1985) [51 FR 44276]. Based in part on the recommendation of the Street Name Study, we adopted additional rules in 1977 facilitating the transmission of proxy materials from issuers to beneficial owners. Requirements for Dissemination of Proxy Information to Beneficial Owners by Issuers and Intermediary Broker-Dealers, Release No. 34-13719 (July 5, 1977) [42 FR 35953].

¹⁴⁹ See Facilitating Shareholder Communications Provisions, Release No. 34-20021 (July 28, 1983) [48 FR 35082]. Exchange Act Rule 14a-13(b)(5) enables an issuer to obtain a list of its NOBOs only, which means that broker-dealers and banks must classify their beneficial owners as either objecting or non-objecting beneficial owners, based on the investor’s election. A requesting issuer must reimburse the intermediaries for their reasonable expenses in preparing the NOBO list. 17 CFR 240.14a-13(b)(5). The NYSE and other exchanges establish a per-holder fee that member brokers can charge for preparation of the NOBO list. *E.g.*, NYSE Rule 465. Notwithstanding these limitations on the fees, issuers, particularly those with large shareholder bases, have indicated that the cost to obtain such lists can be prohibitive.

¹⁵⁰ See 17 CFR 240.14b-1(b)(3)(i). Several commentators have indicated that, in a number of foreign jurisdictions, public issuers have the right to learn the identity of individuals and institutions with voting rights or beneficial owner interests in their shares. See, *e.g.*, BRT Petition, note 8, above; Kahan, note 146, above; Donald, note 146, above.

¹⁵¹ Proxy Working Group Report at 10-11, note 107, above.

¹⁵² Although mutual funds disclose their securities holdings on Forms N-Q and N-CSR, those disclosures are made as of the end of the quarter, which may not coincide with the record date used to determine shareholders entitled to vote at a meeting.

¹⁵³ One recent report states that while “73% of retail shareholders are NOBOs, * * * [m]ost institutional shareholders—about 71%—are OBOs, accounting for about 91% of all institutionally held shares.” SIFMA Report, note 134, above, at 7.

¹⁵⁴ Concerns about whether or not to disclose shareholder identities are shared by regulators in several jurisdictions. For example, in Canada,

CII%20White%20Paper%20-%20The%20OBO-NOBO%20Distinction%20in%20Beneficial%20Ownership%20February%202010.pdf, at 8-10. This report (the “CII OBO/NOBO Report”) was published by the Council of Institutional Investors.

¹⁴² See “Recommendations for Securities Settlement Systems,” CFSS/IOSCO Task Force (Nov. 2001) and “Global Clearing and Settlement, A Plan of Action,” published by the Group of Thirty (“G-30”) (Jan. 30, 2003).

¹⁴³ See <http://www.dtcc.com/about/business/statistics.php>.

¹⁴⁴ See Proxy Working Group Report, note 107, above, at 22 (discussing comments received with respect to a then-proposed amendment, which was recently adopted, to Rule 452 eliminating broker-dealer voting in the election of directors).

¹⁴⁵ See, *e.g.*, CII OBO/NOBO Report, note 141, above, at 11 (“Recent developments in corporate governance will place more pressure on voting outcomes and increase the need for both companies and shareowners to have an effective and reliable framework for communications.”); letter from Shareholder Communications Coalition to Chairman Mary Schapiro (Aug. 4, 2009), available at <http://www.shareholdercoalition.com/SCCLettertoSECChairmanMarySchapiroAug2009.pdf>.

- Issuers have indicated to the staff that the majority of their street name securities are held by OBOs through securities intermediaries, making it very difficult to determine the identity and holdings of their investors. Issuers believe that the recent changes in corporate governance, including the move to majority voting of directors, the elimination of broker discretionary voting in uncontested director elections, and a possible drop in retail voting percentages,¹⁵⁵ call for more direct communication between issuers and their shareholders. These communications may include using a proxy solicitor to contact shareholders by telephone. However, an issuer cannot make these direct appeals for shareholders to participate in the issuer's corporate governance if it does not know the identity of those shareholders.

- Issuers also have indicated to the staff that they face considerable expense in communicating with beneficial owners, either OBOs or NOBOs, indirectly through securities intermediaries or their agents. Issuers are required to reimburse securities intermediaries for expenses incurred in forwarding communications to beneficial owners. These expenses include reimbursement for postage, envelopes and communication expenses as well as fees to proxy service providers.¹⁵⁶

- Some issuers have claimed that the expense of obtaining the list of NOBOs from the securities intermediary or its proxy service provider deters some issuers, particularly widely-held issuers, from using the NOBO list to

companies are under no obligation to send proxy materials to shareholders who do not disclose their underlying identity. See OECD Survey, note 90, above. In the United Kingdom, companies have the right to ask any person whom the company knows or has reasonable cause to believe has an interest in its shares to declare that interest. UK Companies Act 2006—Section 793: Notice by company requiring information about interests in its shares, available at (http://www.opsi.gov.uk/acts/acts2006/ukpga_20060046_en_45) The failure to do so may enable the company to apply for a court order directing that the shares in question be subject to certain restrictions involving voting rights, transfers and other limitations. UK Companies Act 2006—Sections 794 and 797. Given that shareholders have the right to dismiss the board at any time in the United Kingdom, companies generally believe it is important that the board know who its shareholders are and pay attention to what they want. Thus, the company should be entitled to know who owns its shares in order to ensure accountability in both directions.

¹⁵⁵ It is unclear whether such a drop has occurred. See note 196 and accompanying text, below.

¹⁵⁶ See Section III.D, above. See also Supplementary Material to NYSE Rules 451 and 465; NYSE Listed Issuer Manual § 402.10(A).

communicate with beneficial owners.¹⁵⁷ We have also received expressions of concern from broker-dealers about the difficulty of maintaining an accurate NOBO list when a class of securities is actively traded.

- We also have heard that issuers may desire more flexibility to design the proxy materials (e.g., forms of VIFs, packaging of materials, etc.) that are sent to beneficial owners. Some issuers believe that the current uniform appearance of proxy materials used by some of the proxy service providers may lead to reduced interest in the materials by beneficial owners. Other commentators have suggested that VIFs do not sufficiently inform shareholders as to how their shares will be voted if they do not provide instructions on all the matters included on the VIFs.¹⁵⁸

- Some issuers also have expressed concerns regarding potential quality control problems that have arisen, from time to time, with the services provided by proxy service providers. Similarly, retail investors have complained to our Office of Investor Education and Advocacy, from time to time, that proxy materials have been delivered late. To the extent that delivery of proxy materials is delayed, the utility of issuer-investor communication through the proxy process is impaired.

2. Potential Regulatory Responses

Many issuers, securities intermediaries and commentators believe that there can be more efficient and cost-effective ways for issuers to communicate directly with their shareholders. Some commentators have advocated for significant changes. The 2004 Business Roundtable rulemaking petition (“BRT Petition”)¹⁵⁹ recommended that the Commission enable issuers to communicate directly with their beneficial owners by requiring broker-dealers and banks to execute an omnibus proxy in favor of their underlying beneficial owners and by eliminating the ability of beneficial owners to object to the disclosure of their identities to issuers. The BRT

¹⁵⁷ Under current NYSE rules, the issuer is required to pay \$0.065 per NOBO name, plus reasonable expenses of the broker-dealer's agent in providing the information. NYSE Rule 465 Supplementary Material, available at <http://nyserules.nyse.com/NYSETools/PlatformViewer.asp?searched=1&selectednode=chp%5F1%5F5%5F13%5F1&CiRestriction=465&manual=%2Fnyse%2Frules%2Fnyse%2Drules%2F>; FINRA Rule 2251 Supplementary Material.

¹⁵⁸ See James McRitchie, Request for rulemaking to amend Rule 14a-4(b)(1) under the Securities Exchange Act of 1934 to prohibit conferring discretionary authority to issuers with respect to non-votes on the voter information form or proxy. No. 4-583 (May 15, 2009).

¹⁵⁹ See BRT Petition, note 8, above.

Petition argued that eliminating objecting beneficial owner status would create a more efficient proxy system by allowing issuers to bypass securities intermediaries and their agents in forwarding proxy materials and by simplifying the voting and tabulation process.

In 2009, the Shareholder Communications Coalition¹⁶⁰ filed a letter supporting the BRT Petition and providing more specific recommendations on how to implement a system that eliminates objecting beneficial owner status and grants the right to vote directly to the beneficial owners through an omnibus proxy.¹⁶¹ This proposed system would separate the functions of beneficial owner data aggregation and proxy communications distribution, thereby making beneficial owner data available to the issuer's (and not the securities intermediary's) agent. The system would identify all beneficial owners except those that elect to remain anonymous by registering shares in a nominee account.¹⁶²

Others advocate less comprehensive change and encourage adoption of an approach in which an issuer would be entitled to a list of all beneficial owners, but only as of the record date for a particular meeting.¹⁶³ In such a system (an “annual NOBO” system), objecting beneficial owners would not be able to shield their identity for purposes of a shareholder meeting. At any other time during the year, objecting beneficial owner information would not be available to the issuer or any other party. An annual NOBO system would enable issuers to communicate directly with all of their shareholders, both registered and beneficial owners, for purposes of a shareholder meeting, while minimizing the possibility that the investor information will be used for purposes other than proxy solicitation,

¹⁶⁰ The Shareholder Communications Coalition is an umbrella group that represents the views of The Business Roundtable, the Society of Corporate Secretaries and Governance Professionals, the National Investor Relations Institute, and the Securities Transfer Association.

¹⁶¹ See SCC Discussion Draft, note 139, above.

¹⁶² A beneficial owner could continue to remain anonymous by hiring a third party to hold the securities for the beneficial owner. In this circumstance, however, the cost of this agency arrangement would be borne by the beneficial owner.

¹⁶³ The Altman Group, “Practical Solutions to Improve the Proxy Voting System” (Oct. 2009), available at <http://altmangroup.com/pdf/PracticalSolutionTAG.pdf> (identifying this approach as the “ABO” or “all beneficial owners” system). We use the term “annual NOBO” because we believe it better reflects the fact that, under the system, an OBO would be treated as if it were a NOBO, but only annually or for specific proxy solicitations.

such as determining an investor's trading strategies.

Others have suggested more gradual change.¹⁶⁴ In order to encourage holding in NOBO rather than OBO status, some have suggested various steps to promote selection of NOBO status, such as educating investors about OBO and NOBO status when they open their accounts or periodically. Other steps may involve the elections made by investors when they open their accounts. While our rules contemplate that investors must object to disclosure of their identities to issuers,¹⁶⁵ neither our rules nor self-regulatory organization ("SRO") rules currently require disclosure of the consequences of choosing OBO or NOBO status, or specify broker-dealer policies or procedures with regard to their clients' choice of OBO or NOBO status. In particular, if a securities intermediary's standard customer agreement includes a default election of OBO status, it could promote a less than fully considered election of OBO status. While several broker-dealers have informed us that they currently default beneficial owners to NOBO status, it has been recommended that the default agreement used by all broker-dealers be NOBO status, or that broker-dealers provide informational materials to their customers prior to allowing the customers to elect OBO status and contact customers who elect OBO status periodically to re-elect their OBO/NOBO status.

In addition, there remains the issue of whether beneficial owners have a privacy right with respect to the disclosure of their ownership positions. We have been informed of a variety of privacy considerations: some investors, particularly institutional investors, select OBO status for competitive reasons, in order to mask their investment strategies; other investors may prefer OBO status in order to minimize the communications (particularly telephone calls) they receive regarding their investments.¹⁶⁶ In either case, however, according to a

¹⁶⁴ See, e.g., CII OBO/NOBO Report, note 141, above.

¹⁶⁵ See Exchange Act Rule 14b-1(b)(3)(i) [17 CFR 240.14b-1(b)(3)(i)] (requiring broker-dealers to provide names, addresses, and securities positions of customers who have not objected to disclosure of such information); Exchange Act Rule 14b-2(b)(4) [17 CFR 240.14b-2(b)(4)] (requiring banks to provide names, addresses, and securities positions of customers that have not objected to disclosure of such information for customer accounts established after December 28, 1986, but requiring affirmative consent to disclosure of such information for customer accounts opened before that date).

¹⁶⁶ See SIFMA Report, note 134, above, at 10, 12, 20-22.

study by the NYSE, investor preference for OBO status may be cost-sensitive and perhaps even overstated.¹⁶⁷

3. Request for Comment

As discussed above, we are considering whether regulatory action is needed to make it easier for issuers to communicate with their investors. In particular, we seek comment on whether we should eliminate the OBO/NOBO distinction, thereby making all beneficial owner information available to the issuer, or require broker-dealers to disclose the consequences of choosing OBO or NOBO status, or whether OBO or NOBO status should be the default choice. We also are exploring ways in which issuers can communicate directly with beneficial owners, such as requiring securities intermediaries to transfer proxy voting authority to some or all beneficial owners, so that issuers can solicit proxies directly from such holders. In this regard, we seek comment on the following questions:

- Do our existing rules inappropriately inhibit issuers from effectively communicating with investors? If so, what changes should we make to our rules to improve investor communication? Even if our rules do not inappropriately inhibit issuers from effectively communicating with investors, do the rules significantly raise the cost of communicating? Do any non-Commission rules inappropriately inhibit issuers from effectively communicating with investors? What are the benefits and costs of the various changes proposed by commentators?

- Do investors consider the degree and manner of communication with issuers to be adequate?

- To what extent are proxy materials not being delivered in a timely fashion? Are any changes in our rules or other rules required to improve timeliness of delivery, either with respect to registered or beneficial owners?

- What impact does the uniform appearance of proxy materials such as the VIF have on shareholder participation in proxy voting? Would investors, especially retail investors, be more likely to vote if there was less uniformity in the appearance of proxy materials?

¹⁶⁷ Investor Attitudes Study Conducted for NYSE Group—April 7, 2006, available at http://www.nyse.com/pdfs/Final_ORC_Survey.pdf. In that study, 71% of respondents indicated that they would provide contact information to the issuers in which they invest if asked. In addition, the study notes that investor preference for NOBO status increases if fees are imposed on continuing to maintain OBO status: with the imposition of a \$50 annual fee, preference for OBO status declines from 36% to 5%. *Id.* at 3.

- Is the format and layout of proxy cards and VIFs clear and easy to use from the perspective of investors? Could the layout be improved to enhance investor participation? Do the formats of proxy cards and VIFs appropriately set out the consequences of not voting or giving voting instructions on one or more specific matters?

- To what extent has the loss of broker discretionary votes in uncontested elections of directors increased the likelihood that issuers will not meet quorum requirements? Would the availability of less-costly means of communication with shareholders improve issuers' ability to meet quorum requirements?

- Do investors have legitimate privacy interests with respect to the disclosure of their share ownership? In what ways would an investor be harmed if his or her identity and the size of his or her holdings are disclosed to issuers? Should an investor be able to indicate that he or she does not wish to be contacted by an issuer? Do broker-dealers or banks have legitimate commercial interests in keeping the identities of their customers confidential? How should these interests be balanced against an issuer's interest in identifying and communicating with its investors? Is this balance different for individual and institutional investors, and if so, would different treatment in regard to OBO status be appropriate? Are there technological solutions that would facilitate communication while protecting the identities of shareholders?

- Issuers have expressed interest in not only communicating with shareholders, but also in identifying them. While these interests can be complementary, is one more important than the other? Should any regulatory changes that may be considered by the Commission emphasize one over the other?

- Are there merits to, or concerns about, establishing a central beneficial owner data aggregator for use by issuers, as suggested by the Shareholder Communications Coalition and as described above?

- Is competition in the proxy distribution service market needed, and if so, what changes to facilitate issuers' communications with investors would also encourage competition in the proxy distribution service market?

- Should we consider rules that would shift the cost of distributing proxy materials to broker-dealers for customers who choose to be objecting beneficial owners?

- Do our rules adequately address how beneficial owners elect objecting or non-objecting beneficial owner status when they open their accounts? Should there be a requirement that beneficial owners' account agreements adopt any specific election as the default choice? If so, would it matter whether the Commission, FINRA, or the stock exchanges imposed that requirement? Should the required default choice be for objecting or non-objecting beneficial owner status? Are there other ways in which default positions can be established for customers of securities intermediaries? Should there be a standardized form for customers to elect either NOBO or OBO status?

- Should we or SROs instead, or in addition, consider requiring securities intermediaries to provide informational materials to their customers prior to allowing the customer to elect OBO or NOBO status? What should be included in such informational materials, and how frequently should investors be provided with such materials? Should we consider requiring securities intermediaries to inform customers of the reasons for and against choosing to disclose or shield their identities?

- Should a broker-dealer periodically request that customers reaffirm their OBO/NOBO status selection? If so, how should the cost of this periodic evaluation be allocated?

- Should we consider revising our rules to require that securities intermediaries provide an omnibus proxy to their underlying beneficial owners and identify them to the issuer? If we were to propose such a rule, should we limit it to granting proxies to NOBOs since their identities are already available to issuers? How would such a system address the way securities transactions are cleared and settled?

- What are the costs and benefits of the annual NOBO system suggested by commentators? Would disclosure of all beneficial owners, limited to information as of the record date of a shareholder meeting, harm those investors (for example, would it reveal trading strategies of those investors)? Would implementing the annual NOBO system adversely affect any privacy interests of OBOs? As a practical matter, would issuers be able to contact OBOs using this information for subsequent shareholder meetings?

- What problems might arise if issuers or their transfer agents have greater access to or control of shareholder lists? How could we provide for fair and efficient access to those lists by other soliciting parties?

B. Means To Facilitate Retail Investor Participation

1. Background

As we seek to promote and facilitate shareholder voting in general, we understand that the level of voting by retail investors is a particular area of concern. Retail investor participation rates in the proxy voting process historically have been low.¹⁶⁸ Given the importance of proxy voting, we view significant lack of participation by retail investors in proxy voting as a source of concern, even in companies in which retail share ownership represents a relatively small portion of total voting power. We understand that this situation is not limited to the U.S., as the level of voting by shareholders in other jurisdictions has also caused concern.¹⁶⁹

2. Potential Regulatory Responses

a. Investor Education

Commentators have indicated that there is confusion among investors regarding the proxy voting process and the importance of voting.¹⁷⁰ Investors accustomed to brokers voting their shares on their behalf may be unaware that, as a result of the recent revisions to NYSE Rule 452, brokers can no longer vote investors' shares in uncontested elections of corporate directors without instructions from the investors. In addition, many investors may be confused by the distinction between record and beneficial ownership and how that may affect their voting rights. These commentators have recommended the development of a significant investor education campaign to inform investors about the proxy voting process and the importance of voting as one way in which communication and proxy voting could be improved.

We believe that improved investor education may help dispel some of these potential misunderstandings and create interest in the voting process. There are several ways in which we can enhance the educational opportunities for investors. We recently created a new section on our investor site, <http://www.investor.gov>, to provide educational materials about proxy mechanics generally and the notice and access model for the delivery of proxy materials. The new proxy matters section can be found at <http://www.investor.gov/proxy-matters>.¹⁷¹

We understand that a number of issuers and shareholder organizations have provided links from their Web sites to these educational materials. In addition, NYSE recently revised examples of letters containing the information and instructions required to be given by NYSE members to beneficial owners to inform beneficial owners that brokers are no longer allowed to vote shares held by beneficial owners on uncontested elections of directors, unless the beneficial owner has provided voting instructions.¹⁷²

Another possible venue for investor education is issuers' Web sites and brokers' Web sites. Many investors go to issuer Web sites to obtain information about the issuers in which they invest, and an increasing number of investors review their holdings and effect securities transactions through their brokers' Web sites. More proxy-related educational materials located on an issuer's or broker's Web site may be helpful to investors. In addition, although some explanation of how the proxy process works is often included on the back of the proxy card (or on the VIF), that information can be difficult to read and is often presented in small print. We are interested in whether improving the presentation of information on the proxy card or VIF would have an effect on voting participation.

Finally, we are interested in whether we should also consider the scope, format, and content of the communications between brokers and their customers that occur in connection with opening customers' accounts. The account-opening process may be a good

¹⁷¹ The staff of the Commission initiated an educational program on proxy voting matters for retail investors with the goal of increasing investor awareness about the importance of participating in director elections and other issues brought before shareholders at annual and special meetings. A plain-language "Spotlight on Proxy Matters page" in question and answer format was developed on the SEC Web site to explain proxy voting procedures. In addition, the staff of our Office of Investor Education and Advocacy has spoken before investor and issuer organizations to promote the Web site material and to urge their involvement in proxy voting educational programming. To date, this ongoing effort has yielded more than 25,000 unique visits to the Proxy Matters Web site and 1,430 references on Google. The staff plans to continue and expand the education and outreach to retail investors in preparation for the 2011 proxy season. As part of this outreach program, we are exploring potential opportunities to link proxy educational materials directly to online brokerage accounts and other locations that may be visited frequently by retail shareholders.

¹⁷² See Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Sample Broker Letters Set Forth In Rule 451, Release No. 34-61046 (Nov. 20, 2009) [74 FR 62849].

¹⁶⁸ See Roundtable Briefing Paper, note 79, above.

¹⁶⁹ See, e.g., Myners Report, note 15, above.

¹⁷⁰ See Proxy Working Group Report, note 107, above, at 15.

opportunity to communicate important information about the shareholder voting process.

b. Enhanced Brokers' Internet Platforms

As noted above, many investors use their brokers' Web sites as "one-stop shopping" for their investment needs. It is our understanding, however, that many of these Web sites do not provide information about upcoming corporate actions or enable retail investors to use the same platform for proxy voting. Rather, many brokers hire a third-party proxy service provider to handle the collection of voting instructions. Therefore, those investors must go to a different Web site, not run by the broker, in order to submit voting instructions to their broker. We are interested in receiving views on whether receiving notices of upcoming corporate votes and having the ability to access proxy materials and a VIF through the investor's account page on the broker's Web site would be helpful to investors. We also wish to explore whether other communications from broker to customer could encourage more active and better informed participation in the proxy voting process.

c. Advance Voting Instructions

Some commentators have recommended that we adopt rules to facilitate what has been called "client-directed voting" as a means to increase investor participation in the voting process.¹⁷³ In general, this concept contemplates that brokers or other parties¹⁷⁴ would solicit voting instructions from retail investors on particular topics (e.g., election of directors, ratification of auditors, approval of equity compensation plans, action on shareholder proposals) in advance of their receiving the proxy materials from companies.¹⁷⁵ The advance voting instructions would then be applied to proxy cards or VIFs related to the investors' securities holdings, unless the investors changed those instructions. Investors would be able (but not required) to instruct their securities intermediaries or other parties

¹⁷³ See Proxy Working Group Addendum, note 127, above. We use the term "advance voting instructions" rather than "client-directed voting" because we believe it more precisely identifies the salient feature of this approach to shareholder voting.

¹⁷⁴ Such parties could include proxy advisory firms or other third parties offering voting platforms to facilitate voting by retail investors.

¹⁷⁵ As noted above, proxy advisory services sometimes submit votes on behalf of their institutional investor clients pursuant to the clients' proxy voting policies.

to vote their shares in any number of ways, including the following:

- Vote shares in accordance with the board of directors' recommendations;
- Vote shares against the board of directors' recommendations;
- Vote shares related to particular types of proposals (for example, shareholder proposals related to environmental or social issues) consistent with recommendations issued by specified interest groups, proxy advisory firms, investors, or voting policies;
- Abstain from voting shares; or
- Vote shares proportionally with the brokerage firm's customers' instructed votes, or the instructed votes of its institutional or retail customers only.¹⁷⁶

The advance voting instructions would generally be given by the investors at the time they sign their brokerage agreements or sign up for the proxy voting service, or periodically thereafter, and would always be revocable. Investors would also be able to change the advance voting instructions at any time.

In connection with each proxy solicitation, investors who had given advance voting instructions would receive a proxy card or VIF pre-marked in accordance with those voting instructions, along with the proxy materials required by the federal securities laws. Investors could override any of the advanced voting instructions applicable to that proxy solicitation by checking or clicking on an appropriate election box before the vote is submitted. Absent instructions to the contrary, the securities intermediary or other party would vote the investor's shares in accordance with the advance voting instructions as pre-marked on the proxy card or VIF.

In connection with the proposal to amend NYSE Rule 452,¹⁷⁷ we received several comment letters that discussed advance voting instructions as an alternative to the NYSE Rule 452 amendment¹⁷⁸ or advocated that such

¹⁷⁶ See Proxy Working Group Addendum, note 127, above; see also John Wilcox, Fixing the Problems with Client-Directed Voting, March 5, 2010, available at <http://blogs.law.harvard.edu/corpgov/2010/03/05/fixing-the-problems-with-client-directed-voting/>.

¹⁷⁷ On July 1, 2009, the Commission approved an amendment to NYSE Rule 452 and Section 402.08 of the NYSE Listed Issuer Manual that eliminated discretionary voting by brokers in uncontested director elections. See Release No. 34-60215, note 11, above.

¹⁷⁸ See comment letters from American Bar Association ("ABA Letter"); American Business Conference; Agilent Technologies, Inc.; Business Roundtable; United States Chamber of Commerce; Connecticut Water; DTE Energy; First Financial Holdings, Inc.; Furniture Brands International; General Electric; Intel Corporation; Jacksonville

voting instructions should be considered in conjunction with the NYSE Rule 452 amendment.¹⁷⁹ In the order approving the NYSE Rule 452 amendment, we noted that advance voting instructions raise a variety of questions and concerns, such as requiring investors to make a voting decision in advance of receiving a proxy statement containing the disclosures mandated under the federal securities laws and possibly without consideration of the specific issues to be voted upon.¹⁸⁰ The Proxy Working Group also expressed concern that advance voting instructions could act as a disincentive for retail investors to vote after reviewing proxy materials if they had already given such instructions.¹⁸¹ On the other hand, supporters of advance voting instructions stated that the implementation of voting based on such instructions could help issuers solve quorum problems, encourage greater retail shareholder participation in the voting process by making it easier for investors to vote, better permit shareholders to exercise their franchise, and result in more discussion and involvement between investors and their brokers on proxy issues.¹⁸²

While we will continue to consider the advisability of allowing third parties, such as broker-dealers, to solicit instructions regarding the voting of shares by retail investors without the benefit of information that is contained in disclosures that our rules require in connection with shareholder votes, we recognize that facilitating the use of advance voting instructions can be

Bancorp Inc.; McKesson Corporation; Monster Worldwide, Inc.; Nucor Corporation; Provident Bank; Provident Financial Services, Inc.; Quest Diagnostics Inc.; Synalloy Corporation; and Veeco Instruments Inc to Notice of Filing of Proposed Rule Change, as modified by Amendment No. 4, to Amend NYSE Rule 452 and Listed Company Manual Section 402.08 to Eliminate Broker Discretionary Voting for the Election of Directors and Codify Two Previously Published Interpretations That Do Not Permit Broker Discretionary Votes for Material Amendments to Investment Advisory Contracts, Release No. 34-59464 (Feb. 26, 2009), available at <http://www.sec.gov/comments/sr-nyse-2006-92/nyse200692.shtml>.

¹⁷⁹ See comment letters from American Express; Society of Corporate Secretaries and Governance Professionals ("Governance Professionals Letter"); Honeywell; JPMorgan Chase & Co.; and Shareholder Communications Coalition to Release No. 34-59464, note 178, above, available at <http://www.sec.gov/comments/sr-nyse-2006-92/nyse200692.shtml>.

¹⁸⁰ See Release No. 34-60215, note 11, above, at 34.

¹⁸¹ See Proxy Working Group Addendum, note 127, above, at 5.

¹⁸² *Id.* at 5-6. See also Governance Professionals Letter, note 179, above; ABA Letter, note 177, above; and Frank G. Zarb, Jr. and John Deane, "The Case for 'Client Directed Voting,'" Law 360 (Jan. 4, 2010).

viewed as providing retail investors with a component of the services now made available to institutional investors by proxy advisory firms. However, retail investors are not necessarily in the same position as institutional investors. Some institutional investors rely upon pre-developed voting policies and procedures to ensure consistency across portfolios, to aid in post-vote monitoring and reporting, and otherwise to comply with applicable fiduciary duties. Some retail shareholders may not be as likely to monitor, or hire others to monitor, the application of their advance voting instructions.

There is currently no applicable exemption for securities intermediaries to solicit advance voting instructions from their customers. Exchange Act Rule 14a-2(a)(1) provides an exemption from the proxy solicitation rules to securities intermediaries when they forward proxy materials on behalf of issuers and request voting instructions.¹⁸³ This exemption, however, requires securities intermediaries to “promptly furnish” proxy materials to the person solicited. By definition, brokers seeking to obtain advance voting instructions from customers would not be able to satisfy this requirement. In the absence of an applicable exemption for the solicitation of advance voting instructions, Rule 14a-4(d) states that no proxy shall confer authority to vote at any annual meeting other than the next annual meeting after the date on which the form of proxy is first sent.¹⁸⁴ In addition, that rule prohibits a proxy from granting authority to vote with respect to more than one meeting.¹⁸⁵

To pursue this alternative further, there are a number of issues that would need to be considered. Advance voting instructions could be solicited to varying levels of detail. For instance, such an instruction could be very broad, such as “vote consistent with management’s recommendations” or “vote consistent with the recommendations of XYZ Environmental Group.” The grant of such broad authority could raise concerns about the extent to which the investor’s vote is an informed one. Greater specificity in a request for instructions, however, could provide an investor with greater certainty regarding what his or her instruction relates to. For example, an instruction to “vote consistent with [management’s or other party’s] recommendations regarding

corporate governance issues” would provide more certainty.

In addition, if we were to permit advance voting instructions, we would need to address other issues including whether such instructions should be re-affirmed on a periodic basis; whether they should apply to the voting of shares of issuers that the investor did not own when the original instructions were submitted; whether they should be re-affirmed each time an investor purchases additional shares of an issuer’s stock for which that investor has already submitted voting instructions; and whether brokers can seek from investors advance voting instructions that vary by company.

We are interested in receiving views on whether permitting advance voting instructions would increase retail investor participation in the voting process, and on whether such instructions would be appropriate as a general matter. If such instructions would increase retail investor participation and would be appropriate, we are interested in receiving views on any conditions or requirements that we should consider applying to the solicitation of such instructions.

d. Investor-to-Investor Communications

We are interested in receiving views on whether investor interest in matters presented to shareholders is affected by the extent to which investors are able to communicate with other investors about their opinions regarding matters up for a vote. It is our understanding that there tends to be higher voting participation in situations that involve increased communications and high investor interest, such as well-publicized proxy contests. We have, in the past, adopted several provisions designed to enhance shareholder communications between investors and the issuer, as well as among investors, including:

- Exempting communications with investors from the proxy statement delivery and disclosure requirements where the soliciting person is not seeking proxy authority and does not have, among other things, a substantial interest in the matter (other than as an investor in the issuer);¹⁸⁶
- Permitting an investor to publicly announce how it intends to vote and provide the reasons for that decision

¹⁸⁶ 17 CFR 240.14a-2(b)(1). The rule specifies certain individuals and entities, such as affiliates of the registrant, that are not entitled to rely on the exemption. Also, if the shareholder owns more than \$5 million of the registrant’s securities, it must furnish a Notice of Exempt Solicitation to the Commission. 17 CFR 240.14a-6(g).

without having to comply with the proxy rules;¹⁸⁷ and

- Broadening the types of communications that are permissible prior to the distribution of a definitive proxy statement.¹⁸⁸

In addition, in 2007, we adopted rules promoting the use of electronic shareholder forums on the Internet for investor communications.¹⁸⁹ It is our understanding that such forums have not been used extensively. We are interested in receiving views on whether, if further steps are taken to facilitate informed discussion among investors, the level of investor voting participation and informed proxy voting would be likely to increase. In addition, we are interested in receiving views on whether any additional forums for shareholder-to-shareholder communications would be helpful.

e. Improving the Use of the Internet for Distribution of Proxy Materials

In 2007, we amended the proxy rules to adopt a “notice and access model.”¹⁹⁰ This model provides issuers with two options for making their proxy materials available: the “notice-only option”¹⁹¹ and the “full set delivery option.” Under the notice-only option, the issuer must post its proxy materials on a publicly-accessible Web site and send a notice to shareholders at least 40 days before the shareholder meeting date to inform them of the electronic availability of the proxy materials, and explain how to access those materials.¹⁹² Under this option, an issuer must also provide paper or e-mail copies of proxy materials at no charge to shareholders who request such copies.¹⁹³

Issuers may also select the “full set delivery” option, where the issuer

¹⁸⁷ 17 CFR 240.14a-1(l)(2)(iv).

¹⁸⁸ 17 CFR 240.14a-12; Regulation of Takeovers and Security Holder Communications, Release No. 33-7760 (Oct. 22, 1999) [64 FR 61408].

¹⁸⁹ See Release No. 34-57172, note 3, above.

¹⁹⁰ See Notice and Access Release, note 2, above.

¹⁹¹ The notice and access model is a concept separate from, but complementary to, electronic delivery. The notice and access model permits an issuer (or a securities intermediary at the direction of the issuer) to deliver a notice (typically in paper) informing shareholders that proxy materials are available on the Internet in lieu of sending a full paper set of proxy materials. Electronic delivery, on the other hand, arises from our guidance in Release No. 33-7233, note 32, above. In that release, we explained that delivery of materials (including proxy materials) may be made electronically under certain circumstances, including if a shareholder has provided affirmative consent to electronic delivery. An issuer or securities intermediary may send this notice electronically to a shareholder if that shareholder has affirmatively consented to electronic delivery.

¹⁹² See 17 CFR 240.14a-16; Notice and Access Release, note 2, above.

¹⁹³ 17 CFR 240.14a-16.

¹⁸³ 17 CFR 240.14a-2(a)(1).

¹⁸⁴ 17 CFR 240.14a-4(d)(2).

¹⁸⁵ 17 CFR 240.14a-4(d)(3).

delivers a full set of proxy materials to shareholders, along with the Notice of Internet Availability of Proxy Materials on a Web site, and posts the proxy materials to a publicly-accessible Web site.¹⁹⁴ An issuer may use the notice-only option to provide proxy materials to some shareholders, and the full set delivery option to provide proxy materials to other shareholders.¹⁹⁵

It has been suggested that our adoption of rules permitting the dissemination of proxy materials through a “notice and access” model has contributed to a decline in retail investor participation in voting. We believe that it is difficult to conclude, based on existing data, that notice and access has caused changes in voter participation. To be sure, the number of retail accounts submitting voting instructions when issuers use the notice-only option is lower than the number of retail accounts submitting voting instructions when issuers use the full-set delivery option. The number of retail shares being voted, however, does not appear to differ substantially.¹⁹⁶ More importantly, because issuers can elect whether to use the notice-only model, it is difficult to discern whether patterns in voting behavior are due to notice and access or to other factors. Issuers who choose the notice-only model may differ from other issuers in ways that may also correlate with voter participation, such as size or other characteristics. Some issuers have chosen a hybrid model, continuing to distribute full packages of proxy solicitation materials to selected shareholders based on the size of their holdings or their voting histories,¹⁹⁷ suggesting that these issuers may believe that full-set delivery affects voter participation in some cases.

Another possible option to encourage shareholder participation, while still allowing issuers to use the notice-only option, would be to permit the inclusion of a proxy card or VIF with the Notice

of Internet Availability of Proxy Materials when an issuer or other soliciting shareholder elects to use the notice-only option under the notice and access model for the delivery of proxy materials. Currently, Exchange Act Rule 14a–16 explicitly prohibits the soliciting party from including a proxy card or VIF with the Notice in the same mailing.¹⁹⁸ Although we initially proposed a model that would have allowed soliciting parties to include a proxy card or VIF with the Notice, we ultimately adopted a rule that prohibited the inclusion of the proxy card or VIF and noted commentators’ concerns that “physically separating the card from the proxy statement, as originally proposed, may lead to the type of uninformed voting that the proxy rules are intended to prevent.”¹⁹⁹

3. Request for Comment

With respect to investor education, we ask the following questions:

- To what extent should we take additional steps to encourage retail investor participation in the proxy process?
- To what extent would greater use of plain English, some form of summary of proxy materials, or layered formats in Web-based disclosure make proxy materials more accessible to retail investors?
- To what extent are retail voter participation levels affected by process-related impediments to participation? If affected by impediments, what are they and should we seek to remove them? What costs and benefits are associated with efforts to increase participation?
- Would additional investor education improve retail investor participation in the proxy process? How could such a program best reach both registered owners and beneficial owners? What would be the benefits and costs of such a program? What should be in the educational materials and who should decide what goes in them?
- Should brokers more clearly highlight and disclose key policies, including a shareholder’s voting rights and default positions, such as OBO/NOBO, when a customer enters into a brokerage agreement? Should brokers provide counseling to potential customers to enhance understanding of such provisions in the brokerage agreement? When a customer enters into a brokerage agreement, should brokers

be required to obtain the preferences of the client regarding whether to receive proxy materials electronically, and inform issuers of that election automatically when securities of that issuer are purchased?

- What role should the Commission play in promoting or developing the education campaign? How can the SEC’s investor education Web sites be made more useful? For example, should the Web site provide interactive instruction?

With respect to enhanced issuers’ and brokers’ Internet platforms, we ask the following questions:

- Would an issuer’s Web site or a broker’s Web site be a useful location for investor educational information? Are there other methods to effectively educate investors? What would be the costs and benefits of requiring issuers or securities intermediaries to include such information on their Web sites?
- Should issuers or brokers enhance their Web sites, if they have one, to provide the issuers’ shareholders or the brokers’ customers, respectively, with the ability to receive notices of upcoming corporate votes, to access proxy materials and to vote shares through their personal account pages? What would be the costs of such a system? Would adding this service for investors make them more likely to vote? To what extent do issuers and brokers currently provide such functionality on their Web sites?
- Should we encourage the creation of inexpensive or free proxy voting platforms that would provide retail investors with access to proxy research, vote recommendations, and vote execution? If so, how?

With respect to advance voting instructions, we ask the following questions:

- Should we consider allowing securities intermediaries to solicit voting instructions in advance of distribution of proxy materials pursuant to an exemption from the proxy solicitation rules? Should there be any conditions on any such exemption, and if so, what should they be?
- To what extent would voting instructions made without the benefit of proxy materials result in less informed voting decisions? Are there countervailing benefits to permitting the solicitation of such instructions? To what extent does the revocability of advance voting instructions mitigate concerns over less informed voting decisions?
- With regard to the use of advance voting instructions, are retail investors at a disadvantage as compared to institutional investors that use the

¹⁹⁴ *Id.* The issuer may elect to include all of the information required to appear in the Notice in the proxy statement and proxy card. *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Broadridge, Notice and Access: 2010 Statistical Overview of Use with Beneficial Shareholders, available at http://www.broadridge.com/notice-and-access/FY10_full_year.pdf (“2010 Broadridge Statistical Overview”). This report indicates that, during the 2009 and 2010 proxy seasons, 31.95% and 27.29%, respectively, of retail shares were voted at issuers not using notice and access, while 28.70% and 31.01%, respectively, of retail shares were voted at issuers using notice and access. On the other hand, 19.39% and 19.21%, respectively, of retail accounts were voted at issuers not using notice and access, while 12.72% and 13.85%, respectively, of retail accounts were voted at issuers using notice and access.

¹⁹⁷ *Id.*

¹⁹⁸ 17 CFR 240.14a–16(e). A proxy card or VIF may be included with a Notice if at least 10 days have passed since the date a Notice was first sent to shareholders. 17 CFR 240.14a–16(h)(1).

¹⁹⁹ Internet Availability of Proxy Materials, Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148] at 4153.

services of a proxy advisory firm? If so, how? Are there aspects of the services and relationship between proxy advisory firms and their clients that would not exist between securities intermediaries soliciting advance voting instructions and their customers? If so, how should these differences be addressed, if at all?

- If such solicitation of advance voting instructions were permitted, what level of specificity should the solicitation of advanced voting instructions be required (or permitted) to have? Is it appropriate to permit the solicitation of a broad scope of voting authority?

- Should we allow the solicitation by securities intermediaries of advance voting instructions for all types of proxy proposals, or should it be limited to certain types of proposals? For example, should we permit solicitation of advance voting instructions with respect to shareholder proposals, proxy contests, or proposals subject to “vote no” campaigns?

- If solicitation of advance voting instructions were permitted, should the investor be permitted to instruct the securities intermediary to vote in accordance with the recommendations of management, a proxy advisory firm, or other specified persons? How neutral or balanced should the solicitation of advance voting instructions be?

- If we were to allow the solicitation of advance voting instructions, should we require an investor to reaffirm its voting instructions periodically? If so, how often? Should we require an investor to reaffirm its voting instructions every time it purchases additional shares of a stock for which that investor has already submitted a voting instruction, or when it purchases shares of a new issuer?

- If we were to allow advance voting instructions, what would be an appropriate range of options available to an investor? Should advance voting instructions only be permitted when the investor has meaningful options from which to choose?

- How difficult would it be to obtain advance voting instructions from existing brokerage customers? What would be the costs of obtaining advance voting instructions for existing accounts? Who should bear the costs of soliciting such instructions?

- If we were to allow the solicitation of advance voting instructions, would it undermine or promote the purpose of the recent amendment to NYSE Rule 452 to prohibit brokers from voting uninstructed shares in uncontested elections of directors?

With respect to investor-to-investor communications, we ask the following questions:

- To what extent are investor interest in matters presented to shareholders and investor voting participation affected by the lack of investor-to-investor communications regarding those matters?

- Have electronic shareholder forums been used extensively? Are there any revisions to Rule 14a-2(b)(6), which currently provides an exemption for electronic shareholder forums, that would make it easier to establish such forums? For example, is there a way for an entity establishing an electronic shareholder forum to confirm the shareholder status of participants on the forum? If a securities intermediary provides information, such as a control number, to enable such confirmation, should precautions be taken to ensure that personal information about those investors is not disclosed?

- Should we consider revising the electronic shareholder forum rules to shorten the 60-day period to promote more shareholder-to-shareholder communication closer to the meeting date? If so, what would be an appropriate time period?

- Are there any other new rules or revisions to existing rules that would facilitate communications among investors? If so, what would those revisions be?

- Would any additional guidance regarding the scope of our rules and definitions, such as the definition of the term “solicitation,” improve the extent and quality of investor participation in the proxy voting process?

With respect to possible revisions to the notice and access model, we ask the following questions:

- Should we consider requiring that companies using a “notice and access” model for distributing proxy materials use that model on a stratified basis to encourage retail voting participation? For example, should we require that issuers send full sets of proxy materials to shareholders who have voted on paper in the past two years?

- Should we consider amending our rules to permit inclusion of a proxy card or VIF with a Notice of Internet Availability of Proxy Materials?

- Are there other changes that we can make to the notice and access model to improve voting participation? For example, should we require affirmative consent from a shareholder before an issuer is allowed to send that customer only a Notice of Internet Availability of Proxy Materials? Should we eliminate the notice and access model altogether?

C. Data-Tagging Proxy-Related Materials

1. Background

Issuers soliciting proxies are required to distribute a proxy statement²⁰⁰ and to disclose the results of shareholder votes within four business days after the end of the meeting at which the vote was held.²⁰¹ Funds are generally required to disclose annually on Form N-PX²⁰² how they vote proxies relating to portfolio securities.²⁰³ In the discussion below, we address whether this information could be organized and made available to investors in ways that might enhance the level and quality of shareholder participation in the proxy voting process.

In 2004, as part of our longstanding efforts to increase transparency in general and the usefulness of information in particular, we began an initiative to assess the benefits of interactive data²⁰⁴ and its potential for improving the timeliness, accuracy, and analysis of financial and other filed information.²⁰⁵ Data becomes interactive when it is labeled, or “tagged,” using a computer markup language that can be processed by software for analysis. Such computer markup languages use standard sets of definitions, or “taxonomies,” that translate text-based information in Commission filings into interactive data that can be retrieved, searched, and analyzed through automated means.

Our efforts regarding interactive data thus far have resulted in our adoption of rules that, in general, currently or ultimately will require:

- Public issuers, including foreign private issuers, to provide their financial statements to the Commission and on their corporate Web sites, if any,

²⁰⁰ The proxy statement must include the information required by Schedule 14A of the Exchange Act. [17 CFR 240.14a-101] The Commission’s rules also generally require issuers not soliciting proxies from shareholders entitled to vote on a matter to distribute an information statement that must include the similar information required by Schedule 14C of the Exchange Act [17 CFR 240.14c-101]. Accordingly, the data-tagging discussion in this Section IV.C relates to the information required by Schedule 14C in the same manner it relates to corresponding information required by Schedule 14A.

²⁰¹ Item 5.07 of Form 8-K [referenced in 17 CFR 249.308].

²⁰² 17 CFR 274.129. See Section III.C, above, for a further discussion of Form N-PX.

²⁰³ In this Section IV.C, we use the term “proxy statement and voting information” to refer collectively to the information required by Schedule 14A, Schedule 14C, Item 5.07 of Form 8-K and Form N-PX.

²⁰⁴ In this Section IV.C, we generally refer to “tagged data” as “interactive data” because users are able to interact with the data by processing it.

²⁰⁵ See Press Release No. 2004-97 (July 22, 2004), available at <http://www.sec.gov/news/press/2004-97.htm>.

in interactive data format using eXtensible Business Reporting Language (“XBRL”);²⁰⁶

- Mutual funds²⁰⁷ to provide the risk/return summary section of their prospectuses to the Commission and on their Web sites, if any, in XBRL format;²⁰⁸

- Rating agencies to provide certain ratings information on their Web sites in XBRL format;²⁰⁹

- Money market funds to provide portfolio holdings information to the Commission in interactive data format using eXtensible Markup Language (“XML”);²¹⁰

- Transfer agents to provide registration, activity and withdrawal information to the Commission in XML format;²¹¹

- Issuers to provide notice of Regulation D²¹² exempt offering information to the Commission in XML format²¹³ or through the Commission’s

²⁰⁶ Interactive Data to Improve Financial Reporting, Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776] as corrected by Interactive Data to Improve Financial Reporting, Release No. 33–9002A (Apr. 1, 2009) [74 FR 15666]. Issuers that are or will be required to provide their financial statements in interactive data format using XBRL are permitted to provide such interactive data before they are required to do so. Funds are permitted to provide financial information in interactive data format using XBRL as an exhibit to certain filings in our electronic filing system under a voluntary filer program that initially was implemented in 2005.

²⁰⁷ In this Section IV.C, we use the term “mutual fund” to mean an open-end management investment company. An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, which offers for sale or has outstanding any redeemable security of which it is the issuer. See Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)].

²⁰⁸ Interactive Data for Mutual Fund Risk/Return Summary, Release No. 33–9006 (Feb. 11, 2009) [74 FR 7748] as corrected by Interactive Data for Mutual Fund Risk/Return Summary; Correction, Release No. 33–9006A (May 1, 2009) [74 FR 21255]. Mutual funds are permitted to provide their risk/return summary information in interactive data format (using XBRL) before they are required to do so. The public companies, foreign private issuers and mutual funds permitted or required to provide financial statement or risk/return summary information in interactive data format are required to continue to provide the information in traditional format as well.

²⁰⁹ Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34–61050 (Nov. 23, 2009) [74 FR 63832] and Amendments to Rules for Nationally Recognized Statistical Rating Organizations, Release No. 34–59342 (Feb. 2, 2009) [74 FR 6456].

²¹⁰ Money Market Fund Reform, Release No. IC–29132 (Feb. 23, 2010) [75 FR 10060]. The XBRL format is compatible with and derives from the XML format.

²¹¹ Electronic Filing of Transfer Agent Forms, Release No. 34–54864 (Dec. 4, 2006) [71 FR 74698].

²¹² 17 CFR 230.501–508.

²¹³ See EDGAR Form D XML Technical Specification (Version 7.4.0), available at <http://www.sec.gov/info/edgar/formdxmltechspec.htm>.

online forms Web site that tags the information in XML;²¹⁴ and

- Officers, directors, and principal owners to provide beneficial ownership information under Section 16(a) of the Exchange Act²¹⁵ to the Commission in XML format²¹⁶ or through the Commission’s online forms Web site that tags the information in XML.²¹⁷

Currently, proxy statement and voting information is neither required nor permitted to be provided to the Commission in interactive data format. As a result, shareholders cannot retrieve, search, and use this information through automated means in the form in which it is provided to the Commission.

2. Potential Regulatory Responses

We are interested in receiving views on whether it would be beneficial to investors to permit or require issuers, including funds, to provide proxy statement and voting information in interactive data format in addition to the traditional format. We are also interested in understanding the costs of providing additional tagged information. A significant amount of the textual data in the proxy statement is well-structured and may be suitable for data tagging. If issuers provided reportable items in interactive data format, shareholders may be able to more easily obtain specific information about issuers, compare information across different issuers, and observe how issuer-specific information changes over time as the same issuer continues to file in an interactive data format. This could both facilitate more informed voting and investment decisions and assist in automating regulatory filings and business information processing.²¹⁸

Under our current rules, issuers are permitted or required to provide specified information in interactive data format only as described above. We

²¹⁴ Electronic Filing and Revision of Form D, Release No. 33–8891 (Feb. 6, 2008) [73 FR 10592].

²¹⁵ 15 U.S.C. 78p(a).

²¹⁶ See EDGAR Ownership XML Technical Specification (Version 3), available at <http://www.sec.gov/info/edgar/ownershipxmltechspec.htm>.

²¹⁷ Mandated Electronic Filing and Web Site Posting for Forms 3, 4 and 5, Release No. 33–8230 (May 7, 2003) [68 FR 25788].

²¹⁸ We anticipate that any interactive data format version of the information permitted or required would not replace the traditional format version, at least not initially. In general, interactive data currently is machine-readable only. Without the use of software, interactive data is illegible to the human eye. As a result, we expect that any interactive data would be provided in a separate schedule or exhibit. It is possible, however, that at some point in the future technology will evolve in a manner that would permit human-readable text and interactive data to appear in the same document.

have, however, previously considered, and sought comment on, permitting or requiring interactive data for other types of information in XBRL or another format.²¹⁹ Most recently, in the 2008 release proposing the required filing of financial statements in XBRL format,²²⁰ we expanded upon our 2006 request for comment on making executive compensation information available in interactive data format.²²¹ In the 2008 release, we did not propose permitting or requiring interactive data for executive compensation, but asked a series of questions related to whether we should. As noted in the 2009 release adopting the financial statement XBRL requirements, some commentators supported the idea of eventually tagging non-financial statement information such as executive compensation because of its usefulness to investors,²²² while others expressed concern that variations among issuers in executive compensation practices may not lend themselves to the development of standard tags and suggested that any tagging be voluntary rather than required.²²³

In connection with our efforts to improve communication in the proxy context, we are interested in receiving views on whether we should reconsider whether to permit or require proxy statement and voting information to be provided in interactive data format.²²⁴

²¹⁹ With regard to format, we solicited comment in our 2004 interactive data concept release regarding the ability of interactive data to add value to Commission filings, whether in XBRL or another interactive data format. Enhancing Commission Filings Through the Use of Tagged Data, Release No. 33–8497 (Sept. 27, 2004) [69 FR 59111].

²²⁰ Interactive Data to Improve Financial Reporting, Release No. 33–8924 (May 30, 2008) [73 FR 32794].

²²¹ Executive Compensation and Related Party Disclosure, Release No. 33–8655 (Jan. 27, 2006) [71 FR 6542]. In 2007, as further discussed below, our staff used XBRL to tag Summary Compensation Table data provided by large filers and created rendering software that enabled investors to not only view compensation information but also manually calculate compensation and compare compensation across companies. The software was called the Executive Compensation Reader. We made these efforts to show how interactive data might provide investors with easier and faster analysis. SEC Press Release 2007–268 (Dec. 21, 2007).

²²² See, e.g., comment letter to Release No. 33–9002, note 206, above, from California Public Employees’ Retirement System.

²²³ See, e.g., comment letters to Release 33–9002, note 206, above, from American Bar Association, Johnson & Johnson, Pfizer, General Mills, and Society of Corporate Secretaries and Governance Professionals.

²²⁴ Our solicitation of comment regarding providing proxy statement and voting information in interactive data format is consistent with the Resolution on Tag Data for Proxy and Vote Filings adopted by the Securities and Exchange Commission Investor Advisory Committee. See

3. Request for Comment

- Should we permit issuers, including funds, to provide proxy statement and voting information to the Commission and on their corporate Web sites, if any, in an interactive data format? If so, are there benefits to one tagging language (e.g., XBRL) over another?²²⁵ Should we require issuers to provide such information to the Commission and on their corporate Web sites, if any, in an interactive data format? Should we also permit or require the tagging of executive compensation information even if it is not in the proxy statement, but rather, in the annual report on Form 10-K?²²⁶
- Are there any other types of information for which we should permit or require tagging in order to improve the efficiency and quality of proxy voting? For example, should we permit or require tagging of information contained in proxy statements filed by non-management parties?
- If we permit or require interactive data for the information contained in a proxy statement, should we permit or require it for only a subset of that information, such as executive compensation,²²⁷ director experience²²⁸ and other directorships,²²⁹ transactions with related persons,²³⁰ or corporate

<http://www.sec.gov/spotlight/invadvcmm/iacproposedresproxyvotingtrans.pdf>.

²²⁵ Currently, there apparently is no standard set of XBRL definitions, or "taxonomy," available to enable an issuer to provide proxy statement and voting information or any subset of such information in XBRL format. XBRL US, however, is developing a taxonomy for at least some information a proxy statement requires. See <http://xbrl.us/Learn/Pages/Initiatives.aspx> ("Broadridge Financial Solutions contributed a proxy taxonomy to XBRL US in Q4 2008. XBRL US will incorporate the taxonomy into a master digital dictionary of terms.")

²²⁶ 17 CFR 249.310.

²²⁷ As we noted in Release No. 33-8924, note 220, above, there was substantial interest in financial Web pages that linked to the Executive Compensation Reader that temporarily was posted on our Web site beginning in late 2007. The Executive Compensation Reader displayed the Summary Compensation Table disclosure of 500 large companies that followed the executive compensation rules adopted in 2006 in reporting 2006 compensation information in their proxy statements filed with the Commission. By using the reader, an investor could view amounts included in the Summary Compensation Table Stock Awards and Option Awards columns based on either the full grant date fair value of the awards granted during the fiscal year, or the compensation cost of awards recognized for financial statement reporting purposes with respect to the fiscal year, and recalculate the Total Compensation column accordingly.

²²⁸ Item 401(e)(1) of Regulation S-K [17 CFR 229.401(e)(1)].

²²⁹ Item 401(e)(2) of Regulation S-K [17 CFR 229.401(e)(2)].

²³⁰ Item 404(a) of Regulation S-K [17 CFR 229.404(a)].

governance?²³¹ Should we permit or require it for only a subset of executive compensation information, such as the Summary Compensation Table,²³² Director Compensation Table,²³³ Outstanding Equity Awards at Fiscal Year-End Table,²³⁴ or Compensation Discussion and Analysis?²³⁵

- Would it be useful to investors for issuers to provide their proxy statement and voting information, or some subset of that information, in interactive data format? If so, would it be useful for issuers to provide the information both to the Commission and on their corporate Web sites, if any? Would data-tagging enable investors to access proxy information more easily or to compare information regarding different issuers and/or changes in information over time with respect to a specific issuer or a set of issuers? Would this ability result in better informed voting decisions? For instance, should officer and director identities be tagged and linked to their unique Commission Central Index Key (CIK) identifier, which would enable investors to more easily determine whether they have relationships with other Commission filers? Would investors benefit if governance attributes, such as board leadership structure²³⁶ and director independence, were tagged?²³⁷

- Would requiring issuers to provide proxy statements and voting information in interactive data format assist issuers in automating their business information processing?

- Approximately how much would it cost issuers to provide each of the following in interactive data format:

- All information contained in a proxy statement;
- Executive compensation information only; and
- Voting information disclosed pursuant to Item 5.07 of Form 8-K or Form N-PX?

- With respect to cost, would it be preferable to defer any requirement to tag proxy-related materials until the issuer has been fully phased-in to the financial statement interactive data requirements, or would it be relatively easy to accomplish the tagging of proxy-related materials before, or at the same

²³¹ Item 407 of Regulation S-K [17 CFR 229.407].

²³² Items 402(c) and 402(n) of Regulation S-K [17 CFR 229.402(c) and 402(n)].

²³³ Items 402(k) and 402(r) of Regulation S-K [17 CFR 229.402(k) and 402(r)].

²³⁴ Items 402(f) and 402(p) of Regulation S-K [17 CFR 229.402(f) and 402(p)].

²³⁵ Item 402(b) of Regulation S-K [17 CFR 229.402(b)].

²³⁶ Item 407(h) of Regulation S-K [17 CFR 229.407(h)].

²³⁷ Item 407(a) of Regulation S-K [17 CFR 229.407(a)].

time as, becoming subject to the financial statement requirements?

- Is it feasible for funds to tag Form N-PX in a manner that provides for uniform identification of each matter voted (e.g., for every fund to assign the same tag to the election of directors at XYZ Corporation) if issuers of portfolio securities do not themselves create these tags by tagging their proxy statements? What alternatives exist, other than having issuers of portfolio securities tag their proxy statements and assign tags to each matter on their proxy statements, that could result in uniform tags being assigned by all funds on Form N-PX to each corporate matter? What would be the costs associated with those alternatives?

- Whether or not we permit or require interactive data tagging, should Form N-PX require standardized reporting formats so that comparisons between funds are easier?

- Should persons other than the issuer be required to file proxy materials in interactive data format?

- How will retail investors have access to interactive data/XBRL software that will enable them to take advantage of interactive data formats?

V. Relationship Between Voting Power and Economic Interest

As discussed below, investor and issuer confidence in the legitimacy of shareholder voting may be based on the belief that, except as expressly agreed otherwise, shareholders entitled to vote in the election of directors and other matters have a residual economic (or equity) interest in the company that is commensurate with their voting rights. To the extent that votes are cast by persons lacking such an economic interest in the company, confidence in the proxy system could be undermined. This section examines the possibility of misalignment of voting power in general and three areas in which concerns have been expressed about whether our regulations play a role in the misalignment of voting power from economic interest: The increasingly important role of proxy advisory firms; the impediments in our rules to allowing issuers to set voting record dates that more closely match the date on which voting actually occurs; and hedging and other strategies that allow the voting rights of equity securities to be held or controlled by persons without an equivalent economic interest in the company.

A. Proxy Advisory Firms

1. The Role and Legal Status of Proxy Advisory Firms

Over the last twenty-five years, institutional investors, including investment advisers, pension plans, employee benefit plans, bank trust departments and funds, have substantially increased their use of proxy advisory firms, reflecting the tremendous growth in institutional investment as well as the fact that, in many cases, institutional investors have fiduciary obligations to vote the shares they hold on behalf of their beneficiaries.²³⁸ Institutional investors typically own securities positions in a large number of issuers.

Every year, at shareholders' meetings, these investors face decisions on how to vote their shares on a significant number of matters, ranging from the election of directors and the approval of stock option plans to shareholder proposals submitted under Exchange Act Rule 14a-8,²³⁹ which often raise significant policy questions and corporate governance issues. At special meetings of shareholders, investors also face voting decisions when a merger or acquisition or a sale of all or substantially all of the assets of the company is presented to them for approval.

In order to assist them in exercising their voting rights on matters presented to shareholders, institutional investors may retain proxy advisory firms to perform a variety of functions, including the following:

- Analyzing and making voting recommendations on the matters presented for shareholder vote and included in the issuers' proxy statements;
- Executing votes on the institutional investors' proxies or VIFs in accordance with the investors' instructions, which may include voting the shares in accordance with a customized proxy voting policy resulting from consultation between the institutional investor and the proxy advisory firm,

²³⁸ See, e.g., GAO Report to Congress, *Corporate Shareholder Meetings—Issues Relating to Firms That Advise Institutional Investors on Proxy Voting* (June 2007) (“GAO Report”) at 6–7 (attributing the growth in the use of proxy voting advisers, in part, to the Commission's recognition of fiduciary obligations associated with voting proxies by registered investment advisers and its adoption of the proxy voting Advisers Act Rule 206(4)–6 (17 CFR 275.206(4)–6), requiring registered investment advisers to “adopt and implement written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients”).

²³⁹ 17 CFR 240.14a–8.

the proxy advisory firm's proxy voting policies, or the institution's own voting policy;

- Assisting with the administrative tasks associated with voting and keeping track of the large number of voting decisions;
- Providing research and identifying potential risk factors related to corporate governance; and
- Helping mitigate conflict of interest concerns raised when the institutional investor is casting votes in a matter in which its interest may differ from the interest of its clients.²⁴⁰

Firms that are in the business of supplying these services to clients for compensation—in particular, analysis of and recommendations for voting on matters presented for a shareholder vote—are widely known as proxy advisory firms.²⁴¹ Institutional clients compensate proxy advisory firms on a fee basis for providing such services, and proxy advisory firms typically represent that their analysis and recommendations are prepared with a view toward maximizing long-term share value or the investment goals of the institutional client.

Issuers may also be consumers of the services provided by some proxy advisory firms. Some proxy advisory firms provide consulting services to issuers on corporate governance or executive compensation matters, such as assistance in developing proposals to be submitted for shareholder approval. Some proxy advisory firms also qualitatively rate or score issuers' corporate governance structures, policies, and practices,²⁴² and provide consulting services to corporate clients seeking to improve their corporate governance ratings. As a result, some proxy advisory firms provide vote recommendations to institutional investors on matters for which they also provided consulting services to the issuer. Some proxy advisory firms disclose these dual client relationships; others also have opted to attempt to address the conflict through the creation

²⁴⁰ See *Proxy Voting by Investment Advisers*, Release No. IA–2106 (Jan. 31, 2003) at text accompanying note 25 (stating that an adviser could demonstrate that the vote was not a product of a conflict of interest if it voted client securities, in accordance with a pre-determined policy, based upon the recommendations of an independent third party).

²⁴¹ E.g., GAO Report, note 238, above, at 1.

²⁴² For example, The RiskMetrics Group (“RiskMetrics”) publishes “governance risk indicators.” Information on these ratings is available at <http://www.riskmetrics.com/GRIId-info>. Proxy advisory firms are not the only types of businesses that offer corporate governance ratings or scores.

of “fire walls” between the investor and corporate lines of business.

Depending on their activities, proxy advisory firms may be subject to the federal securities laws in at least two notable respects. First, because of the breadth of the definition of “solicitation,”²⁴³ proxy advisory firms may be subject to our proxy rules because they provide recommendations that are reasonably calculated to result in the procurement, withholding, or revocation of a proxy. As a general matter, the furnishing of proxy voting advice constitutes a “solicitation” subject to the information and filing requirements in the proxy rules.²⁴⁴ In 1979, however, we adopted Exchange Act Rule 14a-2(b)(3)²⁴⁵ to exempt the furnishing of proxy voting advice by any advisor to any other person with whom the advisor has a business relationship from the informational and filing requirements of the federal proxy rules, provided certain conditions are met.²⁴⁶ Specifically, the advisor:

- Must render financial advice in the ordinary course of its business;
- Must disclose to the person any significant relationship it has with the issuer or any of its affiliates, or with a shareholder proponent of the matter on which advice is given, in addition to any material interest of the advisor in the matter to which the advice relates;
- May not receive any special commission or remuneration for furnishing the proxy voting advice from anyone other than the recipients of the advice; and
- May not furnish proxy voting advice on behalf of any person soliciting proxies.

Even if exempt from the informational and filing requirements of the federal

²⁴³ Exchange Act Rule 14a-1(I)(iii) [17 CFR 240.14a-1(I)(iii)] defines the solicitation of proxies to include “[t]he furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.”

²⁴⁴ See *Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally*, Release No. 34–16104 (Aug. 13, 1979) at note 25. Of course, the issue of whether or not a particular communication constitutes a solicitation depends both upon the specific nature and content of the communication and the circumstances under which it is transmitted. See *Broker-Dealer Participation in Proxy Solicitations*, Release No. 34–7208 (Jan. 7, 1964).

²⁴⁵ 17 CFR 240.14a-2(b)(3).

²⁴⁶ See *Shareholder Communications and Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally*, Release No. 34–16356 (Nov. 21, 1979) [44 FR 68769]. In 1992, the Commission confirmed that the Rule 14a-2(b)(3) exemption is available to proxy advisory firms that render only proxy voting advice. See *Regulation of Communications Among Shareholders*, Release No. 34–31326 (Oct. 16, 1992) [57 FR 48276], at note 41.

proxy rules, the furnishing of proxy voting advice remains subject to the prohibition on false and misleading statements in Rule 14a-9.²⁴⁷

Second, when proxy advisory firms provide certain services, they meet the definition of investment adviser under the Advisers Act and thus are subject to regulation under that Act. A person is an "investment adviser" if the person, for compensation, engages in the business of providing advice to others as to the value of securities, whether to invest in, purchase, or sell securities, or issues reports or analyses concerning securities.²⁴⁸ As described above, proxy advisory firms receive compensation for providing voting recommendations and analysis on matters submitted for a vote at shareholder meetings. These matters may include shareholder proposals, elections for boards of directors, or corporate actions such as mergers. We understand that typically proxy advisory firms represent that they provide their clients with advice designed to enable institutional clients to maximize the value of their investments. In other words, proxy advisory firms provide analyses of shareholder proposals, director candidacies or corporate actions and provide advice concerning particular votes in a manner that is intended to assist their institutional clients in achieving their investment goals with respect to the voting securities they hold. In that way, proxy advisory firms meet the definition of investment adviser because they, for compensation, engage in the business of issuing reports or analyses concerning securities and providing advice to others as to the value of securities.

The Supreme Court has construed Section 206 of the Advisers Act as establishing a federal fiduciary standard governing the conduct of investment advisers.²⁴⁹ The Court stated that "[t]he Advisers Act of 1940 reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which

was not disinterested."²⁵⁰ As investment advisers, proxy advisory firms owe fiduciary duties to their advisory clients.

In addition, Section 206 of the Advisers Act,²⁵¹ the antifraud provision, applies to any person that meets the definition of investment adviser, regardless of whether that person is registered with the Commission. Section 206(1) of the Advisers Act prohibits an investment adviser from "employ[ing] any device, scheme, or artifice to defraud any client or prospective client."²⁵² Section 206(2) prohibits an investment adviser from engaging in "any transaction, practice or course of business which operates as a fraud or deceit on any client or prospective client."²⁵³ As we stated recently, the Commission has authority under Section 206(4) of the Advisers Act to adopt rules "reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive or manipulative."²⁵⁴ Congress gave the Commission this authority to, among other things, address the "question as to the scope of the fraudulent and deceptive activities which are prohibited [by Section 206],"²⁵⁵ and thereby permit the

²⁵⁰ *Capital Gains*, 375 U.S. at 191–192.

²⁵¹ 15 U.S.C. 80b-6.

²⁵² 15 U.S.C. 80b-6(1).

²⁵³ 15 U.S.C. 80b-6(2).

²⁵⁴ Political Contributions by Certain Investment Advisers, Advisers Act Release No. 3043 (July 1, 2010) at 16, *citing* 15 U.S.C. 80b-6(4). Section 206(4) was added to the Advisers Act in Pub. L. No. 86-750, 74 Stat. 885, at sec. 9 (1960).

²⁵⁵ See H.R. REP. NO. 2197, 86th Cong., 2d Sess., at 7–8 (1960) (stating that "[b]ecause of the general language of section 206 and the absence of express rulemaking power in that section, there has always been a question as to the scope of the fraudulent and deceptive activities which are prohibited and the extent to which the Commission is limited in this area by common law concepts of fraud and deceit * * * [Section 206(4)] would empower the Commission, by rules and regulations to define, and prescribe means reasonably designed to prevent, acts, practices, and courses of business which are fraudulent, deceptive, or manipulative. This is comparable to Section 15(c)(2) of the Securities Exchange Act [15 U.S.C. 78o(c)(2)] which applies to brokers and dealers."). See also S. REP. NO. 1760, 86th Cong., 2d Sess., at 8 (1960) ("This [section 206(4)] language is almost the identical wording of section 15(c)(2) of the Securities Exchange Act of 1934 in regard to brokers and dealers."). The Supreme Court, in *United States v. O'Hagan*, interpreted nearly identical language in section 14(e) of the Securities Exchange Act [15 U.S.C. 78n(e)] as providing the Commission with authority to adopt rules that are "definitional and prophylactic" and that may prohibit acts that are "not themselves fraudulent * * * if the prohibition is 'reasonably designed to prevent * * * acts and practices [that] are fraudulent.'" *United States v. O'Hagan*, 521 U.S. 642, 667, 673 (1997). The wording of the rulemaking authority in section 206(4) remains substantially similar to that of section 14(e) and section 15(c)(2) of the Securities Exchange Act. See also Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles,

Commission to adopt prophylactic²⁵⁶ rules that may prohibit acts that are not themselves fraudulent.²⁵⁷

Proxy advisory firms also may have to register with the Commission as investment advisers. Whether a particular investment adviser is required to register with the Commission depends on several factors. Investment advisers are generally prohibited from registering with the Commission if they have less than \$25 million in assets under management.²⁵⁸ Congress established this threshold in 1996 to bifurcate regulatory responsibility between the Commission and the states.²⁵⁹ The Commission retains authority to exempt advisers from the prohibition on registration if the prohibition would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes" of the prohibition.²⁶⁰

Proxy advisory firms are unlikely to have sufficient assets under management to register with the Commission because they typically do not manage client assets.²⁶¹ Proxy advisory firms may nonetheless be eligible to register because they qualify for one of the exemptions from the registration prohibition under Rule 203A-2 under the Advisers Act. In particular, some proxy advisory firms

Advisers Act Release No. 2628 (Aug. 3, 2007) [72 FR 44756] (stating, in connection with the suggestion by commenters that section 206(4) provides us authority only to adopt prophylactic rules that explicitly identify conduct that would be fraudulent under a particular rule, "We believe our authority is broader. We do not believe that the commenters' suggested approach would be consistent with the purposes of the Advisers Act or the protection of investors.").

²⁵⁶ S. REP. NO. 1760, note 255, above, at 4, 8. The Commission has used this authority to adopt eight rules that address abusive advertising practices, custodial arrangements, the use of solicitors, required disclosures regarding advisers' financial conditions and disciplinary histories, prohibition against political contributions by certain investment advisers ("pay to play"), proxy voting, compliance procedures and practices, and deterring fraud with respect to pooled investment vehicles. 17 CFR 275.206(4)-1; 275.206(4)-2; 275.206(4)-3; 275.206(4)-4; 275.206(4)-5; 275.206(4)-6; 275.206(4)-7; and 275.206(4)-8.

²⁵⁷ See H.R. REP. NO. 2197, note 255, above.

²⁵⁸ Advisers Act Section 203A [15 USC 80b-3(a)]. If such an adviser is an adviser to an investment company registered under the Investment Company Act, however, it must register with the Commission. See *id.*

²⁵⁹ National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, 110 Stat. 3416 (codified as amended in scattered sections of the United States Code).

²⁶⁰ Advisers Act Section 203A(c) [15 U.S.C. 80b-3(c)].

²⁶¹ For the purpose of calculating assets under management, an adviser must look to those securities portfolios for which it provides "continuous and regular supervisory or management services." See Instruction 5 to Item 5F of Form ADV [17 CFR 279.1].

²⁴⁷ 17 CFR 240.14a-9.

²⁴⁸ Advisers Act Section 202(a)(11) [15 U.S.C. 80b-2(a)(11)]. Sections 202(a)(11)(A) through (G) of the Advisers Act address exclusions to the definition of the term "investment adviser." [15 U.S.C. 80b-2(a)(11)(A)-(G)].

²⁴⁹ *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 17 (1979); *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191–192 (1963).

may be able to rely on the exemption for “pension consultants”²⁶² if they have pension plan clients with an aggregate minimum value of \$50 million.²⁶³

Proxy advisory firms that are registered as investment advisers with the Commission are subject to a number of additional regulatory requirements that provide important protections to the firm’s clients. For example, registered investment advisers have to make certain disclosures on their Form ADV.²⁶⁴ Among other things, these disclosures include information about arrangements that the adviser has that involve certain conflicts of interest with its advisory client.²⁶⁵ In addition, proxy advisory firms that are registered investment advisers are required to adopt, implement, and annually review an internal compliance program consisting of written policies and procedures that are reasonably designed to prevent the adviser or its supervised persons from violating the Advisers Act.²⁶⁶ Every registered proxy advisory firm that is registered as an investment adviser also must designate a chief compliance officer to oversee its compliance program. This compliance officer must be knowledgeable about the Advisers Act and have authority to develop and enforce appropriate

compliance policies and procedures for the adviser.²⁶⁷ A proxy advisory firm that is registered as an investment adviser also is required to establish, maintain, and enforce policies and procedures reasonably designed to prevent the misuse of material non-public information.²⁶⁸ Proxy advisory firms that are registered as investment advisers also are required to create and preserve certain records that our examiners review when performing an inspection of an adviser.²⁶⁹

2. Concerns About the Role of Proxy Advisory Firms

The use of proxy advisory firms by institutional investors raises a number of potential issues. For example, to the extent that conflicts of interest on the part of proxy advisory firms are insufficiently disclosed and managed, shareholders could be misled and informed shareholder voting could be impaired. To the extent that proxy advisory firms develop, disseminate, and implement their voting recommendations without adequate accountability for informational accuracy in the development and application of voting standards, informed shareholder voting may be likewise impaired. Furthermore, some have argued that proxy advisory firms are controlling or significantly influencing shareholder voting without appropriate oversight, and without having an actual economic stake in the issuer.²⁷⁰ In evaluating any potential regulatory response to such issues, we are interested in learning commentators’ views regarding appropriate means of addressing these issues, including the application of the proxy solicitation rules and Advisers Act registration provisions to proxy advisory firms. We are also interested in learning commentators’ views as to whether these issues are affected—and if so, how—by the fact that there is one dominant proxy advisory firm in the marketplace, Institutional Shareholder Services (“ISS”),²⁷¹ whose long-standing

position, according to the Government Accountability Office, “has been cited by industry analysts as a barrier to competition.”²⁷²

In order to address these issues, which we describe in additional detail below, we would like to receive views about the role that proxy advisory firms play in the proxy voting process, which could, for instance, assist in determining whether additional regulatory requirements might be appropriate, such as the extent to which oversight of proxy advisory firms registered as investment advisers might be improved. Below we outline the two principal areas of concern about the proxy advisory industry that have come to our attention.

a. Conflicts of Interest

Perhaps the most frequently raised concern about the proxy advisory industry relates to conflicts of interest.²⁷³ The Government Accountability Office has issued two reports since 2004 examining conflicts of interest in proxy voting by institutional investors.²⁷⁴ The GAO Report issued in 2007 addressed, among other things, conflicts of interest that may exist for proxy advisory firms, institutional investors’ use of the firms’ services and the firms’ potential influence on proxy vote outcomes, as well as the steps that the Commission has taken to oversee these firms.²⁷⁵ The GAO Report noted that the most commonly cited conflict of interest for proxy advisory firms is when they provide both proxy voting recommendations to investment advisers and other institutional investors and consulting services to corporations seeking assistance with proposals to be presented to

difficult for competitors to attract clients and compete in the market”). As of June 2007, ISS’s client base included an estimate of 1,700 institutional investors, more than the other four major firms combined. Id. ISS was acquired by RiskMetrics in January 2007, which in turn was acquired on June 1, 2010 by MSCI, Inc. See “MSCI Completes Acquisition of RiskMetrics,” (June 1, 2010), available at http://www.riskmetrics.com/news_releases/20100601_msci.

²⁷² GAO Report, note 238, above, at 2.

²⁷³ See generally Thompson-Mann Policy Briefing, note 89, above, at 8; GAO Report, note 238, above.

²⁷⁴ GAO Report, note 238, above. The GAO issued an earlier report in 2004 that described, among other things, conflicts of interest in the proxy voting system with respect to pension plans and actions taken to manage them by plan fiduciaries. See GAO, Pension Plans: Additional Transparency and Other Actions Needed in Connection with Proxy Voting (Aug. 10, 2004), available at <http://www.gao.gov/new.items/d04749.pdf>.

²⁷⁵ GAO Report, note 238, above. That report noted that the Commission had not identified any major violations in its examinations of such firms that were registered as investment advisers.

²⁶² Advisers Act Rule 203A-2(b) [17 CFR 275.203A-2(b)] provides that “[a]n investment adviser is a pension consultant * * * if the investment adviser provides investment advice to: Any employee benefit plan described in Section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) [29 U.S.C. 1002(3)]; Any governmental plan described in Section 3(32) of ERISA (29 U.S.C. 1002(32)); or Any church plan described in Section 3(33) of ERISA (29 U.S.C. 1002(33)).”

²⁶³ See *id.* A number of proxy advisory firms are currently registered with the Commission under the pension consultant exemption.

²⁶⁴ See Advisers Act Rule 203-1 [17 CFR 275.203-1]. Form ADV consists of two parts. The information provided by advisers in Part I of that form provides the Commission with census-like information on investment adviser registrants and is critical to the examination program in assessing risk and planning examinations. It also requires investment advisers to report disciplinary events of the adviser and its employees. See Advisers Act Rule 204-1 [17 CFR 275.204-1].

²⁶⁵ Part II of Form ADV, or a brochure containing the information in the Form, is required to be delivered to advisory clients or prospective clients by Rule 204-3 under the Advisers Act [17 CFR 275.204-3]. In addition to the disclosure of certain conflicts of interest, Part II contains information including the adviser’s fee schedule and the educational and business background of management and key advisory personnel of the adviser. Part II is currently not submitted to the SEC but must be kept by advisers in their files and made available to the SEC upon request and is “considered filed.” See Advisers Act Rule 204-1(c) [17 CFR 275.204-1(c)]. Form ADV must be updated at least annually or when there are material changes. See Advisers Act Rule 204-1 [17 CFR 275.204-1].

²⁶⁶ Advisers Act Rule 206(4)-7 [17 CFR 275.206(4)-7].

²⁶⁷ Advisers Act Rule 206(4)-7(c) [17 CFR 275.206(4)-7(c)].

²⁶⁸ Section 204A of the Advisers Act [15 U.S.C. 80b-4a].

²⁶⁹ Advisers Act Rule 204-2 [17 CFR 275.204-2].

²⁷⁰ See comment letters to Release No. 33-9046, note 7, above, from The Business Roundtable and IBM. It has been suggested, for example, that some issuers have adopted corporate governance practices simply to meet a proxy advisory firm’s standards, even though they may not see the value of doing so. See GAO Report, note 238, above, at 10.

²⁷¹ See GAO Report, note 238, above, at 13 (stating that, “[a]s the dominant proxy advisory firm, ISS has gained a reputation with institutional investors for providing reliable, comprehensive proxy research and recommendations, making it

shareholders or with improving their corporate governance ratings.²⁷⁶

In particular, this conflict of interest arises if a proxy advisory firm provides voting recommendations on matters put to a shareholder vote while also offering consulting services to the issuer or a proponent of a shareholder proposal on the very same matter.²⁷⁷ The issuer in this situation may purchase consulting services from the proxy advisory firm in an effort to garner the firm's support for the issuer when the voting recommendations are made.²⁷⁸ Similarly, a proponent may engage the proxy advisory firm for advice on voting recommendations in an effort to garner the firm's support for its shareholder proposals. The GAO Report also noted that the firm might recommend a vote in favor of a client's shareholder proposal in order to keep the client's business.

A conflict also arises when a proxy advisory firm provides corporate governance ratings on issuers to institutional clients, while also offering consulting services to corporate clients so that those issuers can improve their corporate governance ranking.²⁷⁹ The GAO Report also described the potential for conflicts of interest when owners or executives of the proxy advisory firm have significant ownership interests in, or serve on the board of directors of, issuers with matters being put to a shareholder vote on which the proxy advisory firm is offering vote recommendations. In such cases, institutional investors told the GAO that some proxy advisory firms would not offer vote recommendations to avoid the appearance of a conflict of interest.

²⁷⁶ In its report, GAO described the business model of ISS as containing this particular conflict and noted that the proxy advisory firm took steps to manage the conflict by disclosing the relationships it had with corporate governance clients and implementing policies and procedures to separate its consulting services from proxy voting services. See GAO Report, note 238, above, at 10–11. These potential conflicts of interest of proxy advisory firms are not limited to the United States. See OECD Survey, note 90, above (expressing concern about the integrity of financial intermediaries and the need for more concrete rules).

²⁷⁷ See GAO Report, note 238, above. Not all proxy advisory firms provide both types of services; some proxy advisory firms differentiate their services by not providing consulting services to corporations. See <http://www.ejproxy.com/about.aspx>; <http://www.glasslewis.com/solutions/proxypaper.php>; and www.marcoconsulting.com/2.3.html.

²⁷⁸ See Thompson-Mann Policy Briefing, note 89, above, at 9. See also comment letter to Proxy Disclosure and Solicitation Enhancements, Release No. 33–9052 (July 10, 2009) [74 FR 35076], from Pearl Meyer and Partners, at 12.

²⁷⁹ See Paul Rose, *The Corporate Governance Industry*, 32 Iowa J. Corp. L. 887, 903 (2007).

It is our understanding that at least one proxy advisory firm provides a generic disclosure of such conflicts of interest by stating that the proxy advisory firm “may” have a consulting relationship with the issuer, without affirmatively stating whether the proxy advisory firm has or had a relationship with a specific issuer or the nature of any such relationship. Some have argued that this type of general disclosure is insufficient, even if the proxy advisory firm has confidentiality walls between its corporate consulting and proxy research departments.²⁸⁰

b. Lack of Accuracy and Transparency in Formulating Voting Recommendations

Some commentators have expressed the concern that voting recommendations by proxy advisory firms may be made based on materially inaccurate or incomplete data, or that the analysis provided to an institutional client may be materially inaccurate or incomplete.²⁸¹ To the extent that a voting recommendation is based on flawed data or analysis, issuers have expressed a desire for a process to correct the mistake. We understand, however, that proxy advisory firms may be unwilling, as a matter of policy, to accept any attempted communication from the issuer or to reconsider recommendations in light of such communications. Even if a proxy advisory firm entertains comment from the issuer and amends its recommendation, votes may have already been cast based on the prior recommendation. Accordingly, some issuers have expressed a desire to be involved in reviewing a draft of the proxy advisory firm's report, if only for the limited purpose of ensuring that the voting recommendations are based on accurate issuer data. Some proxy advisory firms have claimed that they are willing to discuss matters with issuers, but that some issuers are unwilling to enter into such discussions.

There also is a concern that proxy advisory firms may base their recommendation on one-size-fits-all

²⁸⁰ See generally comment letter to Release No. 33–9052, note 278, above, from Oppenheimer Funds.

²⁸¹ See, e.g., White Paper on RiskMetrics Report on Target Corporation, available at http://tgtfiles.target.com/empl/pdfs/RMG_Analysis.pdf (identifying asserted inaccurate or misleading statements or assessments in RiskMetrics' report on the 2009 proxy contest involving Target Corporation); Matthew Greco, “New, New Ranking of the Shareholder Friendly, Unfriendly,” Securities Data Publishing, May 13, 1996.

governance approach.²⁸² As a result, a policy that would benefit some issuers, but that is less suitable for other issuers, might not receive a positive recommendation, making it less likely to be approved by shareholders.

Rule 14a–2(b)(3)'s exemption of proxy advisory firms does not mandate that a firm relying on the exemption have specific procedures in place to ensure that its research or analysis is materially accurate or complete prior to recommending a vote.²⁸³ While voting advice by firms relying on the Rule 14a–2(b)(3) exemption remains subject to the antifraud provisions of the proxy rules contained in Rule 14a–9²⁸⁴—and those antifraud provisions should deter the rendering of voting advice that is misleading or inaccurate—it is our understanding that certain participants in the proxy process believe that additional oversight mechanisms could improve the likelihood that voting recommendations are based on materially accurate and complete information. In addition, as a fiduciary, the proxy advisory firm has a duty of care requiring it to make a reasonable investigation to determine that it is not basing its recommendations on materially inaccurate or incomplete information.

3. Potential Regulatory Responses

a. Potential Solutions Addressing Conflicts of Interest

Revising or providing interpretive guidance on the proxy rule exemption in Exchange Act Rule 14a–2(b)(3)²⁸⁵ could be one potential solution to the concerns regarding a proxy advisory firm's disclosures about conflicts of interest. Exchange Act Rule 14a–2(b)(3)(ii) requires that a person furnishing proxy voting advice to another person must disclose to its client “any significant relationship” it has with the issuer, its affiliates, or a shareholder proponent of the matter on which advice is given. It appears that some proxy advisory firms currently provide disclosure limited to the fact that the firm “may” provide consulting

²⁸² The concern regarding a potential one-size-fits-all approach to proxy advice is not limited to U.S. proxy participants. The OECD also has expressed concern that there is a danger of one-size-fits-all voting advice (e.g., applicable to compensation and a box-ticking approach by shareholders minimizing analysis and responsibilities of shareholders) so that a competitive market for advice needs to be encouraged. See OECD, *Corporate Governance and the Financial Crisis: Key Findings and Main Messages* (June 2009), available at <http://www.oecd.org/dataoecd/3/10/43056196.pdf>.

²⁸³ 17 CFR 240.14a–2(b)(3).

²⁸⁴ 17 CFR 240.14a–9.

²⁸⁵ 17 CFR 240.14a–2(b)(3).

or other advisory services to issuers. However, we believe that such disclosure should be examined further to determine whether it adequately indicates to shareholders the existence of a potential conflict with respect to any particular proposal. Therefore, we are interested in receiving views on whether this rule should be revised or whether we should provide additional guidance regarding the requirements of this rule. Specifically, we could revise the rule to require more specific disclosure regarding the presence of a potential conflict.

Alternatively, or in addition, we seek comment on whether proxy advisory firms operate the kind of national business or have an impact on the securities markets that Advisers Act Section 203A(c)²⁸⁶ was designed to address, and whether, as a result, we should establish an additional exemption from the prohibition on federal registration for proxy advisory firms to register with the Commission as investment advisers. We could also provide additional guidance, if necessary, on the fiduciary duty of proxy advisors who are investment advisers to deal fairly with clients and prospective clients, and to disclose fully any material conflict of interest. We also could provide guidance or propose a rule requiring specific disclosure by proxy advisory firms that are registered as investment advisers regarding their conflicts of interest, including, for example, on Form ADV.

Finally, in light of the similarity between the proxy advisory relationship and the “subscriber-paid” model for credit ratings, we could consider whether additional regulations similar to those addressing conflicts of interest on the part of Nationally Recognized Statistical Rating Organizations (“NRSROs”)²⁸⁷ would be useful

²⁸⁶ 15 U.S.C. 80b–3a(c).

²⁸⁷ NRSROs are credit rating agencies that assess the creditworthiness of obligors as entities or with respect to specific securities or money market instruments and that have elected to be registered with the Commission under Section 15E of the Exchange Act. 15 U.S.C. 78o–7. Sections 15E and 17 of the Exchange Act provide the Commission with exclusive authority to implement registration, recordkeeping, financial reporting, and oversight rules with respect to NRSROs. 15 U.S.C. 78o–7 and 78q.

One commentator has suggested that the Commission’s rules that govern NRSROs may be useful templates for developing a regulatory program addressing conflicts of interest and other issues with respect to the accuracy and transparency of voting recommendations provided by proxy advisory firms. Such rules include provisions that: (i) Require rating actions to be made publicly available on the NRSRO’s Internet Web site [17 CFR 240.17g–2(d)(3)]; (ii) prohibit certain conflicts of interest [17 CFR 240.17g–5(c); Form NRSRO Exhibits 6–7]; (iii) require the

responses to stated concerns about conflicts of interest on the part of proxy advisory firms. For example, such regulations could prohibit certain conflicts of interest and require proxy advisory firms to file periodic disclosures, akin to Form NRSRO, describing any conflicts of interest and procedures to manage them.

b. Potential Solutions Addressing Accuracy and Transparency in Formulating Voting Recommendations

We have identified a number of potential approaches that might address concerns about accuracy or transparency in the formulation of voting recommendations by proxy advisory firms. For example, proxy advisory firms could provide increased disclosure regarding the extent of research involved with a particular recommendation and the extent and/or effectiveness of its controls and procedures in ensuring the accuracy of issuer data. Proxy advisory firms could also disclose policies and procedures for interacting with issuers, informing issuers of recommendations, and handling appeals of recommendations.²⁸⁸ We could also consider requiring proxy advisory firms to file their voting recommendations with us as soliciting material, at least on a delayed basis, to facilitate independent evaluation by market participants of the quality of those recommendations.

3. Request for Comment

As discussed above, we are considering the extent to which the voting recommendations of proxy advisory firms serve the interests of investors in informed proxy voting, and

disclosure and management of certain other conflicts of interest that arise in the normal course of engaging in the business of issuing credit ratings [17 CFR 240.17g–5(b)]; and (iv) require disclosure of, among other things, performance measurement statistics, sources of information, models and metrics used, qualifications and compensation of analysts, and procedures and methodologies used to determine credit ratings, including procedures for (A) interacting with management of rated issuers, (B) informing issuers of rating decisions, and (C) appealing final or pending rating decisions. [Form NRSRO, Exhibits 1, 2, 8 and 13]. We recognize that the role of NRSROs and proxy advisory firms differ and that following a similar regulatory approach might not be appropriate. We also recognize that the costs and benefits of the NRSRO regulation differ from the costs and benefits of potential additional regulation of proxy advisory firms.

²⁸⁸ See, e.g., Thompson-Mann Policy Briefing, note 89, above, at 25 (advocating that a proxy advisory firm should, where feasible and appropriate, prior to issuing or revising a recommendation, advise the issuer of the critical information and principal considerations upon which a recommendation will be based and afford the issuer an opportunity to clarify any likely factual misperceptions).

whether, and if so, how, we should take steps to improve the utility of such recommendations to investors. In particular, we seek comment on whether we should clarify existing regulations or propose additional regulations to address concerns about the existence and disclosure of conflicts of interest on the part of proxy advisory firms, and about the accuracy and transparency of the formulation of their voting recommendations. Accordingly, we seek commentators’ views generally on proxy advisory firms and invite comment on the following questions:

- Do proxy advisory firms perform services for their clients in addition to or different from those noted above?
- Is additional regulation of proxy advisory firms necessary or appropriate for the protection of investors? Why or why not? If so, what are the implications of regulation through the Advisers Act or the proxy solicitation rules under the Exchange Act? Are any other regulatory approaches equally or better suited to provide appropriate additional regulation? Are there regulatory approaches used in connection with NRSROs that may be appropriate to consider applying to proxy advisory firms?
- Are there conflicts of interest (other than those described above) when a proxy advisory firm provides services to both investors, including shareholder proponents, and issuers? If so, are those conflicts appropriately addressed by current laws, regulations, and industry practices?
- Are there conflicts of interest where a proxy advisory firm is itself a publicly held company? If so, what are they and how should they be addressed?
- What policies and procedures, if any, do proxy advisory firms use to ensure that their voting recommendations are independent and not influenced by the fees they receive for services to corporate clients or shareholder proponent clients?
- Is the disclosure that proxy advisory firms currently provide to investor clients regarding conflicts of interest adequate? Would specific disclosure of potential conflicts and conflict of interest policies be sufficient, or is some other form of regulation necessary (e.g., prohibiting such conflicts)?
- Do issuers modify or change their proposals to increase the likelihood of favorable recommendations by a proxy advisory firm?
- Do issuers adopt particular governance standards solely to meet the standards of a proxy advisory firm? If so, why do issuers behave in this manner?

- Should proxy advisory firms be required to disclose publicly their decision models for approval of executive compensation plans? Would this alleviate concerns regarding potential conflicts of interest when issuers pay consulting fees for access to such models?

- What is the competitive structure of the market for proxy advisory firms, and what are the reasons for it? Does competition vary across the types of services provided by the proxy advisory firms or the subset of issuers that they cover? Does the industry's competitive structure affect the quality of the recommendations? If there is, as we understand it, one proxy advisory firm that has a significantly larger market share than other firms,²⁸⁹ does that affect the quality of the recommendations made by that proxy advisory firm or by other proxy advisory firms? Are there any other effects caused by the fact that there is one dominant proxy advisory firm?

- How do institutional investors use the voting recommendations provided by proxy advisory firms? What empirical data exists regarding how, and to what extent, institutional investors vote consistently, or inconsistently, with such recommendations?

- What criteria and processes do proxy advisory firms use to formulate their recommendations and corporate governance ratings? Does the lack of a direct pecuniary interest in the effects of their recommendations on shareholder value affect how they formulate recommendations and corporate governance ratings? Would greater disclosure about how recommendations and corporate governance ratings are generated and how voting recommendations are made affect the quality of the ratings and the recommendations?

- Are existing procedures followed by proxy advisory firms sufficient to ensure that proxy research reports provided to investor clients are materially accurate and complete? If not, how should proxy advisory firms be encouraged to provide investors with the information they need to make informed voting decisions?

- If additional oversight is needed, should it be in the form of regulatory oversight or issuer involvement? Would requiring delayed public disclosure of voting recommendations be an appropriate means to promote accurate voting recommendations?

- Do proxy advisory firms control or significantly influence shareholder

voting without appropriate oversight? If so, is there empirical evidence that demonstrates this control or significant influence? If such proxy advisory firms do control or significantly influence shareholder voting, is that inappropriate, and if so, should the Commission take action to address it? If so, what specific action should the Commission take?

- Are there any proxy advisory firms that cannot rely on an exemption to the prohibition on Advisers Act registration? If so, why do the exemptions not apply to those proxy advisory firms?

- Do proxy advisory firms operate the kind of national business that the Advisers Act Section 203A(c) was designed to address? Should we create an additional exemption from the prohibition on federal registration for proxy advisory firms to register as investment advisers? If so, what standard should we use?

- Do the current regulatory requirements for registered investment advisers adequately address advisers whose business is primarily providing proxy voting services? If we consider new rulemaking in this area, what should the rules address? Should we amend Form ADV to require specific disclosures by registered investment advisers that are proxy advisory firms?

- Do proxy advisory firms maintain an audit trail for votes cast on behalf of clients? Do proxy advisory firms monitor whether votes cast are appropriately counted, and if so, how?

B. Dual Record Dates

1. Background

Under state corporation law, issuers set a record date in advance of a shareholder meeting, and holders of record on the record date are entitled to notice of the meeting and to vote at the meeting. State corporation law also governs how far in advance of the meeting a record date can be—typically, no more than 60 days before the date of the meeting.²⁹⁰ The record date that an issuer selects has implications under the federal securities laws. Our rules require issuers that have a class of securities registered under Section 12 of the Exchange Act and certain investment companies to provide either proxy materials or an information statement to every investor of the class entitled to vote.²⁹¹ Additionally, Rule 14a–13

²⁹⁰ See, e.g., Del. Code Ann. tit. 8, § 213(a); Model Bus. Corp. Act § 7.05.

²⁹¹ Additionally, Section 402.04 of the NYSE Listed Issuer Manual provides that “[a]ctively operating issuers are required to solicit proxies for all meetings of shareholders,” and NASDAQ Listing

requires that if an issuer intends to solicit proxies for an upcoming meeting and knows that its securities are held by securities intermediaries, it generally must make an inquiry of each such securities intermediary at least 20 business days prior to the record date to ascertain the number of copies of sets of proxy materials needed to supply the materials to the beneficial owners.²⁹²

Historically, the same record date has been used for determining both which shareholders are entitled to notice of an upcoming meeting and which shareholders are entitled to vote. However, some states are enacting changes to this procedure. For example, effective August 1, 2009, the Delaware General Corporation Law permits, but does not require, Delaware corporations to use separate record dates for making these two determinations.²⁹³ One important result of this change is that it potentially allows an issuer, by establishing a voting record date close to the meeting date, to decrease the likelihood that as of the meeting date persons entitled to vote at the meeting (*i.e.*, the holders on the voting record date) will no longer have an economic interest in the issuer.²⁹⁴

2. Difficulties in Setting a Voting Record Date Close to a Meeting Date

Although Delaware's amended statute permits a voting record date²⁹⁵ to be as

Rule 5620(b) provides that “[e]ach Issuer that is not a limited partnership shall solicit proxies and provide proxy statements for all meetings of Shareholders.”

²⁹² 17 CFR 240.14a–13. Rule 14c–7 contains a parallel requirement for issuers intending to distribute information statements. 17 CFR 240.14c–7.

²⁹³ Del. Code Ann. tit. 8, § 213(a). Section 213 provides that the record date for determining which shareholders are entitled to notice of a meeting “shall not be more than 60 nor less than 10 days before the date of such meeting,” and that Unless the board determines otherwise, “such date shall also be the record date for determining the stockholders entitled to vote at such meeting.” The August 1, 2009 amendment provides that as an alternative, the board may determine “that a later date on or before the date of the meeting shall be the date for making such determination.” Recently proposed amendments to the Model Business Corporation Act, especially § 7.07(e) of that Act, adopt a similar approach in permitting dual record dates. See Changes in the Model Business Corporation Act—Proposed Amendments to Shareholder Voting Provisions Authorizing Remote Participation in Shareholder Meetings and Bifurcated Record Dates, 65 Bus. Law. 153, 156–160 (Nov. 2009).

²⁹⁴ See James L. Holzman and Paul A. Fioravanti, Jr., “Review of Developments in Delaware Corporation Law,” Apr. 2009, at 2, available at http://www.prickett.com/PrinterFriendly/Articles/2009_Review_of_Developments.pdf (explaining that the ability to move the voting record date closer to meeting date should promote voting only by those who continue to have an economic interest).

²⁹⁵ For purposes of this release, the term “voting record date” refers to the date used in determining

²⁸⁹ GAO Report, note 238, above, at 13 (describing ISS as “the dominant proxy advisory firm”).

late as the date of the meeting itself,²⁹⁶ certain logistical and legal matters currently prevent issuers from setting such a voting record date.²⁹⁷ For example, Rule 14c-2(b) requires that if information statements are being distributed, they must be sent or given to holders of the class of securities entitled to vote at least 20 calendar days prior to the meeting date. Because the investors entitled to receive the information statements, by definition, cannot be identified until the voting record date,²⁹⁸ issuers intending to distribute information statements currently would be unable to set a voting record date that is fewer than 20 calendar days prior to the corresponding meeting.

We have not adopted a 20 calendar day requirement with respect to proxy materials,²⁹⁹ but we have stated that “the materials must be mailed sufficiently in advance of the meeting date to allow five business days for processing by the banks and broker-dealers and an additional period to provide ample time for delivery of the material, consideration of the material by the beneficial owners, return of their voting instructions, and transmittal of the vote from the bank or broker-dealer to the tabulator.”³⁰⁰ Additionally,

- Instructions to Schedule 14A, Form S-4, and Form F-4 prescribe certain

the stockholders entitled to vote at the meeting, and the term “notice record date” refers to the date used for determining the stockholders entitled to notice of the meeting. “Voting-record-date shareholders” and “notice-record-date shareholders” refer to shareholders who hold their shares as of the record date that is specified.

²⁹⁶ See Charles M. Nathan, “‘Empty Voting’ and Other Fault Lines Undermining Shareholder Democracy: The New Hunting Ground for Hedge Funds,” available at http://lw.com/upload/pubContent/_pdf/pub1878_1.Commentary.Empty.Voting.pdf (explaining that, “[w]ith modern technology, there is no apparent need to retain an advance record date concept to manage shareholder voting. Rather, the record date could be as late as the close of business on the night preceding the meeting, with a voting period (*i.e.*, the time for which the polls remain open) at or in conjunction with the meeting lasting several hours or perhaps a full working day.”).

²⁹⁷ Conversely, the record date for traded companies in the United Kingdom must be set at a time that is not more than 48 hours before the time for the holding of the meeting. The Companies (Shareholders’ Rights) Regulations 2009 No. 1632 (Regulation 20, section 360B), available at http://www.opsi.gov.uk/si/si2009/uksi_20091632_en_3#pt3-11g9.

²⁹⁸ Rules 14a-1(h) and 14c-1(h) define “record date” as “the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined” (emphasis added).

²⁹⁹ We note, however, that Section 401.03 of the NYSE Listed Issuer Manual “recommends that a minimum of 30 days be allowed between the record and meeting dates so as to give ample time for the solicitation of proxies.”

³⁰⁰ Release No. 34-33768, note 4, above.

situations in which, if the materials being sent to shareholders incorporate information by reference, the issuer must send its proxy statement or prospectus to investors at least 20 business days before the meeting;³⁰¹

- Rule 14a-16(a)(1) requires issuers not relying on the full set delivery option to provide a Notice of Internet Availability of Proxy Materials at least 40 calendar days before the meeting date;³⁰² and

- Certain of our rules and forms require that if a limited partnership roll-up transaction is being proposed, the disclosure document must be distributed no later than the lesser of 60 calendar days prior to the meeting date or the maximum number of days permitted for giving notice under applicable state law.³⁰³

Because these provisions require a period of time between the mailing of materials and the meeting date and because, under a dual record date system, the investors to whom the materials must be mailed (that is, those investors entitled to vote at the meeting) would not be identified until the voting record date,³⁰⁴ issuers are limited in how close to the meeting date their voting record date can be.

Issuers also need to consider logistical matters in deciding the timing of their voting record date and their mailing. They need to find out how many copies of their materials to print, print the materials, and distribute the materials to transfer agents and to proxy service providers so that they can be delivered to registered and beneficial owners. Exchange Act Rules 14a-13, 14b-1, 14b-2, and 14c-7 govern this process, but we understand that in practice those rules reflect only a subset of the time-consuming logistical hurdles issuers need to go through. In this release, we are inviting submission of additional information on this process and suggestions for streamlining it.

3. Potential Regulatory Responses

In light of the changes to state law, we seek to explore whether to propose

³⁰¹ See Note D.3 to Schedule 14A, General Instruction A.2 to Form S-4, and General Instruction A.2 to Form F-4.

³⁰² 17 CFR 240.14a-16(a)(1).

³⁰³ Section 14(h)(1)(I) of the Exchange Act, Rule 14a-6(I), Rule 14c-2(c), General Instruction I.2 to Form S-4, and General Instruction G.2 to Form F-4.

³⁰⁴ Under our rules, the issuer must send an information statement to all shareholders entitled to vote at a meeting, but from whom no proxy is being solicited. 17 CFR 240.14c-2. Thus, the issuer effectively must send either a proxy statement or an information statement to any shareholder entitled to vote at a meeting, including those that acquire the securities after the notice record date, but before the voting record date.

action to accommodate issuers that wish to use separate record dates where permitted by state law, and if so, what action we should take. In analyzing this situation, we are faced with competing considerations. On one hand, the closer to a meeting date a voting record date is, the more likely it is that investors who are entitled to vote will still have an economic interest in the issuer at the time of the shareholder meeting. Thus, setting the voting record date close to the meeting date avoids disenfranchising the shareholders who purchase their shares after the record date for notice of the meeting. Moreover, facilitating the use of a notice record date that significantly precedes a voting record date may assist shareholders in recalling loaned securities in order to vote them. On the other hand, investors who are entitled to vote need adequate time to receive the proxy materials and consider the matters presented to them for approval. Inadequate time can lead to uninformed voting decisions or, in some cases, a decision by the investor not to vote at all, a problem that was highlighted in 2007 as we considered adopting the notice and access rules.³⁰⁵

If we choose to facilitate issuers’ use of separate record dates, we could choose between two general models, one focusing principally on the notice record date and the other focusing principally on the voting record date. The first model would be to require issuers to provide proxy materials or an information statement, as applicable, to those who are investors as of the notice record date. This model parallels the Delaware provision in that it focuses the information-delivery obligation on persons who are investors as of the notice record date. One open question under this first model is whether issuers should subsequently be obligated to send the disclosure document to those who were not investors as of the notice record date but who become investors by the voting record date.³⁰⁶

The second model would be to require issuers to provide the disclosure document to those who are investors as of the voting record date. An open issue under this model is whether and how issuers should be obligated to make the disclosure document public at some point before the voting record date.

³⁰⁵ See Release 34-55146, note 199, above, at note 25.

³⁰⁶ The theory for not imposing this requirement would be that voting-record-date shareholders will have the information available to them if they desire to see it. The information will be available on the Internet pursuant to Rule 14a-16(b)(1) and (d), and in many cases press releases and media reports would publicize the availability of the information.

Under either model, it is possible that some investors will obtain a proxy card or VIF, fill it out and submit it, and then buy additional shares or sell some shares, all prior to the voting record date. Thus, the number of shares held at the time of submission of the proxy or VIF may differ from the number of shares that are ultimately voted on behalf of the investor. In such a situation, we would need to consider how the proxy or VIF already submitted by the investor would be affected, as well as the legal and operational implications that this situation may impose on broker-dealers and their customers and the costs associated with developing a process to address it, in light of the complex beneficial ownership structure described earlier in this release.

Investors may benefit from receiving information about the effect that trades subsequent to the submission of their proxy or VIF will have on their voting rights. Therefore, additional disclosure may be necessary in proxy and information statements. One possible disclosure would be to establish that if an investor submits a proxy or VIF prior to the voting record date, all of the shares held by the investor as of the voting record date would be voted in accordance with the proxy or VIF, in the absence of specific contrary instructions from the investor.³⁰⁷ Another alternative would be to clarify that a proxy or VIF would not be used to vote more shares than the investor held at the time he or she submitted the proxy or VIF, so that shares acquired after the notice record date would not be voted unless that investor submits a separate proxy or voting instruction for those shares. However, it appears that each of these approaches may risk undermining the purpose of facilitating a voting record date that is closer to the meeting date.

4. Request for Comment

- Do issuers wish to use dual record dates? If so, why?
- The Delaware amendment became effective on August 1, 2009. Should we first see how popular the dual-record-date provision is before providing a regulatory response? Or, are our rules an impediment to using dual record dates, so that it is difficult to assess whether this new approach would be viewed favorably by issuers or investors unless we change our rules?
- In view of the competing policy considerations described above, if we respond, should we respond in a way

that generally facilitates issuers' ability to use the dual-record-date approach or in a way that discourages it? Which direction would be better for investors? Is there a more neutral approach that would better serve the interests of investors?

- Even if it is too early for us to take action that either facilitates or discourages issuers' use of dual record dates, does the mere existence of a two-record-date regime create confusion or uncertainty in the interpretation of any of our existing rules? If so, which rules need to be clarified or revised? For example, should we consider proposing to clarify or to revise:

- Rules 14a-1(h) and 14c-1(h), which define "record date" as, essentially, the voting record date;

- Item 6(b) of Schedule 14A, which requires issuers to "[s]tate the record date, if any, with respect to this solicitation"; or

- Rules 14a-13(a)(3) and 14c-7(a)(3), which require issuers to send an inquiry at least 20 business days prior to the record date?

- Would any SRO rules or recommendations need to be revised or clarified in order to facilitate the use of dual record dates?

- Under the first model described above, after an issuer distributes its disclosure document to investors as of the notice record date, the issuer might need to send the disclosure document, or at least a notice of the availability of the disclosure document, to those who become investors after the notice record date but before the voting record date.

- Would this obligation be appropriate?

- If not, how would new investors obtain the means to vote, such as a proxy card, a VIF, or a control number to vote electronically or telephonically? Would they be limited to attending the meeting in person? Would new beneficial owners be able to vote or attend at all?

- Given that the investors who are entitled to vote are the investors as of the voting record date, would the first model (in which some investors who ultimately would not be entitled to vote would receive proxy materials) serve any useful interest if such an obligation were not imposed?

- If we do not impose such an obligation on issuers, should they be able to choose which new investors to send the disclosure document to, or should an "all or none" requirement apply? If they should have a choice, on what basis should they be able to choose?

- Finally, what impact would the first model have on the costs of distributing proxy materials?

- Under the second model described above, because the voting record date might be close to, or on, the meeting date, would it be necessary to require issuers to make public their disclosure document at some point before the voting record date? What would be the most appropriate way for them to do so, and how far in advance of the voting record date or the meeting date should they be required to do so? Should we consider different requirements for different sizes of issuers (for example, permit more reliance on media outlets and less reliance on physical mailings for larger issuers)?

- Which of the two general approaches outlined above is more appropriate? What other general approaches should we consider?

- Would broker-dealers be able, or have sufficient time, to track accurately which beneficial owners would have the right to vote on the voting record date if it is close to the shareholder meeting? If so, what would be the cost to broker-dealers to establish such tracking systems?

- As discussed above, some of our rules specify a minimum number of days before a meeting by which an issuer must distribute its disclosure document. Should we consider shortening or eliminating any of these time periods? If we shorten any of them, what is an appropriate amount of time to replace it with?

- Should we propose to specify a minimum number of days that must elapse between the mailing of a proxy statement and a meeting, as Rule 14c-2(b) does with information statements? If we were to do so, what would be an appropriate number of days, and should the number be flexible to account for such possibilities as overnight or electronic delivery, or electronic or telephonic voting?³⁰⁸ In what ways can or should we rely on technology to reduce these time periods?

- Should we propose that federal proxy rules prescribe a form of proxy that permits the shareholder to specify the extent to which an executed proxy should be applied to shares that are bought after the proxy is submitted and before the voting record date?

³⁰⁸ The OECD recommends that measures should be taken, both by regulators and by all the institutions involved in the voting chain (issuers, custodians, etc.) to remove obstacles and to encourage the use of flexible voting mechanisms such as electronic voting. Corporate Governance and the Financial Crisis—Key Findings and Main Messages, note 282, above.

³⁰⁷ The investor would, of course, continue to be able to revise his or her previous votes prior to the meeting.

• Would voting all of the shares in accordance with the instructions on the proxy or VIF present issues under Rule 14a-10(b), which prohibits the solicitation of “any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder”? If so, should that rule be amended, and how?

C. “Empty Voting” and Related “Decoupling” Issues

1. Background and Reasons for Concern

As noted in the Introduction, this release primarily focuses on whether the U.S. proxy system operates with the accuracy, reliability, transparency, accountability, and integrity that shareholders and issuers should rightfully expect. These expectations are shaped in part by the Commission’s proxy solicitation, disclosure and other rules, the rules of the national securities exchanges, as well as by the substantive rights granted under state corporate law and the charter and bylaw provisions of individual corporations.

At their core, these expectations are based on the foundational understanding that, absent contractual or legal provisions to the contrary, a “shareholder” possesses both voting rights and an economic interest in the company.

The ability to separate a share’s voting rights from the economic stake through, for instance, what has been dubbed “empty voting” and “decoupling” challenges this foundational understanding.³⁰⁹ The term “empty voting” has been defined to refer to the circumstance in which a shareholder’s voting rights substantially exceed the shareholder’s economic interest in the company.³¹⁰ In this circumstance, the

³⁰⁹ See, e.g., Henry T. C. Hu & Bernard Black, *Equity and Debt Decoupling and Empty Voting II: Importance and Extensions*, 156 *University of Pennsylvania Law Review* 625–739 (2008) [hereinafter, *Hu & Black, Empty Voting II*]; Henry T. C. Hu & Bernard Black, *Debt, Equity, and Hybrid Decoupling: Governance and Systemic Risk Implications*, 14 *European Financial Management* 663–709 (2008) [hereinafter *Hu and Black, Debt and Hybrid Decoupling*]. Henry Hu currently serves as the Director of the Division of Risk, Strategy, and Financial Innovation at the Commission.

³¹⁰ For the purposes of this release, empty voting does not include dual class or similar share structures in which the corporate charter prescribes disproportionate allocation of voting and economic rights, albeit in a fully disclosed fashion. Likewise, for purposes of this release empty voting does not encompass the situation in which the individuals within an institutional investor who determine that investor’s voting decisions act independently of the person or persons making economic investment decisions in regard to the security being voted. See, e.g., Charles M. Nathan & Parul Mehta, *The Parallel Universes of Institutional Investing and Institutional Voting* (Mar. 6, 2010), available at

exercise of the right to vote is viewed as “empty” because the votes have been emptied of a commensurate economic interest in the shares (and, at the extreme, may even be associated with a negative economic interest in the sense of benefiting from a decline in the share price). Here, the bundle of rights and obligations customarily associated with share ownership has been “decoupled.” Empty voting is an example of decoupling and can occur in a variety of ways, some of which we describe briefly below.

Such decoupling raises potential practical and theoretical considerations for voting of shares. For example, an empty voter with a negative economic interest in the company may prefer that the company’s share price fall rather than increase. Such a person’s voting motivation contradicts the widely-held assumption that equity securities are voted based on an interest in increasing shareholder value and in a way to protect shareholders’ interests or enhance the value of the investment in the securities. That assumption—a core premise of state statutes requiring shareholder votes to elect directors and approve certain corporate decisions—may be undermined by the possibility that persons with voting power may have little or no economic interest or, even worse, have a negative economic interest in the shares they vote. It is a source of some concern that elections of directors and other important corporate actions, such as business combinations, might be decided by persons who could have the incentive to elect unqualified directors or block actions that are in the interests of the shareholders as a whole. Significant decoupling of voting rights from economic interest could potentially undermine investor confidence in the public capital markets.³¹¹

On the other hand, empty voting may not always be contrary to the interests of shareholders. One article argues, for

http://www.lw.com/upload/pubContent/_pdf/pub3463_1.pdf; cf. James McRitchie, *Parallel Universes Undercuts Its Own Arguments* (Apr. 16, 2010), available at <http://corp.gov.net/wordpress/?tag=nathan>. Unlike the dual class situation, this latter situation could involve undisclosed decoupling of voting decisions from economic considerations.

³¹¹ For an academic analysis of many of the efficiency-related effects of equity decoupling, positive as well as negative, see *Hu & Black, Debt and Hybrid Decoupling*, note 309, above, at 667–672. For a discussion of how outsiders as well as incumbent management (e.g., managers, controlling shareholders, and corporations themselves) may try engaging in equity decoupling strategies, see *Hu & Black, Empty Voting II*, note 309, above, at 628–654 and 661–681.

instance, that informed investors³¹² could potentially improve electoral outcomes through empty voting by taking long economic positions, acquiring disproportionate voting power from less informed shareholders,³¹³ and casting votes that are more informed and thus more likely to contribute to shareholder value.³¹⁴

As discussed below, regardless of whether empty voting is deemed to be “good” or “bad,” there is a strong argument for ensuring that there is transparency about the use of empty voting. If a voter acquires shares with a view to influencing or controlling the outcome of a vote but takes steps to reduce the risk of economic loss or even achieve a negative economic interest, disclosure of the empty voter’s status and intentions could be important information to other shareholders.³¹⁵

The Commission needs to further evaluate empty voting and related techniques in order to properly review the reliability, accuracy, transparency, accountability, and integrity of the current proxy system and the challenges that may be posed by empty voting and related techniques. Therefore, we are seeking information on the myriad ways in which decoupling can occur, and its nature, extent, and effects on shareholder voting and the proxy process.³¹⁶ We understand that responses explicitly intended to address aspects of empty voting have already

³¹² We do not express an opinion as to whether any particular class of investor will always make a shareholder-maximizing vote. For purposes of this discussion, it is sufficient to assume that, generally speaking, a highly informed investor is more likely to vote in a manner that will add to shareholder value than a less informed investor.

³¹³ Notably, the nature of the decoupling in these circumstances is qualitatively different than that in which a person holding the right to vote has no economic interest, or a negative economic interest, in the issuer. Rather, such an investor has a positive economic interest, and while there is decoupling insofar as that investor holds voting rights that derive from shares owned by a different investor, that investor has voting interests that are aligned with the economic interest of investors generally.

³¹⁴ See Susan E. K. Christoffersen, Christopher C. Geczy, David K. Musto, and Adam V. Reed, *Vote Trading and Information Aggregation*, *Journal of Finance*, Vol. 62, 2007, pp. 2897–2929.

³¹⁵ Item 6 of Schedule 13D requires disclosure of contracts, arrangements, understandings, or relationships with respect to the securities covered by the Schedule, but the filing of Schedule 13D is triggered only when a person owns greater than 5% of a Section 12-registered equity security, as such ownership is calculated according to the pertinent rules.

³¹⁶ Separately, as described in Section V.C.2.b, below, the staff has initiated a project to review longstanding requirements as to disclosure of holdings of securities. The information gathered in connection with both projects, as well as any rule changes that may flow from such projects, could be helpful to the Commission, as well as to shareholders, issuers and state legislatures.

started to occur at the state corporate law and individual corporation level.³¹⁷

2. Empty Voting Techniques and Potential Downsides

a. Empty Voting Using Hedging-Based Strategies

A variety of techniques can be used to accomplish empty voting. One technique is to hold shares but to hedge the economic interest in those shares. A shareholder could hedge that economic interest in a wide variety of ways, including by buying either exchange-traded or OTC put options. In a recent Commission enforcement action, a registered investment adviser agreed to settle charges that it had violated Section 13(d) of the Exchange Act in furtherance of a strategy of “essentially buying votes.”³¹⁸ The investment adviser purchased shares of a prospective acquirer “for the exclusive purpose of voting the shares in a merger and influencing the outcome of the vote” on a proposed acquisition of a company in which the investment adviser owned a large block of stock.³¹⁹ At the same time, the investment adviser entered into swap transactions with the banks from which it purchased the acquirer’s shares, so that it “was able to acquire the voting rights to nearly ten percent of [the acquirer]’s stock without having any economic risk and no real economic stake in the company, [and] was able to do this without making a significant financial outlay.”³²⁰

While the practice of empty voting was not asserted as a substantive violation in the enforcement action, the matter illustrates how hedging techniques can be used to obtain voting power without having economic exposure on the securities being voted. The use of hedging by insiders also can result in empty voting. Executives entering into “collars” transactions, for instance, retain full voting rights despite

³¹⁷ For example, Delaware has amended its General Corporation Law to allow corporations to adopt measures to respond to certain record date capture strategies. See Bryn Vaaler, United States: DGCL Amendments Authorize Proxy Access And Expense Reimbursement Bylaws, Reverse Schoon v. Troy Corp., Mondaq Business Briefing, May 12, 2009, available at <http://www.mondaq.com/unitedstates/article.asp?articleid=79322>. Some corporations have adopted bylaws that, under certain circumstances, require shareholders submitting a proposal to disclose how they have hedged the economic interests associated with their share positions. See Matt Andrejczak, “Sara Lee, Coach set rules to deter devious shareholders,” *MarketWatch*, Apr. 2, 2008.

³¹⁸ See *In the Matter of Perry Corp.*, Release No. 34–60351, July 21, 2009 at ¶19, available at <http://www.sec.gov/litigation/admin/2009/34-60351.pdf>.

³¹⁹ *Id.* at ¶33.

³²⁰ *Id.* at ¶18.

having hedged a portion of their economic interest.³²¹

Empty voting can also be accomplished by the use of credit derivatives (rather than through the use of put options and other equity derivatives), a process dubbed “hybrid decoupling.”³²² For example, instead of using put options to hedge its economic interest in shares, a shareholder may enter into credit default swap transactions with a derivatives dealer. If a company experiences poor economic performance, the likelihood of the company defaulting on its debt increases, and so the shareholder’s credit default swap holdings will likely rise in value.³²³

Finally, hedging-based strategies need not even involve holding either the debt or equity of the company in which the shareholder is voting, or derivatives linked to such debt or equity. A shareholder may, for instance, be able to hedge its exposure to a company’s shares through purchasing assets correlated in some fashion to the company’s share price. In the case of an acquisition, for example, a shareholder in the potential acquirer which also holds a larger equity interest in the target company, may arguably be characterized as being an empty voter with a negative economic interest in the acquirer. That is, the more the acquirer overpays for the target, the more net profit the investor would achieve. Other correlated assets that may be used in empty voting strategies may include, for example, shares of a competitor or a supplier.

³²¹ In a “collar” transaction, the investor sells a call option at one strike price and purchases a put option at a lower strike price. For little or no cost, the investor thereby limits the potential for appreciation or depreciation to the range—the “collar”—defined by the two strike prices. Academic research indicates that CEOs, directors, and senior executives have used this strategy to hedge their economic interest in the firm’s stock. See Carr Bettis, John Bizjak, and Michael Lemmon, *Managerial Ownership, Incentive Contracting, and the Use of Zero-Cost Collars and Equity Swaps by Corporate Insiders*, *Journal of Financial and Quantitative Analysis*, 2001, at 3.

³²² See Hu & Black, *Debt and Hybrid Decoupling*, note 309, above, at 688–690.

³²³ And just as “equity decoupling” and “hybrid decoupling” could sometimes incentivize some shareholders to use their voting rights against the best interests of the company and other shareholders, some believe that a pattern that has been termed “debt decoupling”—the unbundling of the economic rights, contractual control rights, and other rights normally associated with debt—may sometimes raise incentive issues as to some debtholders. These debtholders, dubbed “empty creditors,” may sometimes even have the incentive to use the control rights the debtholders have in their loan agreements or bond indentures to try to cause a company to go into bankruptcy. See Hu & Black, *Debt and Hybrid Decoupling*, note 309 above, at 665–66 and 679–688; “CDSs and bankruptcy—No empty threat,” *The Economist*, June 18, 2009.

b. Empty Voting Using Non-Hedging Based Strategies

There are a variety of situations in which empty voting may arise without any hedging at all. For example, active trading between a voting record date and the actual voting date may result in many voters having voting rights different from their economic stakes. An investor who sells shares after the voting record date retains the right to vote the shares without having any economic interest in them. Another example of empty voting without hedging is the voting of employees’ unallocated shares in an employee stock ownership plan (“ESOP”). In an ESOP, while employees only have a contingent economic interest in the unallocated shares, the shares have full voting rights and are voted by a trustee, who either exercises discretion in voting or votes in proportion to vested ESOP shares. Effectively, either the trustee or the employees may become empty voters.³²⁴

One important non-hedging based technique that appears to have been used outside the United States is borrowing shares in the stock lending market. Under standard stock lending arrangements, the borrower of the shares has the voting rights associated with the shares borrowed, but relatively little or no economic interest in the shares.³²⁵ Thus, simply by paying a fee to borrow the shares, the borrower can “buy” votes associated with the shares without having any corresponding economic interest. And the size of the fee could be reduced by borrowing the shares immediately before the record date, and returning the shares immediately afterwards.³²⁶ Within the U.S. this sort of practice appears to be limited by Regulation T, under which securities loans by institutional investors through their broker-dealers are restricted to distinct “permitted purposes” under the Federal Reserve Board’s Regulation T, such as execution of a short sale.³²⁷

³²⁴ See Hu & Black, *Empty Voting II*, note 309 above, at 648–651 (as to restricted stock voting rights and certain ESOPs).

³²⁵ See, e.g., Master Securities Lending Agreement at 7.1–7.5, note 72, above.

³²⁶ Some observers believe that this stock lending-based strategy has occurred in Hong Kong and the United Kingdom. See Kara Scannell, “Outside Influence: How Borrowed Shares Swing Company Votes—SEC and Others Fear Hedge-Fund Strategy May Subvert Elections,” *Wall Street Journal*, Jan. 26, 2007, at page A1.

³²⁷ See Federal Reserve Board Regulation T, 12 CFR § 220.2. This regulation limits the purposes for which broker-dealers who do not transact with customers from the general public may lend shares. Regulation T’s “purpose test” generally provides that borrowers may only borrow securities for short selling, covering delivery fails, and similar purposes. For a fuller description of Regulation T, see Charles E. Dropkin, “Developing Effective

Borrowing securities to obtain the right to vote, however, may occur outside the purview of Regulation T in certain circumstances.

3. Potential Regulatory Responses

As one possible response to empty voting and related phenomena, the Commission could consider requiring disclosure that creates transparency.³²⁸ The proxy rules, the periodic reporting system, and rules adopted pursuant to statutory provisions such as Sections 13(d), 13(f), and 13(g) of the Exchange Act might be modified or a new disclosure system could be developed to elicit fuller disclosure of empty voting. More robust disclosure may be helpful to all of the participants in the proxy process as well as for regulators. For instance, if an investor acquires substantial voting rights that are not disclosed, then the other shareholders may not be aware of the potentially heightened importance of their vote. Without such information, shareholders may have insufficient information as to the need to vote and to take coordinated or other actions to protect their interests. By improving transparency, investors would have the option to choose to respond to such information and make a better informed investment or voting decision. Issuers also may be in a position to take responsible and appropriate action in response to disclosure of empty voting strategies, such as increasing their solicitation efforts.

Beyond gathering information and enhancing transparency, the following are some of the possible responses to empty voting and other types of decoupling that could be considered by the Commission, Congress, state legislatures, and individual issuers.

- Require voters to certify on the form of proxy or VIF that they held the full economic interest in the shares being

voted at the time the proxy was executed, or, if not, disclose the extent to which their economic interest in the shares was shorted or hedged.

- Require disclosure of the shareholder meeting agenda sufficiently ahead of the record date to enable investors who have loaned their securities to recall those loans to retain voting control of those securities.³²⁹
- Permit only persons who possess pure long positions (*i.e.*, economic interests not shorted or hedged) in the underlying shares to vote by proxy, or allow proxy voting only commensurate with their net long positions (*e.g.*, economic interests after adjusting for equity or credit derivative-based hedging or short positions), or require a cooling-off period for those who have no or negative economic interests (after public disclosure) before voting.
- Prohibit empty voting, especially in situations where there is a negative economic interest.

4. Request for Comment

- What is the potential for, and actual prevalence of, all forms of equity, debt, and hybrid decoupling (including empty voting)? Are these techniques employed differently by “outside” investors, company insiders, and the company itself? Does decoupling raise public policy concerns, for example in relation to the disclosure requirements of Section 13(d)? Are existing disclosure requirements under Section 13(d) and other provisions of federal securities laws sufficient to address the entire range of concerns raised by equity, debt, and hybrid decoupling?

- Can the potentially beneficial and potentially detrimental aspects of debt, equity, or hybrid decoupling be meaningfully distinguished? Are there adverse consequences if there are empty voters, or even empty voters with negative economic interests, especially if their votes are outcome determinative? Are there examples of situations in which empty voting was outcome determinative?

- What are the mechanisms that result in debt, equity, and hybrid decoupling giving rise to public policy concerns? How important are these different mechanisms? To what extent can credit derivatives, correlated assets (such as, for example, shares of other participants in a takeover battle), or other financial instruments be used, and to what extent are they being used, to accomplish empty voting? To what extent does debt decoupling raise issues similar to those raised by equity decoupling or hybrid decoupling and

how might regulatory or other responses to debt decoupling differ?

- At what economic threshold or percentage of voting power threshold is decoupling—by any one individual, by group, or by shareholders in the aggregate—material to the company and its security holders?

- Are certain companies (for instance, due to their ownership or capital structure) particularly vulnerable to potential adverse effects of debt, equity, or hybrid decoupling?

- Do concerns about decoupling economic interests and voting rights extend to the decoupling of voting and investment management functions within institutional investors? ³³⁰ If so, would one or more regulatory responses, involving disclosure or otherwise, be appropriate?

- Under what circumstances should disclosure of a shareholder’s net economic interest be required, along with any associated decoupling? If such net economic interest is required to be disclosed, how should “net economic interest” be defined, given the myriad ways in which such decoupling can occur? Should our rules require disclosure regarding, and/or certification of, beneficial and economic ownership as part of the form of proxy or VIF? Or should this matter be left to state law or bylaws adopted by individual companies?

- If companies and company executives themselves engage in decoupling, do existing disclosure requirements result in sufficient transparency for investors to observe this behavior? If not, what level of disclosure would provide sufficient transparency? What changes to Schedules 13D or 13G, periodic disclosure requirements, Securities Act disclosure rules, the proxy rules, or other aspects of securities law are advisable?

- Are there circumstances (such as empty voting while holding a negative economic interest) where debt, equity, and hybrid decoupling appear to be fundamentally detrimental to the shareholders, debtholders, or the issuer itself? Are existing disclosure requirements, or changes to existing disclosure requirements, sufficient to address any such concerns? Should the Commission consider additional remedial actions? What role should federal law, state law and individual corporate actions play in addressing any such concerns?

- Should we propose rule changes to provide more disclosure and transparency as to equity, debt, or

Guidelines for Managing Legal Risks-U.S.

Guidelines,” Securities Lending and Repurchase Agreements 167, 172–176 (Frank J. Fabozzi and Steven V. Mann, eds., 2005). Essentially, Regulation T requires broker-dealers to make a good faith effort to ascertain the borrower’s purpose and cannot lend shares for voting purposes because that is not a permitted purpose under Regulation T. 17 CFR 220.10(a). The standard securities lending agreement in the U.S. generally will contain a representation and warranty that the borrower, and any person to whom the borrower lends the borrowed securities, are only borrowing consistent with the “purpose test” (unless the borrowed securities are “exempted securities”). See, *e.g.*, Master Securities Lending Agreement, note 72, above, at 9.5 (at www.sifma.org/services/std/forms/pdf/master_sec_loan.pdf).

³²⁸ The staff is also working on the separate but related project of reviewing current disclosure requirements relating to holdings of financial instruments, including short sale positions and derivatives positions.

³²⁹ See Section III.C.2, above.

³³⁰ See Nathan & Mehta, note 310, above.

hybrid decoupling? If so, should this disclosure be in proxy solicitation materials, periodic reports, or disclosures pursuant to Sections 13(d), 13(g), and/or 13(f)? Should we develop a specific new form or report relating to short sales, short sale positions, and debt, equity, or other derivatives that could be used to identify instances of potential or actual empty voting or other kinds of equity, debt, or hybrid decoupling? Should any requirements related to decoupling disclosure also require disclosure of credit derivatives positions, as would occur with hybrid decoupling? Should debt decoupling be subject to disclosure requirements and, if so, what disclosure requirements would be appropriate? To what extent would new legislation be necessary in order to impose any of these requirements?

- If we were to propose any enhanced or new disclosure requirements, what should the filing deadlines be under various circumstances in order to inform the marketplace on a timely basis, while providing adequate time for those responsible for complying with the requirement to collect the information and prepare the filing?

- What should be the triggers for such disclosure requirements? For instance, in establishing such a trigger, is the more than 5% equity ownership threshold of Exchange Act Section 13(d)

analogous in any way? Are the current “beneficial owner” concepts contemplated by Regulation 13D–G, some variation of such concepts, or some altogether different concept of ownership appropriate for determining whether a disclosure requirement is triggered? Or should decoupling-related disclosures not be based on conceptions of ownership, but instead be based on the nature of the investor and presence of investment discretion, as with Form 13F? Are there alternatives to “ownership,” the nature of the investor, and presence of investment discretion that should be considered?

- What level of detail should be required for decoupling-related disclosures, recognizing the complexity of, for example, many OTC derivatives?

- If, pursuant to state law or a company’s articles or bylaws, there are substantive limitations on empty voting or other forms of decoupling, should the Commission accommodate the implementation of such limitations by, for instance, requiring disclosure or ownership certifications on the form of proxy or VIF?

- To what extent is Regulation T, by its terms, effective in limiting the borrowing of shares for voting purposes? Should the Commission or another regulator propose a new rule that would prohibit or restrict borrowing securities for purposes of obtaining the right to vote those securities?

VI. Conclusion

The U.S. proxy system is the fundamental infrastructure of shareholder suffrage since the corporate proxy is the principal means by which shareholders exercise their voting rights. The development of issuer, securities intermediary, and shareholder practices over the years, spurred in part by technological advances, has made the system complex and, as a result, less transparent to shareholders and to issuers. It is our intention that this system operate with the reliability, accuracy, transparency, and integrity that shareholders and issuers should rightfully expect.

We are interested in the public’s opinions regarding the matters discussed in this concept release. We encourage all interested parties to submit comment on these topics. In addition, we solicit comment on any other aspect of the mechanics of proxy distribution and collection that commentators believe may be improved upon.

Dated: July 14, 2010.

By the Commission.

Elizabeth M. Murphy,
Secretary.

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Federal Register

**Thursday,
July 22, 2010**

Part VI

The President

**Executive Order 13547—Stewardship of
the Ocean, Our Coasts, and the Great
Lakes**

**Memorandum of July 19, 2010—The
Presidential POWER Initiative: Protecting
Our Workers and Ensuring
Reemployment**

Presidential Documents

Title 3—

Executive Order 13547 of July 19, 2010

The President

Stewardship of the Ocean, Our Coasts, and the Great Lakes

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The ocean, our coasts, and the Great Lakes provide jobs, food, energy resources, ecological services, recreation, and tourism opportunities, and play critical roles in our Nation's transportation, economy, and trade, as well as the global mobility of our Armed Forces and the maintenance of international peace and security. The Deepwater Horizon oil spill in the Gulf of Mexico and resulting environmental crisis is a stark reminder of how vulnerable our marine environments are, and how much communities and the Nation rely on healthy and resilient ocean and coastal ecosystems. America's stewardship of the ocean, our coasts, and the Great Lakes is intrinsically linked to environmental sustainability, human health and well-being, national prosperity, adaptation to climate and other environmental changes, social justice, international diplomacy, and national and homeland security.

This order adopts the recommendations of the Interagency Ocean Policy Task Force, except where otherwise provided in this order, and directs executive agencies to implement those recommendations under the guidance of a National Ocean Council. Based on those recommendations, this order establishes a national policy to ensure the protection, maintenance, and restoration of the health of ocean, coastal, and Great Lakes ecosystems and resources, enhance the sustainability of ocean and coastal economies, preserve our maritime heritage, support sustainable uses and access, provide for adaptive management to enhance our understanding of and capacity to respond to climate change and ocean acidification, and coordinate with our national security and foreign policy interests.

This order also provides for the development of coastal and marine spatial plans that build upon and improve existing Federal, State, tribal, local, and regional decisionmaking and planning processes. These regional plans will enable a more integrated, comprehensive, ecosystem-based, flexible, and proactive approach to planning and managing sustainable multiple uses across sectors and improve the conservation of the ocean, our coasts, and the Great Lakes.

Sec. 2. Policy. (a) To achieve an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured so as to promote the well-being, prosperity, and security of present and future generations, it is the policy of the United States to:

- (i) protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources;
- (ii) improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies;
- (iii) bolster the conservation and sustainable uses of land in ways that will improve the health of ocean, coastal, and Great Lakes ecosystems;
- (iv) use the best available science and knowledge to inform decisions affecting the ocean, our coasts, and the Great Lakes, and enhance humanity's capacity to understand, respond, and adapt to a changing global environment;

- (v) support sustainable, safe, secure, and productive access to, and uses of the ocean, our coasts, and the Great Lakes;
 - (vi) respect and preserve our Nation's maritime heritage, including our social, cultural, recreational, and historical values;
 - (vii) exercise rights and jurisdiction and perform duties in accordance with applicable international law, including respect for and preservation of navigational rights and freedoms, which are essential for the global economy and international peace and security;
 - (viii) increase scientific understanding of ocean, coastal, and Great Lakes ecosystems as part of the global interconnected systems of air, land, ice, and water, including their relationships to humans and their activities;
 - (ix) improve our understanding and awareness of changing environmental conditions, trends, and their causes, and of human activities taking place in ocean, coastal, and Great Lakes waters; and
 - (x) foster a public understanding of the value of the ocean, our coasts, and the Great Lakes to build a foundation for improved stewardship.
- (b) The United States shall promote this policy by:
- (i) ensuring a comprehensive and collaborative framework for the stewardship of the ocean, our coasts, and the Great Lakes that facilitates cohesive actions across the Federal Government, as well as participation of State, tribal, and local authorities, regional governance structures, nongovernmental organizations, the public, and the private sector;
 - (ii) cooperating and exercising leadership at the international level;
 - (iii) pursuing the United States' accession to the Law of the Sea Convention; and
 - (iv) supporting ocean stewardship in a fiscally responsible manner.

Sec. 3. Definitions. As used in this order:

(a) "Final Recommendations" means the *Final Recommendations of the Interagency Ocean Policy Task Force* that shall be made publicly available and for which a notice of public availability shall be published in the *Federal Register*.

(b) The term "coastal and marine spatial planning" means a comprehensive, adaptive, integrated, ecosystem-based, and transparent spatial planning process, based on sound science, for analyzing current and anticipated uses of ocean, coastal, and Great Lakes areas. Coastal and marine spatial planning identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives. In practical terms, coastal and marine spatial planning provides a public policy process for society to better determine how the ocean, our coasts, and Great Lakes are sustainably used and protected—now and for future generations.

(c) The term "coastal and marine spatial plans" means the plans that are certified by the National Ocean Council as developed in accordance with the definition, goals, principles, and process described in the Final Recommendations.

Sec. 4. Establishment of National Ocean Council. (a) There is hereby established the National Ocean Council (Council).

(b) The Council shall consist of the following:

- (i) the Chair of the Council on Environmental Quality and the Director of the Office of Science and Technology Policy, who shall be the Co-Chairs of the Council;
- (ii) the Secretaries of State, Defense, the Interior, Agriculture, Health and Human Services, Commerce, Labor, Transportation, Energy, and Homeland Security, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget,

the Under Secretary of Commerce for Oceans and Atmosphere (Administrator of the National Oceanic and Atmospheric Administration), the Administrator of the National Aeronautics and Space Administration, the Director of National Intelligence, the Director of the National Science Foundation, and the Chairman of the Joint Chiefs of Staff;

(iii) the National Security Advisor and the Assistants to the President for Homeland Security and Counterterrorism, Domestic Policy, Energy and Climate Change, and Economic Policy;

(iv) an employee of the Federal Government designated by the Vice President; and

(v) such other officers or employees of the Federal Government as the Co-Chairs of the Council may from time to time designate.

(c) The Co-Chairs shall invite the participation of the Chairman of the Federal Energy Regulatory Commission, to the extent consistent with the Commission's statutory authorities and legal obligations, and may invite the participation of such other independent agencies as the Council deems appropriate.

(d) The Co-Chairs of the Council, in consultation with the National Security Advisor and the Assistant to the President for Homeland Security and Counterterrorism, shall regularly convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to address particular subject matters, establish and direct committees of the Council that shall consist exclusively of members of the Council.

(e) A member of the Council may designate, to perform committee functions of the member, any person who is within such member's department, agency, or office and who is (i) an officer of the United States appointed by the President, (ii) a member of the Senior Executive Service or the Senior Intelligence Service, (iii) a general officer or flag officer, or (iv) an employee of the Vice President.

(f) Consistent with applicable law and subject to the availability of appropriations, the Office of Science and Technology Policy and the Council on Environmental Quality shall provide the Council with funding, including through the National Science and Technology Council or the Office of Environmental Quality. The Council on Environmental Quality shall, to the extent permitted by law and subject to the availability of appropriations, provide administrative support necessary to implement this order.

(g) The day-to-day operations of the Council shall be administered by a Director and a Deputy Director, who shall supervise a full-time staff to assist the Co-Chairs in their implementation of this order.

Sec. 5. Functions of the Council. (a) The Council shall have the structure and function and operate as defined in the Final Recommendations. The Council is authorized, after the Council's first year of operation, to make modifications to its structure, function, and operations to improve its effectiveness and efficiency in furthering the policy set forth in section 2 of this order.

(b) To implement the policy set forth in section 2 of this order, the Council shall provide appropriate direction to ensure that executive departments', agencies', or offices' decisions and actions affecting the ocean, our coasts, and the Great Lakes will be guided by the stewardship principles and national priority objectives set forth in the Final Recommendations, to the extent consistent with applicable law. The Council shall base its decisions on the consensus of its members. With respect to those matters in which consensus cannot be reached, the National Security Advisor shall coordinate with the Co-Chairs and, as appropriate, the Assistants to the President for Energy and Climate Change, and Economic Policy, and the employee of the United States designated by the Vice President, subject to the limitations set forth in section 9 of this order, to present the disputed issue or issues for decision by the President.

Sec. 6. Agency Responsibilities. (a) All executive departments, agencies, and offices that are members of the Council and any other executive department, agency, or office whose actions affect the ocean, our coasts, and the Great Lakes shall, to the fullest extent consistent with applicable law:

(i) take such action as necessary to implement the policy set forth in section 2 of this order and the stewardship principles and national priority objectives as set forth in the Final Recommendations and subsequent guidance from the Council; and

(ii) participate in the process for coastal and marine spatial planning and comply with Council certified coastal and marine spatial plans, as described in the Final Recommendations and subsequent guidance from the Council.

(b) Each executive department, agency, and office that is required to take actions under this order shall prepare and make publicly available an annual report including a concise description of actions taken by the agency in the previous calendar year to implement the order, a description of written comments by persons or organizations regarding the agency's compliance with this order, and the agency's response to such comments.

(c) Each executive department, agency, and office that is required to take actions under this order shall coordinate and contribute resources, as appropriate, to assist in establishing a common information management system as defined in the Final Recommendations and shall be held accountable for managing its own information assets by keeping them current, easily accessible, and consistent with Federal standards.

(d) To the extent permitted by law, executive departments, agencies, and offices shall provide the Council such information, support, and assistance as the Council, through the Co-Chairs, may request.

Sec. 7. Governance Coordinating Committee. The Council shall establish a Governance Coordinating Committee that shall consist of 18 officials from State, tribal, and local governments in accordance with the Final Recommendations. The Committee may establish subcommittees chaired by representatives of the Governance Coordinating Committee. These subcommittees may include additional representatives from State, tribal, and local governments, as appropriate to provide for greater collaboration and diversity of views.

Sec. 8. Regional Advisory Committees. The lead Federal department, agency, or office for each regional planning body established for the development of regional coastal and marine spatial plans, in consultation with their nonfederal co-lead agencies and membership of their regional planning body, shall establish such advisory committees under the Federal Advisory Committee Act, 5 U.S.C. App., as they deem necessary to provide information and to advise the regional planning body on the development of regional coastal and marine spatial plans to promote the policy established in section 2 of this order.

Sec. 9. General Provisions. (a) Nothing in this order, the establishment of the Council, and the Final Recommendations shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department or agency or the head thereof; or

(ii) functions assigned by the President to the National Security Council or Homeland Security Council (including subordinate bodies) relating to matters affecting foreign affairs, national security, homeland security, or intelligence.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) In carrying out the provisions of this order and implementing the Final Recommendations, all actions of the Council and the executive departments, agencies, and offices that constitute it shall be consistent with applicable international law, including customary international law, such as that reflected in the Law of the Sea Convention.

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

Sec. 10. Revocation. Executive Order 13366 of December 17, 2004, is hereby revoked.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
July 19, 2010.

Presidential Documents

Memorandum of July 19, 2010

The Presidential POWER Initiative: Protecting Our Workers and Ensuring Reemployment

Memorandum for the Heads of Executive Departments and Agencies

Each year Federal civilian employees are injured or fall ill on the job in significant numbers. Although the Federal Government has made progress in reducing workplace injuries and illnesses in recent years, its workers (excluding those employed by the U.S. Postal Service) still filed more than 79,000 new claims and received over \$1.6 billion in workers' compensation payments in fiscal year 2009. Many of these work-related injuries and illnesses are preventable, and executive departments and agencies can and should do even more to improve workplace safety and health, reduce the financial burden of injury on taxpayers, and relieve unnecessary suffering by workers and their families.

Therefore, I am establishing a 4-year Protecting Our Workers and Ensuring Reemployment (POWER) Initiative, covering fiscal years 2011 through 2014. The POWER Initiative will extend prior workplace safety and health efforts of the Federal Government by setting more aggressive performance targets, encouraging the collection and analysis of data on the causes and consequences of frequent or severe injury and illness, and prioritizing safety and health management programs that have proven effective in the past.

Under the POWER Initiative, each executive department and agency will be expected to improve its performance in seven areas:

- (i) reducing total injury and illness case rates;
- (ii) reducing lost time injury and illness case rates;
- (iii) analyzing lost time injury and illness data;
- (iv) increasing the timely filing of workers' compensation claims;
- (v) increasing the timely filing of wage-loss claims;
- (vi) reducing lost production day rates; and
- (vii) speeding employees' return to work in cases of serious injury or illness.

Executive departments and agencies (except the U.S. Postal Service) shall coordinate with the Department of Labor's Occupational Safety and Health Administration and Office of Workers' Compensation Programs to establish performance targets in each category. The Secretary of Labor shall lead the POWER Initiative by measuring both Government-wide and agency-level performance and reporting to me annually.

Each executive department and agency shall bear its own costs for participating in the POWER Initiative, and nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof.

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

The Secretary of Labor is authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
Washington, July 19, 2010

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S. 3104/P.L. 111-202

To permanently authorize Radio Free Asia, and for other purposes. (July 13, 2010; 124 Stat. 1373)

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