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FEDERAL REGISTER

Vol. 76 Wednesday,
No. 46 March 9, 2011

Pages 12817–13058

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHEN: Tuesday, March 22, 2011
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

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Proclamation 8634 of March 4, 2011

National Consumer Protection Week, 2011

By the President of the United States of America

A Proclamation

Each day, families across America navigate complex financial decisions, from buying a home or car to paying off a loan or using a credit card. Consumer education is vital to protecting American families and preserving economic health in the United States. When fully informed about the potential risks in the marketplace and their rights as consumers, Americans are better able to recognize misinformation, scams, and abusive and deceptive practices that can endanger individual economic security and erode the prosperity of our communities.

For more than a decade, National Consumer Protection Week has encouraged Americans to make better-informed decisions about saving, buying, borrowing, and investing. This year's theme, "Your Information Destination: www.NCPW.gov," highlights the resources offered by Federal agencies and partner organizations that encourage the public to manage their money, stay safe online, and understand mortgages and other financial transactions. By seeking out this information, families can both strengthen the economy and protect themselves from fraudulent behavior. For information and resources, I encourage American consumers to visit www.NCPW.gov.

The Federal Government has an important role to play in safeguarding transactions, and my Administration is committed to holding abusive companies accountable and shifting the balance of power back to the American consumer. I was proud to sign into law the strongest consumer protections in our Nation's history with the Credit Card Accountability, Responsibility, and Disclosure Act (Credit CARD Act) and the Dodd-Frank Wall Street Reform and Consumer Protection Act. One of the centerpieces of this financial reform legislation was the creation of the Consumer Financial Protection Bureau, which is charged with enforcing historic financial protections and empowering Americans with clear and concise information to make the best choices for their families. These common-sense reforms will protect both consumers and our economy as a whole.

As a Nation, we must foster an environment that supports informed decision-making, supports fair and robust competition in the marketplace, and guards all citizens from unfair and predatory practices. During National Consumer Protection Week, I encourage all Americans to learn about their rights as consumers and seek out the knowledge to manage their finances more effectively by visiting www.MyMoney.gov and www.ConsumerFinance.gov.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 6 through March 12, 2011, as National Consumer Protection Week. I call upon government officials, industry leaders, and advocates across the Nation to share information about consumer protection and provide our citizens with information about their rights as consumers.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–5541
Filed 3–8–11; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8635 of March 4, 2011

Save Your Vision Week, 2011

By the President of the United States of America

A Proclamation

Across America, millions of men and women experience vision loss or are affected by low vision or blindness. During Save Your Vision Week, we reinforce the importance of routine eye care and remind all Americans to take action to safeguard their eyesight.

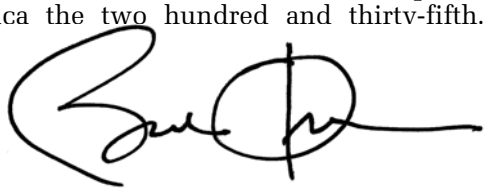
Vision is important to our everyday activities, and we can all take steps to protect and prolong our eye health. Through *Healthy People 2020*, the Department of Health and Human Services' science-based agenda to prevent disease and promote health, our country's leading health officials have identified interventions to preserve sight and prevent blindness. Though some eye diseases and injuries are preventable or treatable with early detection and timely treatment, many Americans do not receive recommended eye exams and screenings. *Healthy People 2020* advises each American to get vision check-ups regularly in order to identify vision impairments at an early stage. For more information about eye health or help finding an eye care professional, I encourage all Americans to visit: www.NEI.NIH.gov.

Preventive eye care, including wearing ultraviolet-protective eyewear and following good eating habits, can help support a healthy and active lifestyle at any age. By seeking out information and taking action to protect healthy vision—and encouraging others to do so as well—all Americans can help preserve the precious gift of sight.

To remind Americans of the importance of safeguarding their eyesight, the United States Congress, by joint resolution approved December 30, 1963, as amended (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim March 6 through March 12, 2011, as Save Your Vision Week. During this time, I invite eye care professionals, teachers, members of the media, and all organizations dedicated to preserving eyesight to join in activities that will raise awareness of eye and vision health.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirtv-fifth.



[FR Doc. 2011–5542
Filed 3–8–11; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8636 of March 4, 2011

150th Anniversary of the Inauguration of Abraham Lincoln

By the President of the United States of America

A Proclamation

President Abraham Lincoln is revered in American history as the leader who held together a fractured country and liberated millions from slavery. His words are memorized by America's schoolchildren, and his name is synonymous with freedom and unity. One hundred fifty years ago, on March 4, 1861, this self-taught man, rugged rail-splitter, and humble lawyer from Springfield, Illinois, was sworn in as our Nation's 16th President under an unfinished dome of the United States Capitol, with the storm clouds of civil war gathering.

President Lincoln reminded us in his Inaugural Address that America's Union was much older than the Constitution itself, and that our national fabric had been stitched together by shared memories and common hopes. As we observe the 150th anniversary of his Inauguration, we reflect on his unceasing belief and our enduring faith that we remain one Nation and one people, sharing a bond as Americans that will never break.

Through simple eloquence and humble leadership marked by profound wisdom—both on his Inauguration day and throughout the coming conflict—President Lincoln charted a course to transcend our discord and bind the wounds of a severed country. From the principles he set forth in the Emancipation Proclamation to his transformative address on the fields of Gettysburg, President Lincoln showed us how to preserve and perfect "the last, best hope of Earth." His actions and his memory enabled America to move beyond a young collection of States to become a free and unified Nation, striving for the promises and principles for which so many fought and died.

Our revered 16th President taught us that we are more than North and South, black and white—we are one, and we are all Americans. The forces that divide us are not stronger than the forces that unite us, and the "new birth of freedom" President Lincoln called for still echoes in each of our hearts. Today, we live in the Union he saved, inheritors of the freedoms and progress for which he served. Through the ages, Abraham Lincoln calls us to take a renewed devotion to the unfinished work remaining before our Nation—joining together across all divides to ensure that "government of the people, by the people, for the people" endures in our time.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 4, 2011, as a day to celebrate the 150th Anniversary of the Inauguration of Abraham Lincoln. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities that honor his memory and uphold the principles he so nobly advanced.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2011–5550
Filed 3–8–11; 8:45 am]
Billing code 3195–W1–P

Presidential Documents

Memorandum of March 4, 2011

Enhanced Collection of Relevant Data and Statistics Relating to Women

Memorandum for the Heads of Executive Departments and Agencies

I am proud to work with the White House Council on Women and Girls, the Office of Management and Budget, and the Department of Commerce on this week's release of *Women in America*, a report detailing the status of American women in the areas of families and income, health, employment, education, and violence and crime. This report provides a snapshot of the status of American women today, serving as a valuable resource for Government officials, academics, members of non-profit, nongovernmental, and news organizations, and others.

My Administration is committed to ensuring that Federal programs achieve policy goals in the most cost-effective manner. The *Women in America* report, together with the accompanying website collection of relevant data, will assist Government officials in crafting policies in light of available statistical evidence. It will also assist the work of the nongovernmental sector, including journalists, public policy analysts, and academic researchers, by providing data that allow greater understanding of policies and programs.

Preparation of this report revealed the vast data resources of the Federal statistical agencies. It also revealed some gaps in data collection. Gathering and analyzing additional data to fill in the gaps could help policymakers gather a more accurate and comprehensive view of the status and needs of American women.

Accordingly, I hereby request the heads of executive departments and agencies, where possible within existing collections of data and in light of budgetary constraints, to identify and to seek to fill in gaps in statistics and improve survey methodology relating to women wherever appropriate, including in the broad areas covered by the *Women in America* report: families and income, health, employment, education, and violence and crime.

Examples of some of the efforts that could be undertaken by departments and agencies with respect to the gathering or design of comprehensive data related to women include the following:

(a) Maternal Mortality. I encourage the National Center for Health Statistics (NCHS) to continue to work with States and other registration areas to complete the expeditious adoption of the most current standards for the collection of information on vital events, as well as the transition to electronic reporting systems. Maternal mortality is an important indicator of women's health both internationally and nationally. In the United States, maternal mortality statistics are based upon the information recorded on death certificates and collected by State and local vital records offices. The NCHS compiles the data across the 50 States and other registration areas. Due to concerns about data quality in the ascertainment of maternal mortality statistics, the 2003 revision of the standard death certificate introduced improved standards for collecting data. Until all 50 States and registration areas adopt the new data standards, formulating a national-level maternal mortality ratio remains difficult.

(b) Women in Leadership in Corporate America. Women participate in every sector of the workforce. Their current role in corporate leadership is an important indicator of their progress. I encourage the Chair of the Securities and Exchange Commission to seek to supplement the information it already collects by seeking to collect, among other data, information on the presence of women in governance positions in corporations, in order to shed further light on the role of women in corporate America.

(c) Women in Leadership in Public Service. I encourage the Corporation for National and Community Service to include statistics about the role of women in diverse aspects of public service within its planned work on measuring civic engagement.

This memorandum shall be carried out to the extent permitted by law, consistent with the legal authorities of executive departments and agencies and subject to the availability of appropriations. Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof; or the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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 Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, March 4, 2011

[FR Doc. 2011–5568
Filed 3–8–11; 8:45 am]
Billing code 3110–01–P

Rules and Regulations

Federal Register

Vol. 76, No. 46

Wednesday, March 9, 2011

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2011–0002]

RIN 3150–AI89

List of Approved Spent Fuel Storage Casks: NUHOMS® HD System Revision 1; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is confirming the effective date of March 29, 2011, for the direct final rule that was published in the **Federal Register** on January 13, 2011 (76 FR 2243). This direct final rule amended the NRC's spent fuel storage regulations at Title 10 of the Code of Federal Regulations (10 CFR 72.214) to revise the NUHOMS® HD System listing to include Amendment Number 1 to Certificate of Compliance (CoC) Number 1030.

DATES: *Effective Date:* The effective date of March 29, 2011, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including any comments received, may be examined at the NRC Public Document Room, Room O–1F21, 11555 Rockville Pike, One White Flint North, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Gregory Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6445, e-mail: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION: On January 13, 2011 (76 FR 2243), the NRC published a direct final rule amending its regulations at 10 CFR 72.214 to include Amendment No. 1 to CoC No. 1030. Amendment No. 1 will revise the definitions for Damaged Fuel Assembly and Transfer Operations; add definitions for Fuel Class and Reconstituted Fuel Assembly; add Combustion Engineering 16x16 class fuel assemblies as authorized contents; reduce the minimum off-normal ambient temperature from −20 °F to −21 °F; expand the authorized contents of the NUHOMS® HD System to include pressurized water reactor fuel assemblies with control components; reduce the minimum initial enrichment of fuel assemblies from 1.5 weight percent uranium-235 to 0.2 weight percent uranium-235; clarify the requirements of reconstituted fuel assemblies; add requirements to qualify metal matrix composite neutron absorbers with integral aluminum cladding; clarify the requirements for neutron absorber tests; delete use of nitrogen for draining the water from the dry shielded canister (DSC), and allow only helium as a cover gas during DSC cavity water removal operations; and make corresponding changes to the technical specifications. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on March 29, 2011.

The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 3rd day of March 2011.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2011–5346 Filed 3–8–11; 8:45 am]

BILLING CODE 7590–01–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: Interim final rule.

SUMMARY: The U.S. Department of Energy (DOE) is amending its test procedures for microwave ovens under the Energy Policy and Conservation Act (EPCA) to provide for the measurement of standby mode and off mode power use by microwave ovens. These amendments incorporate into the DOE test procedure provisions from the International Electrotechnical Commission (IEC) Standard 62301, "Household electrical appliances—Measurement of standby power," First Edition 2005–06 (IEC Standard 62301 (First Edition)). In addition, these amendments adopt in the DOE test procedure definitions of modes based on the relevant provisions from the IEC Standard 62301 Second Edition, Final Draft International Standard (IEC Standard 62301 (FDIS)), as well as language to clarify application of these provisions for measuring standby mode and off mode power consumption in microwave ovens.

DATES: This rule is effective April 8, 2011. Comments on the interim final rule are due September 6, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on April 8, 2011.

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.

Any comments submitted must identify the Interim Final Rule 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: http://www.regulations.gov.* Follow the instructions in section V 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 Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed original paper copy.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V (Public Participation) of this document.

Docket: The docket is available for review at *http://www.regulations.gov*, including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. The documents in the docket are listed for review. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. See section V of this SNOPR for instructions on how to submit comments and to access publicly available material on the regulations.gov Web site.

A link to the Supplemental Notice of Proposed Rulemaking (SNOPR) web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/cooking_products.html,* under Supplemental Notice of Proposed Rulemaking (SNOPR). This web page contains links to the SNOPR, information from the public meeting and regulations.gov. The regulations.gov web page will also contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit or review public comments, participate in the public meeting, or view hard copies of the docket in the Resource Room, contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards@ee.doe.gov.*

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.*

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Tel.: (202) 287–6307, E-mail: *Ari.Altman@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, in context, "the Act") sets forth a variety of provisions designed to improve energy efficiency. Part B of Title III ((42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles," including microwave ovens (all of which are referred to below as "covered products".) [1] (42 U.S.C. 6291(1)–(2) and 6292(a)(10))

Under the Act, this program consists essentially of three parts: (1) Testing; (2) labeling; and (3) establishing Federal energy conservation standards. Pursuant to EPCA, the testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted under EPCA and for representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with EPCA standards. Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. EPCA provides that any test procedures prescribed or amended under this section 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, as determined by the Secretary of Energy, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, 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. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency, energy use, or water use of a representative sample of covered products that minimally comply with

[1] All references to EPCA refer to the statute as amended including through the Energy Independence and Security Act of 2007, Public Law 110–140. For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

the existing standard. The average of such energy efficiency, energy use, or water use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2)) EPCA also states that models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency, energy use, or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard. (42 U.S.C. 6293(e)(3))

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 (First Edition)) [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 active mode 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 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 (NOPR) on October 17, 2008 (hereafter referred to as the October 2008 TP NOPR), in which it proposed incorporating provisions from IEC Standard 62301 (First Edition) 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. 73 FR 62134. 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.

EPCA requires DOE to consider the most recent version of IEC Standard 62301. 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. IEC Standard 62301 (Second Edition) was not published, however, until January 27, 2011.

Because the Energy Independence and Security Act (EISA) of 2007 amendments to EPCA require DOE to establish test procedures for standby mode and off mode by March 31, 2011, and because DOE is conducting a concurrent energy conservation standards rulemaking for standby and off mode energy use, discussed below, DOE published a supplemental notice of proposed rulemaking (SNOPR) on July 22, 2010 (hereafter referred to as the July 2010 TP SNOPR) proposing mode definitions based on those in the then current draft version of IEC Standard 62301 (Second Edition), designated as IEC Standard 62301 Second Edition, Committee Draft for Vote (IEC Standard 62301 (CDV)). 75 FR 42612, 42620–23 (July 22, 2010). DOE noted in the July 2010 TP SNOPR that IEC Standard 62301 (CDV) contains proposed amendments to IEC Standard 62301 (First Edition), 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 stated that it believes that these most recent mode definitions represent the best definitions available for the analysis in support of this rulemaking. 75 FR 42612, 42621.

DOE held a public meeting on September 16, 2010 (hereafter referred to as the September 2010 public meeting), to hear oral comments on and solicit information relevant to the July 2010 TP SNOPR. Interested parties remarked upon, among other things, covered products, incorporation of IEC Standard 62301 (First Edition), mode definitions, and testing procedures. On October 29, 2010, the IEC released a finalized draft version of IEC Standard 62301 (Second Edition), IEC Standard 62301 (FDIS).

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. (42 U.S.C. 6295(h)(2)) 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

[2] IEC standards are available for purchase at: *http://www.iec.ch.*

[3] In a final rule published on April 8, 2009 (74 FR 16040), DOE 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 active mode cooking efficiency test procedure for microwave ovens under EPCA in a final rule published on July 22, 2010 (the July 2010 TP Final Rule). 75 FR 42579. DOE also published a notice of a public meeting to discuss a separate rulemaking process to replace the repealed provisions for measuring microwave oven energy efficiency in active mode on July 22, 2010. 75 FR 42611.

[4] IEC Standard 62301 (CD2) was the draft version immediately preceding IEC Standard 62301 (CDV).

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 (collectively, appliance standards), 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. 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 (First Edition) 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)), which is a widely accepted international test procedure, 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 did not occur until January 27, 2011; as a result, DOE considered the most recent draft at the time, version IEC Standard 62301 (CDV), for the July 2010 TP SNOPR. 75 FR 42612, 42614.

II. Summary of the Interim Final Rule

In today's interim final rule, DOE is amending its test procedures for microwave ovens to:

(1) Address the statutory requirement to establish procedures for the measurement of standby mode and off mode power consumption.

(2) Support the concurrent development of energy conservation standards that address use of standby mode and off mode power by this product.

In today's interim final rule, DOE is incorporating by reference specific clauses from IEC Standard 62301 (First Edition) regarding test conditions and testing procedures for measuring the average standby mode and average off mode power consumption into the microwave oven test procedure. DOE is also adopting in 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 (FDIS). DOE further adopts language to clarify the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power in this interim final rule. Specifically, DOE is 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.*

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 rule amends the test procedures for microwave ovens to include test procedures for the measurement of standby mode and off mode power use. This rule also clarifies 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. In response to the October 2008 TP NOPR, interested parties commented that the proposed definition for covered products lacks clarity and is

inconsistent with current regulations, and requested clarification on what would be considered covered products.

For the July 2010 TP SNOPR, DOE 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 (hereafter referred to as "microwaves with thermal elements only"), while 16 percent (21 out of 129) are combination units (containing microwave, convection, and possibly thermal elements). 75 FR 42612, 42616 DOE stated that, although it 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. *Id.* DOE proposed to clarify that microwave ovens with thermal elements only would be considered covered products under the definition provided in 10 CFR 430.2. *Id.* Based on DOE's product literature review for the single available microwave oven with thermal elements only, DOE stated that it believes that the standby and off mode operation for microwave ovens with thermal elements only does not differ from that of microwave-only units. *Id.*

DOE also proposed 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. 75 FR 42612, 42616–17. 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. *Id.* DOE stated 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. *Id.* However, DOE also stated that, based on its preliminary analysis, it 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. *Id.*

The July 2010 TP SNOPR did 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. Because DOE tentatively determined 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 proposed that the same test procedure amendments for standby and off mode testing, be used for all of these product types. *Id.*

In response to the July 2010 TP SNOPR, DOE received multiple comments on its proposed definition of microwave oven for the purpose of determining covered products. Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCGC), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE), jointly (hereafter, "the California Utilities") the American Council for an Energy Efficient Economy (ACEEE) and the Appliance Standards Awareness Project (ASAP), jointly (hereafter, "ACEEE/ASAP Comment"), and the Northwest Energy Efficiency Alliance (NEEA) supported DOE's definition of microwave ovens with or without thermal elements. (ACEEE/ASAP Comment, No. 20 at p. 1; California Utilities, No. 17 at p. 1; NEEA, No. 16 at p. 2) The Association of Home Appliance Manufacturers (AHAM) stated that it opposed the inclusion of thermal elements designed for surface browning of food in the definition of microwave ovens because there is no repeatable and reproducible test procedure for thermal elements. According to AHAM, those units with thermal elements may use different amounts of energy than units with microwave-only capability, and furthermore, there is no definition of "browning". (AHAM, No. 19 at p. 2)

In today's interim final rule, DOE is adopting provisions to measure the standby mode and off mode energy use of microwave ovens. The energy use of components necessary for any thermal elements, if present, in standby mode and off mode, would be measured under the amended test procedure. DOE is not adopting at this time any measures addressing energy use of microwave ovens in active mode, including the energy required to activate thermal elements. At the time that DOE considers amending the test procedure to include active mode energy use, DOE will evaluate the measurement of thermal element energy consumption, including methodology to account for the usage of such elements (*i.e.,* surface browning or convection heating). DOE does not believe that the lack of current means to measure active mode energy use in microwave ovens warrants the exclusion of certain products from coverage under the amended test procedure, which is only addressing standby mode and off mode energy use.

DOE also received multiple comments regarding the definition of combination ovens and their inclusion as covered products. AHAM and Whirlpool Corporation (Whirlpool) objected to the definition in the July 2010 TP SNOPR, stating that it is overly broad and that a free-standing range or built-in oven with a microwave component should not be considered as a combination microwave oven. AHAM and Whirlpool requested clarification as to whether a cooking product that utilizes radiant as well as microwave energy would be a covered product. According to Whirlpool, a cooking product which primarily uses radiant heat for cooking and which is supplemented by microwave energy would be covered as a conventional cooking product and thus should not be a covered product for this rulemaking. (AHAM, No. 19 at p. 2; AHAM, Public Meeting Transcript, No. 26 at pp. 25, 30, 37–38; Whirlpool, No. 18 at p. 2; Whirlpool, Public Meeting Transcript, No. 26 at pp. 36–37) GE Consumer and Industrial (GE) commented that the definition of combination microwave oven may not cover future products, and that evaluation of standby power may need to take into account such features as noise suppression and components to support heating elements. (GE, Public Meeting Transcript, No. 26 at pp. 30–31) AHAM and Whirlpool commented that the definition must be made in consideration of future active mode test procedures and energy conservation standards, as well as the current rulemakings addressing standby mode and off mode. AHAM stated that there is no test procedure for a convection microwave oven, and thus would object to combination microwave oven being a covered product for the standby mode and off mode test procedure because of the implications for active mode. According to AHAM, an active mode test procedure is likely to have inherent complexities and not considering active mode in the definition of covered products would only add to those

complexities. (AHAM, No. 19 at p. 2; AHAM, Public Meeting Transcript, No. 26 at pp. 26–27, 33–35; Whirlpool, Public Meeting Transcript, No. 26 at p. 36)

The California Utilities, the ACEEE/ASAP Comment, NEEA, and the Natural Resources Defense Council (NRDC) support DOE's definition of combination ovens and their inclusion as covered products. (California Utilities, No. 17 at p. 1; ACEEE/ASAP Comment, No. 20 at p. 1; NEEA, No. 16 at p. 2; NRDC, No. 21 at p. 1) According to the California Utilities, no test data or information has been provided to suggest that combination microwave ovens have additional standby or off mode operations or features that would require separate test procedures to measure these modes. The California Utilities and NEEA stated that combination ovens are a significant and growing share of the overall microwave oven market, and the California Utilities commented that significant energy savings may be achieved by setting energy conservation standards addressing standby mode and off mode energy use for these products. (California Utilities, No. 17 at p. 1; NEEA, No. 16 at p. 2) ACEEE commented that test procedures should cover a broad range of products to support the energy conservation standards rulemaking process. (ACEEE, Public Meeting Transcript, No. 26 at pp. 28–29) NRDC commented that it agreed with DOE's conclusion in the July 2010 TP SNOPR that standby mode and off mode functions do not vary across the scope of covered products and so there is no justification for different standby mode and off mode test procedures. NRDC also stated that the covered products could be categorized as different product classes for the purposes of energy conservation standards or could be the subject of different active mode test procedures. (NRDC, No. 21 at p. 1)

In further considering the definition of combination microwave oven, DOE reiterates, as stated in the October 2008 TP NOPR, that the proposal would exclude as a covered product 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. Therefore, the proposal would exclude a free-standing range with microwave capability. However, DOE does not have information to suggest that a built-in oven, incorporating both radiant elements and microwave capability, is fundamentally different in cooking functions than a countertop or over-the-range cooking product incorporating similar heating components. DOE tests of combination microwave ovens included several built-in models, and DOE did not observe any different standby or off modes as compared to countertop and over-the-range models. Therefore, DOE believes a built-in combination microwave oven would be a covered product for the purposes of this test procedure. DOE based its analysis on products currently available on the market in the United States. DOE is unable to consider testing procedures for future products until it can review details of the technologies, control strategies, and operating modes of any such microwave ovens or combination microwave ovens.

DOE further considered whether the definition of a combination microwave oven as a covered product hinges on which cooking mode (*i.e.,* radiant heating or microwave energy) is primary. DOE is not aware of any cooking products with both microwave and radiant heating features which cannot be operated in microwave-only mode, nor does DOE have any information to determine consumer usage of microwave cooking as compared to other cooking modes for such products. Thus, DOE believes that all ovens equipped with microwave capability would be considered a covered product for today's interim final rule. DOE will evaluate any differences among microwave ovens and combination microwave ovens, including installation configurations and heating features that may warrant different product classes or energy conservation standards during its microwave oven standards rulemaking.

DOE notes that defining a covered product for the purposes of measuring standby mode and off mode energy use does not require that active mode provisions be specified for that same product. When considering future active mode test procedure amendments, DOE will evaluate the suitability of separate provisions for combination microwave ovens to measure the energy performance of heating components other than the microwave portion.

AHAM noted the difference between countertop and over-the-range microwaves, and stated it was not sure if the difference should be addressed in the test procedure or by the creation of separate product classes in the energy conservation standards rulemaking.

Limited DOE testing of a small sample of over-the-range microwave ovens, as well as more extensive testing of a sample of over-the-range combination microwave ovens did not identify any different standby or off modes as compared to countertop microwave-only units. Thus, DOE determined that the measures it is adopting in today's interim final rule will provide representative measures of standby mode and off mode energy use in countertop and over-the-range configurations of microwave ovens and combination microwave ovens, and is not providing an exclusion for over-the-range units in the definition of covered products. Differences in energy use in these modes between countertop and over-the-range configurations would be evaluated as part of the energy conservation standards rulemaking addressing standby mode and off mode for microwave ovens.

B. Effective Date for the Test Procedure and Date on Which Use of the Test Procedure Would Be Required

The effective date of the standby and off mode test procedures for microwave ovens is 30 days after the date of publication of today's interim final rule. However, DOE's amended test procedure regulations codified in the CFR clarify that the procedures and calculations adopted in today's interim final rule 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 is provided that, as of 180 days after publication of today's interim 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)) In addition, in order to ensure that the amended test procedure adequately addresses the EISA 2007 requirement to consider the most recent version of IEC Standard 62301, and recognizing that the IEC issued IEC Standard 62301 (Second Edition) in January of 2011, DOE is issuing this microwave oven test procedure as an interim final rule and offering an additional 180-day comment period to consider whether any changes should be made to this interim final rule in light of publication of IEC Standard 62301 (Second Edition). DOE will consider these comments and, to the

extent necessary, publish a final rulemaking incorporating any changes.

Whirlpool recommended a minimum 3-year lead time between the issue date of a final rule and the compliance date, stating that this time period is necessary to allow for adequate development, testing, and introduction of the new electronic controls that will likely be needed to meet the requirements. (Whirlpool, No. 18 at p. 5) Although Whirlpool did not specify in its comments whether the dates referred to corresponded to the test procedure or energy conservation standards rulemaking, DOE notes that the amended test procedure in today's interim final rule need not be performed by manufacturers until the compliance date of any amended energy conservation standards for microwave ovens addressing standby mode and off mode energy use.

AHAM requested clarification regarding representations of energy use of a microwave oven model on the retail packaging. (AHAM, Public Meeting Transcript, No. 26 at pp. 59–61) As noted above, as of 180 days after publication of today's interim 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. Such representations include those made in writing, including on a label, and in any broadcast advertisement. (42 U.S.C. 6293(c)(1)(B)) Because the provisions adopted in today's interim final rule address microwave oven standby mode and off mode energy use, and because DOE is not adopting measures addressing active mode energy use, representations as to active mode energy use (*e.g.,* the wattage of the product in cooking mode) are not subject to the requirements of 42 U.S.C. 6293(c)(2).

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.[5]

A number of interested parties 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 watts (W) and average off mode power (P_{OFF}) in W, distinct from 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).

DOE addressed the issues with the cooking efficiency measurement in the July 2010 TP Final Rule and notice announcing a public meeting to discuss the development of new active mode test procedure. 75 FR 42579 (July 22, 2010) and 75 FR 42611 (July 22, 2010), respectively. DOE proposed only to establish the test procedure for microwave ovens to address standby mode and off mode energy consumption. 75 FR 42612, 42618. However, DOE also requested 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 for consideration in an active mode test procedure rulemaking. *Id.*

NEEA commented that, although an energy efficiency descriptor for standby mode and/or off mode and a separate energy efficiency descriptor for active cooking mode for microwave ovens is acceptable, it is not strongly supportive of that approach. NEEA stated that it is not troubled by the possibility that standby energy use could reverse the efficiency rankings of some products if a combined active and standby mode energy use descriptor were used. According to NEEA, if standby energy use is a large fraction of a product's annual energy use, then the standby energy's weight in the calculation of an annual energy use descriptor should be relatively large. NEEA also stated that if cooking efficiency results are not meaningful for microwave ovens, then this issue should be addressed in the active mode test procedure and energy conservation standards rulemakings. However, NEEA further stated that the current microwave descriptor is an EF metric, and that the most appropriate measure of standby and off mode energy consumption is annual energy use. For this reason, NEEA commented that not combining these two measures of efficiency is the simplest way to proceed with the microwave oven test procedure rulemaking, and therefore, NEEA accepts DOE's proposal for separate metrics for active mode and standby and off mode energy use. (NEEA, No. 16 at pp. 1–2).

AHAM, GE, and Whirlpool commented that they are unaware of any existing test procedures for measuring active mode energy consumption that are repeatable and reproducible. (AHAM, No. 19 at p. 6; AHAM, Public Meeting Transcript, No. 26 at pp. 58–59; GE, Public Meeting Transcript, No. 26 at p. 61; Whirlpool, No. 18 at p. 2) AHAM also stated that it is unaware of any existing test procedure that has successfully incorporated actual food loads, and if DOE decides to move forward with an active mode test procedure, it should collect data on food loads. Several interested parties provided comments on the methods by which active mode could be tested. (AHAM, No. 19 at p. 6; Whirlpool, No. 18 at p. 2; NRDC, No. 21 at pp. 1–2).

DOE acknowledges these comments, and notes that the absence of active mode provisions results in a *de facto* separate energy use descriptor for microwave oven standby mode and off mode energy use. The consideration of active mode provisions, including a representative food load, is outside the scope of today's interim final rule, which is addressing only standby mode and off mode energy use. DOE determined it would not be feasible to develop such active mode provisions in a time frame that would allow it to consider an integrated metric for this rulemaking. DOE will consider these comments separately as part of an active mode test procedure rulemaking for microwave ovens, which DOE announced it was considering in the notice of public meeting published in the **Federal Register** on July 22, 2010. 75 FR 42611.

D. Incorporating by Reference IEC Standard 62301 (First Edition) for Measuring Standby Mode and Off Mode Power in Microwave Ovens

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.[6] (42 U.S.C. 6295(gg)(2)(A))

DOE noted in the October 2008 TP NOPR that IEC Standard 62301 (First

[5] 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).

[6] DOE 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).

Edition) 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. 73 FR 62134, 62139–41 (Oct. 17, 2008). The July 2010 TP SNOPR did not affect DOE's proposal of the clauses from sections 4 and 5 of IEC Standard 62301 (First Edition) (*i.e.,* paragraphs 4.2, 4.4, 4.5, 5.1 (Note 1), and 5.3) identified in the October 2008 TP NOPR, but proposed to incorporate by reference an additional paragraph of IEC Standard 62301 (First Edition) in response to comments. 75 FR 42612, 42618–19.

Specifically, DOE stated in the July 2010 TP SNOPR that incorporating paragraph 5.2, "Selection and preparation of appliance or equipment," of IEC Standard 62301 (First Edition) provides clarification to the installation requirements for standby mode and off mode energy consumption testing. DOE also stated that paragraph 5.2 of IEC Standard 62301 (First Edition) 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. Therefore, DOE proposed in the July 2010 TP SNOPR to incorporate by reference paragraph 5.2 of IEC Standard 62301 (First Edition). 75 FR 42612, 42619.

DOE also noted in the July 2010 TP SNOPR that paragraph 4.3 of IEC Standard 62301 (First Edition) 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 volts (V) ± 1 percent and 60 Hz ± 1 percent for North America. In addition, paragraph 4.3 of IEC Standard 62301 (First Edition) 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 stated in the July 2010 TP SNOPR that it believes that the accuracy of the electrical supply, including voltage and frequency, specified in IEC Standard 62301 (First Edition) 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 proposed in the July 2010 TP SNOPR to specify electrical supply requirements of 120/240 V ± 1 percent and 60 Hz ± 1 percent in section 2.2.1 of the DOE microwave oven test procedure. As noted in paragraph 4.3 of IEC Standard 62301 (First Edition), 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 (First Edition). 75 FR 42612, 42619.

As discussed above in section III.A, because DOE tentatively concluded in the July 2010 TP SNOPR 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 proposed that the same test procedure amendments for standby and off mode testing discussed in this section be used for all of these product types. 75 FR 42612, 42620.

DOE received comments from interested parties regarding the consideration of IEC Standard 62301 (First Edition) as the most current version according to the EPCA requirement. (42 U.S.C. 6295(gg)(2)(A)) NRDC supports the incorporation of IEC Standard 62301 (without specification of the version) into to the regulations and believes this version is adequate for measuring the standby mode and off mode power of microwave ovens. (NRDC, No. 21 at p. 2) NEEA stated that it supports DOE's use of the most current version of IEC Standard 62301 to the maximum extent possible, especially for definitions and measurement protocols. NEEA commented that it agrees that products that are sold into such a broad variety of international markets should be subject to consistent testing. NEEA also stated, however, that DOE does not make use of the guidance provided in the annexes in IEC Standard 62301, and that DOE should be as specific as possible in adopting or incorporating by reference sections of this IEC standard. (NEEA, No. 16 at p. 3)

AHAM and Whirlpool stated that DOE should use the provisions from the then most recent draft version of IEC Standard 62301 (Second Edition)—IEC Standard 62301 (FDIS)—for optimum international harmonization and to decrease test burden. (AHAM, No. 19 at p. 3, Whirlpool, No. 18 at p. 3) According to AHAM, microwave oven manufacturers build these products for worldwide distribution, requiring that manufacturers have the ability to build one microwave for distribution everywhere. AHAM commented that, while it supports DOE's proposals regarding measurement of standby and off modes, DOE should reference IEC Standard 62301 (FDIS) instead of IEC Standard 62301 (First Edition) or IEC Standard 62301 (CDV), and that IEC Standard 62301 (FDIS) would soon be publicly available and formally adopted by IEC. AHAM stated that the modes and the definitions in the CDV and in the FDIS are essentially the same, but that IEC Standard 62301 (FDIS) contains many new sections that produce more accurate testing and measurements, including new or expanded sections on measurement of power uncertainty, crest factor, power measurement frequency response, sampling methods, average reading methods for non-cyclic loads, and instrument measurement methods. AHAM stated that these provisions are critical for third-party testing and verification testing of the very small amounts of energy use in standby mode. According to AHAM, all other governmental bodies that consider IEC standards are able to reference an FDIS version in their regulations because only grammatical corrections can be made between the FDIS stage and the final version. AHAM noted that IEC Standard 62301 (FDIS) will have to go out to committee members for a vote, but having passed at the CDV stage, AHAM believes IEC Standard 62301 (FDIS) will garner the necessary number of votes to be issued. AHAM further stated that if DOE decides not to incorporate IEC Standard 62301 (FDIS) by reference, it should use its language in full. AHAM does not support incorporation by reference of IEC Standard 62301 (First Edition) combined with only some provisions from IEC Standard 62301 (CDV). AHAM commented that, for example, definitions from IEC Standard 62301 (CDV) do not have the same meaning when combined with provisions from IEC Standard 62301 (First Edition), and that definitions for network mode are not provided in IEC Standard 62301 (First Edition). Finally, AHAM stated that, if DOE chooses neither to incorporate the language of IEC Standard 62301 (FDIS) by reference nor to use its language in full, DOE should incorporate by reference or use the full language of IEC Standard 62301 (CDV). (AHAM, No. 19 at p. 3; AHAM, Public Meeting Transcript, No. 26 at pp. 41–45, 47–49).

IEC published the final version of IEC Standard 62301 (Second Edition) on January 27, 2011. Therefore, the second

edition is now available for DOE's consideration or incorporation by reference. DOE is aware that there are significant differences between IEC Standard 62301 (First Edition) and IEC Standard 62301 (FDIS), which was the latest draft version of IEC Standard 62301 (Second Edition) available during the drafting of this interim final rule. For example, IEC Standard 62301 (FDIS) clarifies certain provisions, such as the definition of "standby mode" and "off mode" to allow for the measurement of multiple standby power modes. DOE notes that other significant changes in the methodology were first introduced only at the IEC Standard 62301 (FDIS) stage. These changes have not been the subject of significant comment from interested parties, nor has DOE had the opportunity to conduct a thorough analysis of those provisions. Consequently, the merits of these latest changes have not been fully vetted to demonstrate that they are preferable to the existing methodological provisions in the current version of the IEC standard.

For the reasons discussed in section III.E, DOE did narrowly consider the language from IEC Standard 62301 (FDIS) for mode definitions to address specific concerns raised by interested parties. Given the pending statutory deadline for issuance of a microwave oven standard and the recent adoption of IEC Standard 62301 (Second Edition), DOE has decided to base the test procedure amendments it is adopting in today's interim final rule (other than the mode definitions, which are discussed in section III.E) on the provisions of IEC Standard 62301 (First Edition), but to seek comment on the merits of adopting additional provisions of IEC Standard 62301 (Second Edition).

As noted above, the July 2010 TP SNOPR proposed to incorporate by reference the clauses from sections 4 and 5 of IEC Standard 62301 (First Edition) as proposed in the October 2008 TP NOPR, along with paragraph 5.2. 75 FR 42612, 42618–19. AHAM commented that it supports DOE's proposal to incorporate by reference the electrical supply requirements in paragraph 4.3 and the testing conditions in paragraph 5.2 of IEC Standard 62301 (without specification of the version of this IEC standard). (AHAM, No. 19 at pp. 3–4; AHAM, Public Meeting Transcript, No. 26 at pp. 66, 71–73) AHAM further stated that, in accordance with paragraph 5.2 of IEC Standard 62301 (FDIS), the appliance should be tested at factory or "default" settings, and that where there are no indications for such setting, the appliance should be tested as shipped. (AHAM, No. 19 at p. 4) ACEEE and the California Utilities objected to the proposal to test standby power at the factory or "default" settings. ACEEE asserted that it would allow the potential for "gaming," by which manufacturers could ship products with settings that use minimal power that consumers could easily switch out of and that therefore these settings would not be representative of typical use. The California Utilities recommended that DOE not incorporate paragraph 5.2 of IEC Standard 62301 because, according to them, there are no data indicating that factory default modes are uniform or typically used by consumers. ACEEE and the California Utilities stated that DOE should require products to be set up for testing with the settings that produce the highest standby power consumption, ensuring that products in the field do not consume more standby power than the tested value. (ACEEE/ASAP, No. 20 at p. 1; California Utilities, No. 17 at p. 2) NEEA stated that section 5.3.1 of IEC Standard 62301 is explicit with regard to getting a repeatable measurement of average power over an extended time period and minimum number of what NEEA termed as "instability cycles," and that the procedures in section 5 and additional information in annexes A and B of IEC Standard 62301 would be adequate for testing microwave oven standby power, as well as that of most other products. NEEA acknowledged the occasional need for specific testing guidance. According to NEEA, DOE might require the highest display mode power setting to be used during standby measurement, and if DOE does this for one product type, it should impose the same requirement for most other products. In cases where there is only one display mode, NEEA stated that this is not an issue, but for products in which display brightness and metrics can be adjusted by the consumer for other than very short-term use, the highest energy use mode should be tested. NEEA further stated that if these functions automatically revert to a lower power mode in a short time (*i.e.,* less than one or two minutes), or the functions do not have a higher power consumption mode, then NEEA would support testing in "as-shipped" or "normal" mode. (NEEA, No. 16 at pp. 2–3)

In response, DOE first clarifies that, although it inadvertently stated in the July 2010 TP SNOPR that it was proposing to incorporate by reference two additional clauses from IEC Standard 62301 (First Edition) as compared to the provisions it proposed to incorporate by reference in the October 2008 TP NOPR, it in fact only proposed regulatory language to additionally incorporate by reference paragraph 5.2 in the July 2010 TP SNOPR along with the paragraphs proposed to be incorporated by reference in the October 2008 TP NOPR. In the July 2010 TP SNOPR, DOE also considered incorporating by reference paragraph 4.3 of IEC Standard 62301 (First Edition), but instead proposed voltage requirements that would supersede any requirements that would be imposed by the IEC Standard 62301 (First Edition) provisions. 75 FR 42612, 42619–20.

In considering testing conditions, DOE notes that its test procedures are developed to measure representative energy use for the typical consumer and cannot capture all possible consumer actions and appliance usage patterns that might increase energy use. For example, certain products featuring a display power-down may allow consumers to alter the display settings to increase the amount of time in the high-power state, or to make the high-power state permanent. However, DOE believes in the absence of information indicating otherwise that the typical consumer will not alter the standard or default settings. DOE also did not receive data to support a determination that standby and off mode power measurements made at the highest power settings would be more representative of actual consumer use than measurements using the default settings. Thus, in today's interim final rule, DOE is incorporating by reference section 5.2 of IEC Standard 62301 (First Edition), with the stipulation that standby mode and off mode measurements be made using the "default" or "as-shipped" settings in the absence of specific manufacturer instructions.

DOE did not receive comments on the suitability of incorporating in its microwave oven test procedure the other specific paragraphs for testing conditions and methods from IEC Standard 62301 (First Edition) that were proposed in the July 2010 TP SNOPR. In the absence of any comments objecting to those specific paragraphs, and for the reasons discussed above relating to the current version of IEC Standard 62301, DOE is adopting in today's interim final rule the provisions from IEC Standard 62301 (First Edition) that were proposed in the July 2010 TP SNOPR (*i.e.,* paragraphs 4.2, 4.4, 4.5, 5.1 (Note 1), and 5.3), along with paragraph 5.2 of IEC Standard 62301 (First Edition).

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 42 U.S.C. 6295(gg)(1)(A) in the October 2008 TP NOPR. 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, defrosting the load, or some combination of these. 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 because activation of the higher-power state would be achieved by means of an internal sensor. DOE additionally clarified whether the presence of a manual power on-off switch would be considered to potentially put the microwave oven in standby mode or off mode. DOE 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.*

DOE stated in the July 2010 TP SNOPR that it believes the definitions of standby mode, off mode, and active mode provided in IEC Standard 62301 (CDV), which at that time was the latest draft version, expand upon the EPCA mode definitions and provide additional guidance as to what functions are associated with each mode. DOE also stated 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, DOE proposed definitions of standby mode, off mode, and active mode based on the definitions provided in IEC Standard 62301 (CDV) in the July 2010 TP SNOPR. DOE stated that it 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 (First Edition), 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. DOE also stated in the July 2010 TP SNOPR that it believes that the proposed definitions of standby, off, and active mode would be applied to microwave-only units, microwave ovens with only thermal elements, and combination microwave ovens. 75 FR 42612, 42620–21.

DOE proposed in the July 2010 TP 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:[7] A remote switch (including a 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. 75 FR 42612, 42621.

DOE proposed in the July 2010 TP SNOPR 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 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. *Id.*

DOE proposed in the July 2010 TP SNOPR 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.[8] 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. 75 FR 42612, 42622.

As part of the July 2010 TP SNOPR, DOE examined the issue of how to classify a microwave oven that is plugged into 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) and 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, the discussion is silent on whether activation of an on/off switch can place the product in disconnected mode. Considering the entirety of section A.2 in total, DOE concluded in the July 2010 TP SNOPR that the

[7] The 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.

[8] 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.

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 revised its determination proposed in the October 2008 TP NOPR and tentatively concluded in the July 2010 TP SNOPR that zero energy consumption due to activation of an on/off switch would be indicative of off mode rather than a disconnected mode. *Id.*

In response to interested parties' question of whether testing would be required for a device with off mode capability even though there is no reporting requirement or standard, DOE noted, in the July 2010 TP SNOPR, that any representations as to the standby and off mode energy consumption for microwave ovens would need to be based upon results generated under the applicable provisions of the test procedure that is the subject of this rulemaking. 75 FR 42612, 42622–23.

Finally, DOE proposed in the July 2010 TP SNOPR 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 noted 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. In response to comments on IEC Standard 62301 (CD2) that led to IEC Standard 62301 (CDV), IEC stated, however, 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. 75 FR 42612, 42623.

DOE tentatively proposed in the July 2010 TP SNOPR 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 food would be considered active mode functions as well.

DOE also noted 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 stated in the July 2010 TP SNOPR that it believes that there would be no energy use in a "disconnected mode," and therefore did not propose a definition or testing methods for such a mode in the DOE test procedure for microwave ovens. *Id.*

The California Utilities and NRDC support DOE's proposal to adopt the definitions of active, standby, and off modes from IEC Standard 62301 (CDV). (California Utilities, No. 17 at p. 2; NRDC, No. 21 at p. 2) AHAM commented that the mode definitions in IEC Standard 62301 (CDV) and IEC Standard 62301 (FDIS) are not going to vary. AHAM initially stated that DOE should move forward using the definitions that are in IEC Standard 62301 (CDV), but later clarified its statements to recommend that DOE reference IEC Standard 62301 (FDIS) for the mode definitions. Whirlpool also stated that DOE should adopt mode definitions from IEC Standard 62301 (FDIS). (AHAM, No. 19 at p. 4; AHAM, Public Meeting Transcript, No. 26 at p. 45; Whirlpool, No. 18 at p. 3)

DOE has reviewed IEC Standard 62301 (FDIS) and anticipates that the newly finalized IEC Standard 62301 (Second Edition) defines the various modes differently than IEC Standard 62301 (First Edition). IEC Standard 62301 (FDIS) incorporates responses to comments from multiple national committees from member countries on several previous draft versions, and thus, DOE believes it provides the best available mode definitions. DOE has decided to consider the substance of the new operational mode definitions from the draft version IEC Standard 62301 (FDIS). DOE notes that the mode definitions in IEC Standard 62301 (FDIS) are substantively similar to those in the previous draft version (IEC Standard 62301 (CDV)), which were the subject of extensive comments from interested parties, both as noted above and during recent DOE test procedure rulemakings addressing standby mode and off mode energy use in other products (*i.e.,* clothes dryers and room air conditioners). In those instances, interested parties indicated general support for adopting the mode definitions provided in IEC Standard 62301 (CDV). Due to the effective equivalence of the mode definitions in IEC Standard 62301 (CDV) and IEC Standard 62301 (FDIS), DOE believes the public comment support expressed for the mode definitions in IEC Standard 62301 (CDV) would extend to those in IEC Standard 62301 (FDIS).

AHAM commented that the definition of "standby mode" should include a requirement that all products will default to the product's standby mode as delivered from the factory. According to AHAM and Whirlpool, products may have provisions for the consumer to add or delete product functions that alter the as-shipped energy mode. AHAM stated that the power consumption in these user-selected modes may exceed the power consumption in the lowest power-consumption mode, and that the consumer must be informed as to how to make these selections and that their selection(s) would override the lowest power-consumption mode. (AHAM, No. 19 at p. 4; Whirlpool, No. 18 at p. 3) DOE notes that design and labeling requirements are outside the scope of this test procedure rulemaking, thus DOE is not adopting, in today's interim final rule, any measures specifying the default operation or provisions regarding consumer information, although potential design requirements may be considered in the microwave oven energy conservation standards rulemaking addressing standby mode and off mode energy use. DOE is, however, addressing the settings for standby mode and off mode testing in section III.F of today's interim final rule.

Whirlpool requested clarification on whether the use of an "Energy Save" pushbutton to enter a lower consumption state (such as by turning off a clock) is consistent with the definition of standby mode proposed by DOE, as allowed by the IEC Standard 62301 (FDIS) definition. Whirlpool stated it prefers harmonization wherever practicable. Whirlpool also questioned whether the switch to standby power could be automatic. (Whirlpool, No. 18 at p. 3) DOE agrees that such a pushbutton would be considered an internal sensor that would activate this lower consumption state, which could be considered either another standby mode or an off mode, depending on the components energized. As noted above, DOE is not addressing design requirements as part of this test procedure rulemaking. DOE will consider any such requirements for standby mode and off mode energy use as part of its energy conservation standards rulemaking for microwave ovens.

Whirlpool and AHAM commented that they do not support the inclusion of power consumed by one-way remote controls in the definition of standby

mode. (Whirlpool, No. 18 at p. 4; AHAM, No. 19 at p. 5) According to AHAM, although EPCA defines standby mode to include activation by remote control, one-way remotes do not meet the intent of the statute. AHAM and Whirlpool stated that a standard remote, when it powers a product "off", actually powers the product down, not off, such that it can be turned on again via remote control, and therefore would be classified as consuming standby power. AHAM and Whirlpool contrasted that with a one-way remote that turns the product completely off such that it cannot be turned on again through the use of the remote. Thus, AHAM commented that a one-way remote does not put the product into standby mode and should not be incorporated into standby mode. AHAM noted that there are few, if any, one-way remotes in the United States, but AHAM stated that including one-way remotes as part of off mode rather than standby mode would encourage manufacturers to design products with them and could result in decreased energy use. (AHAM, No. 19 at p. 5; Whirlpool, No. 18 at p. 4)

DOE notes that the definition of standby mode proposed in the July 2010 TP SNOPR states that standby mode includes user-oriented or protective functions to facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer. DOE believes that if the product is consuming energy to power an infrared sensor used to receive signals from a remote control (while not operating in the active mode), such a function would be considered part of standby mode, regardless of whether the remote is classified as "one-way" or "two-way," because of the function to facilitate the deactivation of another mode by remote switch (including remote control), internal sensor, or timer. However, if a "one-way" remote control powers the product down, including turning off any infrared sensors to receive signals from a remote control, then the product would be operating in the off mode when it is powered down, given that no other standby mode functions within the product are energized.

AHAM also commented that DOE should consider additional provisions from paragraph 3.1 of IEC Standard 62301 (FDIS) that define functions broadly, within which the specific modes are defined. AHAM stated that such additional references are necessary to provide context for the mode definitions. (AHAM, Public Meeting Transcript, No. 26 at pp. 70–71) Paragraph 3.1 of IEC Standard 62301 (FDIS) defines a function as a predetermined operation undertaken by the energy-using product, and would be classified as: (1) A user-oriented secondary function (standby mode); (2) a network-related secondary function (network mode); (3) a primary function (active mode); and (4) other functions. DOE believes that the definitions of standby mode, off mode, and active mode in IEC Standard 62301 (FDIS) sufficiently describe all states of operation which are covered under the EPCA requirements in 42 U.S.C. 6295(gg). As discussed later in this section, DOE is not adopting provisions to measure energy use in network mode. Thus, DOE is not adopting language in today's interim final rule from paragraph 3.1 of IEC Standard 62301 (FDIS).

DOE received several comments on the definition of off mode and the conditions under which a microwave oven would be considered to be in disconnected mode. The California Utilities agreed with DOE's proposal that the disconnected mode for microwave ovens would be associated only with the removal of the power cord from the power source, and that zero energy consumption due to the activation of an on-off switch would be indicative of off mode rather than a disconnected mode. (California Utilities, No. 17 at p. 2) Whirlpool supported DOE's proposed definition of off mode. (Whirlpool, No. 18 at p. 3) GE questioned whether DOE was aware of any studies or information on a 240 volt microwave oven with multiple energy feeds but one on-off switch in the circuitry. (GE, Public Meeting Transcript, No. 26 at p. 83) DOE is not aware of such information, but believes that the provisions it is adopting today for measuring standby mode and off mode energy use would be applicable to a 240 volt microwave oven, regardless of any action of an on-off switch. If, with the switch in the "off" position, any components as described in the definition of standby mode were energized, the microwave oven would be considered to be operating in standby mode.

AHAM commented that it agrees with DOE's proposal that delay start mode should not be considered standby mode, and should instead be considered active mode. AHAM noted that the European Union (EU) also considers delay start mode part of active mode in its regulations. (AHAM, No. 19 at p. 5; AHAM, Public Meeting Transcript, No. 26 at p. 82)

After considering the most current version of IEC Standard 62301 (*i.e.,* the First Edition) and the draft version of IEC Standard 62301 (*i.e.,* FDIS), DOE has concluded that the definitions of "standby mode," "off mode," and "active mode" provided in IEC Standard 62301 (FDIS) are the most useful, in that they expand upon the EPCA mode definitions and provide additional guidance as to which functions are associated with each mode. Therefore, DOE is adopting definitions of "standby mode," "off mode," and "active mode" based on the definitions provided in IEC Standard 62301 (FDIS), as follows:

- "Standby mode" means the product mode where the microwave oven is connected to a mains power source and offers one or more of the following user-oriented or protective functions which usually persist:
- To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;
- Continuous function: information or status displays including clocks or sensor-based functions.

DOE is also adopting in its amendments to the test procedure the clarification, provided as a note accompanying the definition of standby mode in IEC Standard 62301 (FDIS), that 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.

- "Off mode" means a product mode where the microwave oven is connected to a mains power source and is not providing any standby mode or active mode function and where the mode usually persists. An indicator that only shows the user that the product is in the off position is included within the classification of off mode.

DOE notes that the definition of off mode in IEC Standard 62301 (FDIS) also includes the qualification that it is not providing any network mode function. However, for the reasons discussed below DOE is not including a definition of network mode in the amended microwave oven test procedure, DOE did not include reference to network mode in the definition of off mode for today's interim final rule.

- "Active mode(s)" means a product mode where the energy-using product is connected to a mains power source and at least one primary function is activated.

Multiple interested parties submitted comments on the possibility of defining an additional "network mode". The California Utilities, NEEA, and the ACEEE/ASAP Comment commented that DOE should adopt a definition of network mode in the microwave oven

test procedure, (California Utilities, No. 17 at p. 2; NEEA, No. 16 at p. 2; ACEEE/ASAP Comment, No. 20 at p. 2) AHAM stated that, although there are not a sufficient number of products currently available on the market from which to gather data regarding network mode, DOE should define a network mode even if it cannot be measured, because leaving it out would hinder manufacturers' development of products with network mode capabilities in the future. In the event DOE decides to address network mode at that time, AHAM stated it would not support including network mode in standby or off mode. According to AHAM, network mode and the energy use associated with "smart" appliances should be treated as a distinct energy use that enhances electrical grid system efficiencies that save energy and reduce carbon emissions. (AHAM, No. 19 at p. 5; AHAM, Public Meeting Transcript, No. 26 at pp. 73–76) The California Utilities stated that manufacturers have noted that they are developing products with networking capability, and that DOE should include the IEC standard definition of network mode in the microwave oven test procedure. The California Utilities also commented that DOE should collect test data from manufacturers of network-equipped products and develop a test procedure that measures energy use in this mode consistently and appropriately. (California Utilities, No. 17 at p. 2) The ACEEE/ASAP Comment expressed concern that, without provisions in the microwave oven test procedure for network mode, manufacturers could develop products that are always in network mode and therefore could be considered to have no standby power consumption. The ACEEE/ASAP Comment also stated that energy use in network mode could be significant. (ACEEE/ASAP Comment, No. 20 at p. 2) NEEA stated that it was unlikely to be Congress' intent to exclude network mode when mandating DOE to establish test procedures and standards for standby mode and off mode energy use for a broad array of products. According to NEEA, even though very few products may have this mode or function built in (or operating) presently, there is no reason to leave this mode out in the test procedure rulemaking, especially since it would be straightforward to include based on the IEC Standard 62301 approach. NEEA commented that if a network mode microprocessor in a home appliance functions as it does in a number of other products, it will spend almost all of its time in its own standby mode and almost no time in its active mode, placing network mode energy use in the same category as a clock or control circuit energy use. NEEA further commented that it is likely that the network mode processor(s) could significantly increase the standby energy use of many products, warranting its inclusion in the microwave oven test procedure. (NEEA, No. 16 at p. 2)

NRDC and Whirlpool do not support including a definition of network mode in the microwave oven test procedure at this time. NRDC stated that it is unaware of what network mode would entail for a microwave oven and that it is skeptical of its potential benefits. According to NRDC, microwave ovens are a convenience product that consumers generally want to use at a certain time when they want food heated quickly. Thus, NRDC stated, it is unlikely that the active mode function would be able to be delayed by a network mode function. NRDC further noted that network mode could be used to power down displays and other standby functions, but questioned whether this function would be accomplished by occupancy sensors or automatic power-down after a certain period of user inactivity. NRDC requested more data on network mode functions and potential benefits in microwave ovens. (NRDC, No. 21 at p. 2) Whirlpool stated that, although network mode will become vital with the future development of "Smart Grid" appliances, such products do not exist today outside of development laboratories. Whirlpool commented that DOE should retain this mode as separate and distinct from other modes, but that DOE should not adopt standards or test procedures for network mode until manufacturers have sufficient quantities of Smart Grid models in production to support comprehensive testing and measurement. (Whirlpool, No. 18 at p. 4)

Section 3.7 of IEC Standard 62301 (FDIS) also defines "network mode" as a mode category that includes "any product modes where the energy using product is connected to a mains power source and at least one network function is activated (such as reactivation via network command or network integrity communication), but where the primary function is not active." Section 3.7 of IEC Standard 62301 (FDIS) also provides a note, stating that "[w]here a network function is provided but is not active and/or not connected to a network, then this mode is not applicable. A network function could become active intermittently according to a fixed schedule or in response to a network requirement. A 'network' in this context includes communication between two or more separate independently powered devices or products. A network does not include one or more controls which are dedicated to a single product. Network mode may include one or more standby functions."

DOE notes that, in the absence of data on the operation and functionality of network mode, it is unable to define appropriate testing conditions and procedures for accurately measuring the energy use of microwave ovens capable of functioning in network mode. This lack of data also prevents DOE from evaluating how these products will develop in the future. Also, because DOE does not have sufficient data on the operation and functionality of network mode, it is not making a determination as to whether network mode would be included as part of standby or active mode. DOE may consider amendments to the microwave oven test procedure when products capable of functioning in network mode are in production and commercially available. At that time, comprehensive analysis can determine appropriate testing conditions and procedures for accurately measuring network mode and energy use.

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 (First Edition) 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 (First Edition) 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 (First Edition) 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 ± 30-second period" to assure comparable and valid results. *Id.*

As part of the July 2010 TP SNOPR, DOE investigated test methods to determine standby power over a shorter period than 12 hours. DOE first considered representing the average standby power over a 12-hour cycle by calculating a weighted average of power measurements at 18 different clock display times. This approach was discussed in detail 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. 75 FR 42612, 42624.

For the July 2010 TP SNOPR, DOE also investigated whether a single 10-minute measurement period with a starting clock time of 3:33 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 and would produce average standby power measurements comparable to those taken 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. *Id.*

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 *	Percent difference	Standby watts *	Percent difference
1	LCD	1.567	1.552	−0.99	1.592	1.60
2	LCD	1.571	1.560	−0.70	1.554	−1.08
3	LCD	1.812	1.812	0.03	1.801	−0.61
4	LCD	1.490	1.475	−0.96	1.492	0.17
5	LCD	1.859	1.847	−0.60	1.874	0.84
6	LCD	3.788	3.798	0.26	3.818	0.81
7	LCD	3.641	3.642	0.04	3.606	−0.95
8	LED	1.802	1.796	−0.35	1.797	−0.32
9	LED	1.825	1.820	−0.25	1.816	−0.47
10	LED	3.185	3.177	−0.27	3.290	** 3.28
11	VFD	5.600	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 higher 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 concluded in the July 2010 TP SNOPR 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 proposed in the July 2010 TP 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. *Id.*

DOE noted in the July 2010 TP SNOPR 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. 75 FR 42612, 42624–25.

DOE stated in the July 2010 TP SNOPR that the microwave oven test procedure is designed to provide a measurement representative of average consumer use of the product, even if the test conditions and procedures may not be identical to average consumer use (*for example,* specified display times). DOE's proposal reflected 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 proposed in the July 2010 TP SNOPR to address this issue through this test procedure and related certification requirements. Accordingly, DOE's proposed language both (1) made 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) proposed 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. The language did 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 described 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.

AHAM commented that DOE's proposal should be clarified to state that the test is to be started when the display is at its lowest power consumption mode. (AHAM, No. 19 at p. 5) Initially, AHAM suggested that the clock display should be set 5 or 10 minutes earlier than 3:33, then wait until the display time reaches 3:33 to start the test period. According to AHAM, this would allow the clock display, which may get brighter when the time is set, to dim and thus reach its low power state before the standby power measurement is made. AHAM stated that this approach would be more representative of actual consumer use. (AHAM, Public Meeting Transcript, No. 26 at pp. 91–93) AHAM clarified its comments to state that the stabilization period should be conditions-based, meaning the clock display would be set to 3:33 minus whatever time it takes for that product to reach its stabilization period. According to AHAM, such an approach would allow each manufacturer to determine the amount of time to subtract with minimal additional test burden, and would produce the most repeatable and reproducible results. AHAM noted that the topic of test stabilization periods is covered in IEC Standard 62301 (FDIS) section 5.3.1 on sampling methods. That section of IEC Standard 62301 (FDIS) is specifically meant to deal with the issue of noncyclical loads or activities where the power is not stable over a period of time. (AHAM, No. 19 at pp. 5–6; AHAM, Public Meeting Transcript, No. 26 at pp. 94–95) Whirlpool commented that it supports a standby power test cycle which after a period of stabilization, begins at a clock display time of 3:33 and extends for 10 minutes. Whirlpool further suggested allowing a 30-minute stabilization period by setting the clock display at 3:03 and initiating the test measurement 30 minutes later (at 3:33), then measuring energy consumption for the 10-minute period. (Whirlpool, No. 18 at p. 4) In addition, AHAM and Whirlpool stated that controls which sense the test procedure and behave differently under those circumstances are not consistent with the intent of the test procedure. According to Whirlpool, such controls should either not be allowed or should require a waiver under which such different behavior is offset. AHAM and Whirlpool requested that, in the event that waivers are sought, DOE should develop a more expedient means of addressing and issuing waivers, as the current process is too long and cumbersome. AHAM further stated that the length of the waiver process delays time to market. (AHAM, No. 19 at p. 6; AHAM, Public Meeting Transcript, No. 26 at pp. 97–98; Whirlpool, No. 18 at p. 4)

The California Utilities commented that it supports the proposed clarification to the test procedure in which DOE specifies a test period of 10 minutes with an initial clock display time of 3:33 for microwave ovens. However, it asked DOE to require this 10-minute test procedure for all microwave ovens, irrespective of whether the standby power consumption is stable. According to the California Utilities, DOE has not clearly defined what constitutes an "unstable" standby power consumption. The California Utilities stated that, to ensure testing and reporting consistency, and in the absence of test data, DOE should require a test cycle of 10 minutes for all microwave ovens. The California Utilities asserted that this clarification that all products be tested for 10 minutes would not substantially add to manufacturer test burden. (California Utilities, No. 17 at pp. 2–3)

NRDC stated that it prefers the 12-hour test cycle methodology, but is open to considering the use of the 10-minute method, as it produces results that are accurate within 2 percent and provides a significantly smaller testing burden for manufacturers. NRDC expressed concern that the 10-minute method does not account for how quickly a microwave oven reaches the "stabilized" standby state, and that the term "stabilization period" is not well defined and needs to be further clarified. NRDC further commented that, if the 10-minute method is used, a maximum time should be allowed for stabilization, to encourage products to reach their lowest power mode quickly. NRDC also stated that it was concerned that, despite the waiver process proposed by DOE, the 10-minute method is inherently more vulnerable to gaming than the 12-hour test cycle. NRDC did not provide suggestions on what measures beyond the proposed waiver could be instated to prevent gaming, but it stated that the concern about potential gaming is secondary to the stabilization concern, and that NRDC would support the 10-minute method as long as the stabilization period is addressed. (NRDC, No. 21 at p. 2)

Section 5.3.1 of IEC Standard 62301 (First Edition) states that, a mode is stable if the measured power varies less than 5 percent over a minimum 5-minute period, after which the power is measured after an additional period of at least 5 minutes. Thus, these provisions would require a total test time of at least 10 minutes. Therefore, DOE believes it is clear what constitutes the test for whether the standby power consumption is stable or unstable.

Upon review of comments from interested parties, DOE concludes that a 12-hour test requirement would represent a significant burden to manufacturers, and that the alternative 10-minute method would minimize additional test burden. DOE agrees, however, that certain microwave oven displays may enter a higher-power state for a short period after the display time is set, after which the power may drop to a lower level that is more representative of actual use. Thus, DOE determined that the display time should be set in advance of the time required at the start of the measurement period, and that a stabilization period in the interim would allow the microwave oven to enter a lower-power state prior to the standby power measurement. DOE does not believe, however, that allowing the manufacturers to individually determine the stabilization period, would optimize the accuracy and repeatability of the test procedure. Based on DOE's testing, which showed that all microwave ovens in its test sample dropped to the lower power state in less than 10 minutes and the fact that a stabilization period of 30 minutes would effectively double the total test time, DOE believes that a requirement to set the display time to 3:23 and allowing a 10-minute stabilization period prior to a 10-minute measurement period would best balance the need for reproducibility of the test procedure with the burden placed on manufacturers.

DOE notes that the microwave oven test procedure is designed to provide an energy efficiency measurement consistent with representative average consumer use of these products, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (*e.g.,* testing with a display of only 3:33 to 3:42). DOE's amendments reflect 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, thereby making it unrepresentative of average consumer use. If a manufacturer incorporates a power-saving mode as part of the appliance's routine operation, DOE's test procedure would produce a representative measure of average consumer use if the unit powered down during the 10-minute test period for the same percentage of time that such powering down would be expected to occur during a typical 12-hour period, and thus, such operation would be permissible. It has been the Department's long-held interpretation that the purpose of the test procedure is to measure representative use. Ultimately, if DOE identifies a broad pattern of behavior which has the effect of circumventing its test procedure provisions, the Department may consider reopening the microwave oven test procedure for further rulemaking. DOE also notes it has made improvements in its response time to waiver requests, and will continue to strive for increased efficiency in this regard.

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). As noted in the July 2010 TP SNOPR (75 FR 42612, 42625), the active mode provisions were removed from the microwave oven test procedure in the July 2010 TP Final Rule. Thus, the need for the technical correction is obviated and no such amendments are adopted in today's interim final rule.

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 believed that the incorporation of clauses regarding test conditions and methods in IEC Standard 62301 (First Edition), 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 power use in standby mode and off mode. Based on DOE testing and analysis of IEC Standard 62301 (First Edition), 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, as well as for when the measured power is unstable (*i.e.,* varies over a cycle). DOE also stated that because 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 required under the previous test procedure, 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).

Additionally, for reasons similar to those stated above, DOE stated in the July 2010 TP SNOPR that the proposed amendments to measure the standby and off mode power consumption of microwave ovens would not require manufacturers to make major investments in test facilities and new equipment, and would not be unduly burdensome to conduct. DOE proposed a significantly shorter test duration than the 12 hours that was proposed in the October 2008 TP NOPR—a 5-minute stabilization period and a 5-minute or 10-minute test time, depending on whether the standby power consumption is stable. DOE stated in the July 2010 TP SNOPR that it believes that the number of units to be tested, according to the sampling requirements in 10 CFR 430.24(i), is reasonable and, along with the shorter test duration, would not substantially add to manufacturer test burden and would allow manufacturers that conduct quality assurance testing on the production line to continue to do so. 75 FR 42612, 42625.

DOE received comments on manufacturer test burden as discussed above in section III.F, and has determined that, although the test duration is slightly longer than that proposed in the July 2010 TP SNOPR because the initial stabilization period is 10 minutes rather than 5 minutes, the methodology adopted in today's interim final rule is otherwise largely similar and will not be unduly burdensome for manufacturers. DOE also continues to believe that the provisions to measure standby mode and off mode energy use would not require manufacturers to make major investments in test facilities and new equipment.

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 interim final 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 interim final rule.

For these reasons, DOE concludes that the interim final rule would not have a significant economic impact on a substantial number of small entities, and has sent a certification to this effect to the SBA. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

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**) or 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 interim final rule, DOE is adopting 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 interim final rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, the relationship between the national government and the States, or 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 interim final 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 interim 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 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 interim 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.

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 interim 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 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 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 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 significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is 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 interim 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 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 interim final rule incorporates testing methods contained in sections 4 and 5 (paragraphs 4.2, 4.4, 4.5, 5.1 (Note 1), 5.2, and 5.3) of the commercial standard, IEC Standard 62301 (First Edition). 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 and will address any concerns when it publishes a response to the public comments on this interim final rule.

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).

V. Public Participation

DOE will accept comments, data, and information regarding the interim final rule no later than the date provided in the **DATES** section at the beginning of this rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this rule.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is

restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via e-mail, hand delivery, or mail. Comments and documents submitted via e-mail, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, e-mail address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Email submissions are preferred. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via e-mail, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via e-mail or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's interim final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental Relations, Small businesses.

Issued in Washington, DC, on February 23, 2011.

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.

■ 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.

* * * * *

§ 430.3 [Amended]

■ 3. Section 430.3 is amended in paragraph (l)(1) by adding the words "Appendix I," after the words "Appendix F,".

■ 4. 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 representative of average consumer use of the product, even if the test conditions and procedures may not be identical to average consumer use (*for example,* specified display times). If a product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use, and 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. For example, the energy use of a component in a product (*such as* display wattage) may not vary predictably as a function 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.

* * * * *

■ 5. Appendix I to Subpart B of Part 430 is amended:
■ a. By adding a note after the heading;
■ b. By revising section 1. *Definitions;*
■ c. In section 2. *Test Conditions,* by:
■ i. Revising sections 2.2.1, 2.5, and 2.6;
■ ii. Adding new sections 2.1.3, 2.2.1.1, 2.2.1.2, 2.5.1, 2.5.2, and 2.9.1.3; and
■ d. In section 3. *Test Methods and Measurements,* by:
■ 1. Revising sections 3.1.1, 3.1.1.1, and 3.1.2; and
■ 2. Adding new sections 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: The procedures and calculations in this Appendix need not be performed to determine compliance with energy conservation standards for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens at this time. However, any representation related to standby mode and off mode energy consumption of these products made after September 6, 2011 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). After July 1, 2010, however, when DOE adopts an energy conservation standard that incorporates standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required. Future revisions may add relevant provisions for measuring active mode in microwave ovens.

* * * * *

1. Definitions

1.1 *Active mode* means a mode in which a conventional cooking top, conventional oven, conventional range, or microwave oven is connected to a mains power source, has been activated, and is performing the main function of producing heat by means of a gas flame, electric resistance heating, or microwave energy. Delay start mode is a one off user-initiated short duration function that is associated with an active mode.

1.2 *Built-in* means the product is supported by surrounding cabinetry, walls, or other similar structures.

1.3 *Drop-in* means the product is supported by horizontal surface cabinetry.

1.4 *Forced convection* means a mode of conventional oven operation in which a fan is used to circulate the heated air within the oven compartment during cooking.

1.5 *Freestanding* means the product is not supported by surrounding cabinetry, walls, or other similar structures.

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 June 2005). (incorporated by reference, see § 430.3)

1.7 *Normal nonoperating temperature* means the temperature of all areas of an appliance to be tested are within 5 °F (2.8 °C) of the temperature that the identical areas of the same basic model of the appliance would attain if it remained in the test room for 24 hours while not operating with all oven doors closed and with any gas pilot lights on and adjusted in accordance with manufacturer's instructions.

1.8 *Off mode* means a mode in which a conventional cooking top, conventional oven, conventional range, or microwave oven is connected to a mains power source and is not providing any active mode or standby mode function and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.9 *Primary energy consumption* means either the electrical energy consumption of a conventional electric oven or the gas energy consumption of a conventional gas oven.

1.10 *Secondary energy consumption* means any electrical energy consumption, other than clock energy consumption, of a conventional gas oven.

1.11 *Standard cubic foot (L) of gas* means that quantity of gas that occupies 1 cubic foot (L) when saturated with water vapor at a temperature of 60 °F (15.6 °C) and a pressure of 30 inches of mercury (101.6 kPa) (density of mercury equals 13.595 grams per cubic centimeter).

1.12 *Standby mode* means any mode in which a conventional cooking top, conventional oven, conventional range, or 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: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) 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 allows for regularly scheduled tasks and that operates on a continuous basis.

1.13 *Thermocouple* means a device consisting of two dissimilar metals which are joined together and, with their associated wires, are used to measure temperature by means of electromotive force.

1.14 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

A—Number of Hours in a Year
B—Number of Hours Pilot Light Contributes to Cooking
C—Specific Heat
E—Energy Consumed
Eff—Cooking Efficiency
H—Heating Value of Gas
K—Conversion for Watt-hours to Kilowatt-hours
K_e—3.412 Btu/Wh, Conversion for Watt-hours to Btu's
M—Mass
n—Number of Units
O—Annual Useful Cooking Energy Output
P—Power
Q—Gas Flow Rate
R—Energy Factor, Ratio of Useful Cooking Energy Output to Total Energy Input
S—Number of Self-Cleaning Operations per Year
T—Temperature
t—Time
V—Volume of Gas Consumed
W—Weight of Test Block

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. For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain the electrical supply frequency at 60 hertz ± 1 percent. 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 standby mode and off mode 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.*

2.5.1 *Active mode ambient room air temperature.* During the active mode 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.

2.5.2 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

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 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 1.7 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, 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.

* * * * *

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 section 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 3:23 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 after an additional stabilization period until the clock time reaches 3:33. 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. 2011–5044 Filed 3–8–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1296; Directorate Identifier 2010–CE–063–AD; Amendment 39–16625; AD 2011–06–01]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Model CAP 10 B 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) issued 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:

> A fatal accident occurred to a CAP 10C, in which the pilot lost control of the aeroplane.
>
> The following investigation has revealed that the probable cause of the accident was the improper locking of a turnbuckle (locking clip missing) of the flight control cables, and the subsequent inadvertent release of the pitchup control cable from the turnbuckle.

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

DATES: This AD becomes effective April 13, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

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 December 30, 2010 (75 FR 82335). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A fatal accident occurred to a CAP 10C, in which the pilot lost control of the aeroplane.

The following investigation has revealed that the probable cause of the accident was the improper locking of a turnbuckle (locking clip missing) of the flight control cables, and the subsequent inadvertent release of the pitchup control cable from the turnbuckle.

For the above described reasons, this AD requires repetitive inspections to verify the correct installation of the turnbuckles of the flight control cables and, if foreseen by the applicable design configuration of the turnbuckles and found to be missing, to restore the locking clip and the safety wire.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 28 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $100 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $9,940 or $355 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 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 Management Facility 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 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:

2011–06–01 APEX Aircraft: Amendment 39–16625; Docket No. FAA–2010–1296; Directorate Identifier 2010–CE–063–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 13, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to APEX Aircraft Model CAP10 B and CAP10 B airplanes with Major Change 000302 (commercial name CAP10C), all serial numbers, certificated in any category.

Subject

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

Reason

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

A fatal accident occurred to a CAP 10C, in which the pilot lost control of the aeroplane.

The following investigation has revealed that the probable cause of the accident was the improper locking of a turnbuckle (locking clip missing) of the flight control cables, and the subsequent inadvertent release of the pitchup control cable from the turnbuckle.

For the above described reasons, this AD requires repetitive inspections to verify the correct installation of the turnbuckles of the flight control cables and, if foreseen by the applicable design configuration of the turnbuckles and found to be missing, to restore the locking clip and the safety wire.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 2 months after April 13, 2011 (the effective date of this AD):

(i) If the turnbuckles are designed to be locked with locking clips and safety wire, verify that the locking clips are properly installed in the corresponding groove, that the safety wire of a minimum diameter of 0.8 millimeter (mm) is correctly installed, and that there is no damage to the whole turnbuckle installation.

(ii) For all other designs of turnbuckles, verify the correct installation of the safety locking devices.

(iii) If any discrepancy is found during the inspection required by paragraph (f)(1)(i) or (f)(1)(ii) of this AD, before further flight, restore the correct turnbuckle installation in accordance with standard maintenance practice.

(2) Repeat the inspection required by paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as

applicable to the turnbuckles design, and the associated corrective actions required by paragraph (f)(1)(iii) of this AD at intervals not to exceed 110 hours time-in-service or 13 months since the last inspection, whichever occurs first.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, a Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2010–0233, dated November 26, 2010, for related information.

Issued in Kansas City, Missouri, on February 28, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–5101 Filed 3–8–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. FDA–2011–N–0101]

Change of Address; Requests for Exemption From the Bar Code Label Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to update the address for submitting bar code exemption requests to the Center for Drug Evaluation and Research (CDER). This action is being taken to ensure accuracy and clarity in the Agency's regulations.

DATES: This rule is effective March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Rikin Mehta, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5235, Silver Spring, MD 20993–0002, 301–796–3937.

SUPPLEMENTARY INFORMATION: FDA is amending 21 CFR 201.25(d)(2) to update the address for submitting bar code exemption requests to CDER. The new address for these submissions is Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993–0002. This action is being taken to ensure accuracy and clarity in the Agency's regulations.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical changes to update an address for submitting bar code exemption requests to CDER.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.25 is amended by revising paragraph (d)(2) to read as follows:

§ 201.25 Bar code label requirements.

* * * * *

(d) * * *

(2) Requests for an exemption should be sent to the Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993–0002 (requests involving a drug product) or to the Office of Compliance and Biologics Quality (HFM–600), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852 (requests involving a biological product).

Dated: March 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5288 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 460

RIN 2125–AF42

Public Road Mileage for Apportionment of Highway Safety Funds; Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correcting amendment.

SUMMARY: This rule makes a technical correction to the regulations found at 23 CFR 460.2(e). The amendment contained herein makes no substantive change to the FHWA regulations, policies, or procedures. This rule updates the language of a regulatory definition to be consistent with the statutory definition for the Highway Safety Program.

DATES: This rule is effective April 8, 2011.

FOR FURTHER INFORMATION CONTACT: Ron Erickson, Office of Highway Policy Information, (202) 366–5033, *Ron.Erickson@dot.gov,* or Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *Michael.Harkins@dot.gov,* 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from 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

This rule makes a technical correction to the regulations that govern the public road mileage for apportionment of highway safety funds. These regulations, found at 23 CFR part 460, were drafted in 1975. The definition of "State" found at 23 CFR 460.2(e) was intended to mirror the definition of "State" for the Highway Safety Program contained in 23 U.S.C. 401. Later, the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, Apr. 2, 1987, 101 Stat. 132) substituted "American Samoa, and the Commonwealth of the Northern Mariana Islands" for "and American Samoa" in the language found at 23 U.S.C. 401. The regulations were not updated to reflect the change to the statutory definition. While the FHWA has used the definition found at 23 U.S.C. 401, the omission of the Commonwealth of the Northern Mariana Islands could cause confusion. As such, the FHWA is updating the definition of "State" at 460.2(e) to reflect the statutory language of 23 U.S.C. 401.

Rulemaking Analyses and Notice

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The FHWA finds that notice and comment for this rule is unnecessary and contrary to the public interest because it will have no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice. The FHWA does not anticipate receiving meaningful comments on it. States, local governments, and their consultants rely upon the regulations corrected by this action. This correction will reduce confusion for these entities and should not be unnecessarily delayed. Accordingly, for the reasons listed above, the agencies find good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. This rule only entails minor corrections that will not in any way alter the regulatory effect of 23 CFR part 460. Thus, this final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will 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. 60l–612) the FHWA has evaluated the effects of this action on small entities and have determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule will not make any substantive changes to our regulations or in the way that our regulations affect small entities; it merely corrects technical errors. For this reason, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule does not impose any requirements on State, local, or tribal governments, or the private sector and, thus, will not require those entities to expend any funds.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

This action does not create any new information collection requirements for which a Paperwork Reduction Act submission to the Office of Management and Budget would be needed under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and concluded that this rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government; and will not preempt tribal law. There are no requirements set forth in this rule that directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 12988 (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.

Executive Order 13045 (Protection of Children)

Under Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, this final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionally affect children.

Executive Order 12630 (Taking of Private Property)

This final rule will not effect 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 13211 (Energy Effects)

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has 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 this final rule 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 RINs 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 460

Grant programs—transportation, Highway safety, Reporting and recordkeeping requirements.

Issued on: February 18, 2011.

Victor M. Mendez,

Administrator.

In consideration of the foregoing, 23 CFR part 460 is amended as set forth below.

PART 460—PUBLIC ROAD MILEAGE FOR APPORTIONMENT OF HIGHWAY SAFETY FUNDS

■ 1. The authority citation for part 460 continues to read as follows:

Authority: 23 U.S.C. 315, 402(c); 49 CFR 1.48.

■ 2. Amend § 460.2 by revising paragraph (e) to read as follows:

§ 460.2 Definitions.

* * * * *

(e) *State* means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. For the purpose of the application of 23 U.S.C. 402 on Indian reservations, *State* and *Governor of a State* include the Secretary of the Interior.

[FR Doc. 2011–5410 Filed 3–8–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–252–FOR; OSM–2009–0011]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Kentucky regulatory program (hereinafter, the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted revisions to its administrative regulations pertaining to the disposal of coal mine waste. Kentucky revised its program to be consistent with the corresponding Federal regulations and SMCRA. We are also correcting a codification error which occurred in 2002.

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph L. Blackburn, Telephone: (859) 260–3900. E-mail: *jblackburn@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated September 14, 2009, Kentucky submitted an amendment to its program (Administrative Record No. 1659), under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment in response to a May 27, 1997, letter (Administrative Record No. KY–1400) that we sent in accordance with 30 CFR 732.17(c) requesting that changes be made in order to be consistent with the Federal regulations. The provisions of Kentucky rules that Kentucky proposed to revise are: Kentucky Administrative Regulations (KAR) No. 405 KAR 16:140 and 405 KAR 18:140 with respect to the disposal of coal mine waste.

We announced receipt of the proposed amendment in the November 27, 2009, **Federal Register** (74 FR 62266). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting (Administrative Record No. KY–1661). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 14, 2009. We did not receive any comments.

III. OSM's Findings

Kentucky sent the amendment in response to a May 27, 1997, letter that we sent in accordance with 30 CFR 732.17(c) requesting that changes be made in order to be consistent with the Federal regulations. In that letter, OSM referred to its revised regulations at 30 CFR 816.81 (Surface Mining—Coal mine waste: General Requirements) and 817.81 (Underground Mining—Coal mine waste: General requirements) that required that coal mine waste be "hauled or conveyed" instead of just requiring that it be "placed." In addition, Kentucky also made changes at its own initiative.

Kentucky proposed to make substantially identical changes to administrative regulations pertaining to surface and underground mining: *405 KAR 16:140 Disposal of Coal Mine Waste (surface mining) and 405 KAR 18:140 Disposal of Coal Mine Waste (underground mining).* The text of the Kentucky regulations can be found in the administrative record and online at Regulations.gov

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at

30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

The Federal regulations at 30 CFR 816.81(a) and 817.81(a) state in part that "coal mine waste shall be hauled or conveyed and placed for final placement in a controlled manner." In 405 KAR 16:140 Section 1 (1) and 18:140 Section 1(1), the phrase "transported and placed," as it refers to coal mine waste, is replaced by "hauled and conveyed in a controlled (manner)" so that the first sentence of Section 1 of these Kentucky regulations now reads that "All coal mine waste shall be hauled and conveyed in a controlled manner approved by the cabinet in disposal areas approved by the cabinet for this purpose."

Kentucky's existing regulations at 405 KAR 16:140 Section 1 (1)(a) and 18:140 Section 1 (1)(a) also require that the coal waste disposal area shall be designed, constructed, and maintained in accordance with 405 KAR 16:130 Sections 1 and 2 and 18:130 Sections 1 and 2, respectively. Section 1 of both 405 KAR 16:130 and 18:130 requires among other things that excess spoil, which by definition includes coal mine waste, "shall be placed in designated disposal areas within a permit area, in a controlled manner." We find that the amended language at 405 KAR 16:140 Section 1 (1) and 18:140 Section 1 (1) read in conjunction with existing language 405 KAR 16:140 Section 1 (1)(a) and 18:140 Section 1 (1)(a) and 405 KAR 16:130 Section 1 (1) and 18:130 Section 1 (1) is no less effective than the counterpart Federal regulations at 30 CFR 816.81(a) and 817.81(a) pertaining to coal mine waste disposal. This constitutes satisfaction of the last coal mine waste issue found in the May 27, 1997, 732 letter.

In Section 2 of 405 KAR 16:140 and 18:140 the Kentucky rules require that either a qualified professional engineer or other qualified person under the direct supervision of the responsible professional engineer must inspect all coal mine waste banks. Kentucky replaced the term "registered professional engineer" with "professional engineer." Kentucky Revised Statute (KRS) section 322.010 defines "professional engineer" to mean "a person who is a licensed professional engineer by the board." The board is the State Board of Licensure for Professional Engineers and Land Surveyors. In 1999, Kentucky changed its registration procedures to licensing procedures. See, KRS section 322.015. Kentucky prohibits the practice of engineering or land surveying without a license. KRS 322.020. The Federal regulations at 30 CFR 816.83(d) (Surface Mining—Coal mine waste: Refuse Piles) and 817.83(d) (Underground Mining—Coal mine waste: Refuse Piles) require that a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer shall inspect the refuse pile during construction. Both the Federal and Kentucky rules require inspection by an engineer that is approved by an appropriate regulatory body as qualified to be an engineer. Accordingly, we find that the proposed changes to Kentucky regulations are no less effective than the Federal regulations at 30 CFR 816.83(d) and 817.83(d).

Section 6 of 405 KAR 16:140 and 18:140 requires that a qualified professional engineer must prepare a plan for the removal of any burned coal mine waste or other material from the permitted disposal area. Kentucky replaced the term "registered professional engineer" with "professional engineer." As cited above, KRS section 322.010 defines "professional engineer" to mean "a person who is a licensed professional engineer by the board." The Federal regulations at 30 CFR 780.14(c) (Surface Mining—Operation plan: Maps and plans) and 784.23(c) (Underground Mining—Operation plan: Maps and plans) require that cross sections, maps, and plans shall be prepared, by or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, etc. Both the Federal and Kentucky rules require plan preparation by an engineer that is approved by an appropriate regulatory body as qualified to be an engineer. Accordingly, we find that the proposed changes to Kentucky regulations are consistent with the Federal regulations at 30 CFR 780.14(c) and 784.23(c).

Throughout the Kentucky regulations, the term "coal processing waste" is replaced by "coal mine waste." The Federal definition of "coal mine waste" at 30 CFR 701.5 (Definitions) means "coal processing waste and underground development waste." The Kentucky definitions of coal mine waste at 405 KAR 16:001 (18) and 18:001 (19) define "coal mine waste" as "coal processing waste and underground development waste." The Federal regulations at 30 CFR 816.81, 817.81, 816.83, and 817.83 use the term "coal mine waste." Kentucky's regulations at 405 KAR 16:140 and 18:140 also use this term. Since Kentucky defines the term the same as the Federal regulations and appropriately uses the term "coal mine waste" at 405 KAR 16:140 and 18:140, we find the Kentucky proposed language is no less effective than the Federal regulations at 30 CFR 816.81 and 817.81 and 816.83 and 817.83.

We are also revising section 917.16 (Kentucky—Required regulatory program amendments) to correct a codification error which occurred in 2002. The required amendment at 405 KAR 20.060 section 3 (3)(b) was submitted by the State and the OSM approval was published on June 19, 2002, at 67 FR 41622, 41625, but the requirement was not removed from 30 CFR 917.16(d)(5) as it should have been. We are now removing 30 CFR 917.16(d)(5).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. 1661), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (KY–1662). No comments were received.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the provisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

V. OSM's Decision

Based on the above findings, we approve the amendment Kentucky sent to us on September 14, 2009. To implement this decision, we are amending the Federal regulations at 30 CFR part 917 which codify decisions concerning the Kentucky program. Pursuant to 5 U.S.C. 553(d)(3), an agency may, upon a showing of good cause, waive the 30 day delay of the effective date of a substantive rule following publication in the **Federal Register**, thereby making the final rule effective immediately.

We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Because Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes, making this regulation effective immediately will expedite that process.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of Subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State Regulatory program and does not involve a Federal Regulation involving Indian Lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the Kentucky submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the Kentucky submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 22, 2010.

Thomas D. Shope,

Regional Director, Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 917.15 is amended by adding a new entry to the table in

chronological order by "Date of final publication" to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
September 14, 2009	March 9, 2011	405 KAR 16:140, Disposal of coal mine waste. 405 KAR 18:140, Disposal of coal mine waste.

§ 917.16 [Amended]

■ 3. Section 917.16 is amended by removing and reserving paragraph (d)(5).

[FR Doc. 2011–5386 Filed 3–8–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SATS No. LA–023–FOR; Docket No. OSM–2010–0005]

Louisiana Regulatory Program/ Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Louisiana regulatory program and abandoned mine land reclamation plan under the Surface Mining Control and Reclamation Act of 1977. Louisiana proposed revisions to its regulations regarding: Definitions; lands eligible for remining; general provisions for review of permit application information and entry of information into Applicant Violator System (AVS); review of applicant, operator, and ownership and control information; review of permit history; review of compliance history; permit eligibility determination; unanticipated events or conditions at remining sites; eligibility for provisionally issued permits; written findings for permit application approval; initial review and finding requirements for improvidently issued permits; suspension or rescission requirements for improvidently issued permits; who may challenge ownership or control listings and findings; how to challenge an ownership or control listing or finding; burden of proof for ownership or control challenges; written agency decision on challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; post-permit issuance information requirements for permittees; transfer, assignment, or sale of permit rights; certifying and updating existing permit application information; providing applicant and operator information; providing permit history information; providing violation information; backfilling and grading: previously mined areas; cessation orders; and contractor eligibility. Louisiana revised its regulatory program to be no less effective than the corresponding Federal regulations, and its abandoned mine land reclamation plan to be consistent with the Federal regulations.

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290–7282. E-mail: *swilson@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Louisiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Louisiana program effective October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program in the October 10, 1980, **Federal Register** (45 FR 67340). You can also find later actions concerning the Louisiana program and program amendments at 30 CFR 918.10, 918.15 and 918.16.

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Louisiana plan on November 10, 1986. You can find background information on the Louisiana plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the November 10, 1986, **Federal Register** (51 FR 40795). You can find later actions concerning the Louisiana plan and amendments to the plan at 30 CFR 918.25.

II. Submission of the Amendment

By letter dated March 4, 2010 (Administrative Record No. LA–369), Louisiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Louisiana submitted its proposed amendment in response to a September 30, 2009, letter (Administrative Record No. LA–368) that OSM sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposed revisions to the Louisiana Surface Mining Regulations found in the Louisiana Administrative Code, Title 43, Part XV (LAC)

concerning definitions; lands eligible for remining; general provisions for review of permit application information and entry of information into AVS; review of applicant, operator, and ownership and control information; review of permit history; review of compliance history; permit eligibility determination; unanticipated events or conditions at remining sites; eligibility for provisionally issued permits; written findings for permit application approval; initial review and finding requirements for improvidently issued permits; suspension or rescission requirements for improvidently issued permits; who may challenge ownership or control listings and findings; how to challenge an ownership or control listing or finding; burden of proof for ownership or control challenges; written agency decision on challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; post-permit issuance information requirements for permittees; transfer, assignment, or sale of permit rights; certifying and updating existing permit application information; providing applicant and operator information; providing permit history information; providing violation information; backfilling and grading: previously mined areas; cessation orders; and contractor eligibility.

We announced receipt of the proposed amendment in the September 30, 2010, **Federal Register** (75 FR 60373). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 1, 2010. We did not receive any public comments.

III. OSM's Findings

We are approving the amendment as described below. The following are the findings we made concerning the amendments unde SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, and 30 CFR 884.14 and 884.15.

A. Section 105. Definitions

Louisiana added definitions for Applicant/Violator System or AVS; Knowing or knowingly; Control or controller; Own, owner, or ownership; and Willful or willfully.

We find that Louisiana's new definitions are substantively the same as the counterpart Federal regulations at 30 CFR 701.5. The full text of the new definitions can be found in the administrative record or online at Regulations.gov.

Louisiana deleted the definitions for Knowingly; Owned or Controlled and Owns or Controls; Willfully; and Willful Violation.

We find that these deletions will not make Louisiana's regulations less effective than the Federal counterparts because these definitions were incorporated into other definitions to more closely follow the Federal counterpart. The full text of the deleted definitions can be found in the administrative record or online at Regulations.gov.

Louisiana amended the definition Transfer, Assignment or Sale of Rights from.

We find that Louisiana's new definition is substantively the same as the counterpart Federal regulation at 30 CFR 701.5.

Louisiana added a new definition For Violation, the full text of the new definition can be found in the administrative record or online at Regulations.gov.

We find that Louisiana's new definition is substantively the same as the counterpart Federal regulation at 30 CFR 701.5 with the exception of not including a State counterpart to paragraph (C) related to an alternative bonding system which is not needed since Louisiana does not use an alternative bonding system. We find that this change, including the exception, will not make Louisiana's regulations less effective than the Federal counterpart.

Based on the above findings, we are approving Louisiana's proposed regulations at Section 105, Definitions.

B. Section 2913. Lands Eligible for Remining

Louisiana added a new section with permitting requirements for lands eligible for remining.

We find that Louisiana's Section 2913 is substantively the same as the counterpart Federal regulation at 30 CFR 785.25. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

C. Section 3113. Review of Permit Applications

Louisiana added a new paragraph C pertaining to entry of information into AVS.

We find that Louisiana's Section 3113, paragraph C is substantively the same as the counterpart Federal regulation at 30 CFR 773.8. Therefore, we are approving it. The full text of the new paragraph can be found in the administrative record or online at Regulations.gov.

Louisiana added a new paragraph D for the review of applicant, operator, and ownership and control information.

We find that Louisiana's Section 3113, paragraph D is substantively the same as the counterpart Federal regulation at 30 CFR 773.9. Therefore, we are approving it. The full text of the new paragraph can be found in the administrative record or online at Regulations.gov.

Louisiana added a new paragraph E to include provisions for the review of permit history.

We find that Louisiana's Section 3113, paragraph E is substantively the same as the counterpart Federal regulation at 30 CFR 773.10. Therefore, we are approving it. The full text of the new paragraph can be found in the administrative record or online at Regulations.gov.

Louisiana added a new paragraph F to include provisions for the review of compliance history.

We find that Louisiana's Section 3113, paragraph F is substantively the same as the counterpart Federal regulation at 30 CFR 773.11. Therefore, we are approving it. The full text of the new paragraph can be found in the administrative record or online at Regulations.gov.

Louisiana added a new paragraph G pertaining to permit eligibility determinations.

We find that Louisiana's Section 3113, paragraph G is substantively the same as the counterpart Federal regulation at 30 CFR 773.12. Therefore, we are approving it. The full text of the new paragraph can be found in the administrative record or online at Regulations.gov.

Louisiana added a new paragraph H to include provisions for unanticipated events or conditions at remining sites.

We find that Louisiana's Section 3113, paragraph H is substantively the same as the counterpart Federal regulation at 30 CFR 773.13. Therefore, we are approving it. The full text of the new paragraph can be found in the administrative record or online at Regulations.gov.

Louisiana deleted paragraphs C, D, E, and F related to reviews of violations, permit issuance related to correction or appeal of violations, and final compliance reviews.

We find that the deletion of these four paragraphs (C., D., E., and F.) will not make Louisiana's regulations less effective than the Federal counterpart

because these were incorporated into new paragraphs to more closely follow the Federal counterpart as listed above. Therefore, we are approving it. The full text of the deleted paragraphs can be found in the administrative record or online at Regulations.gov.

D. Section 3114. Eligibility for Provisionally Issued Permits

Louisiana added new paragraphs A, B, and C to include requirements for the issuance of a provisional permit when a notice of violation has been issued and the abatement period has yet to expire, or a violation is unabated or uncorrected beyond the abatement or correction period.

We find that Louisiana's Section 3114 is substantively the same as the counterpart Federal regulation at 30 CFR 773.14. Therefore, we are approving it. The full text of the new paragraphs can be found in the administrative record or online at Regulations.gov.

E. Section 3115. Criteria for Permit Approval or Denial

Louisiana added paragraphs A. 17, 18, and 19 for proposed remining operations, permit application requirements, and eligibility requirements.

We find that Louisiana's Section 3115 is no less effective than the counterpart Federal regulation at 30 CFR 773.15. Therefore, we are approving it. The full text of the new paragraphs can be found in the administrative record or online at Regulations.gov.

F. Section 3127. Improvidently Issued Permits: General Procedures

Louisiana revised this section by deleting the existing paragraphs A, B, and C and replacing them with new paragraphs A, B, C, D, and E for improvidently issued permits.

We find that the deletion of the three paragraphs (A, B, and C) will not make Louisiana's regulations less effective than the Federal counterpart because these were incorporated into new paragraphs (A, B, C, D, and E) to more closely follow the Federal counterparts. We find that Louisiana's new Section 3127 is substantively the same as the counterpart Federal regulation at 30 CFR 773.21. Therefore, we are approving it. The full text of the revised section can be found in the administrative record or online at Regulations.gov.

G. Section 3129. Improvidently Issued Permits: Suspension or Rescission Procedures

Louisiana revised this section by adding "Suspension or" to the title and by replacing paragraph A, revising sub-paragraphs of A via several editorial changes, and by adding a new section A. 3 to closely follow 30 CFR 773.23.

We find that Louisiana's Section 3129 closely follows the counterpart Federal regulation at 30 CFR 773.23 and is no less effective. Therefore, we are approving it. The full text of the revised section can be found in the administrative record or online at Regulations.gov.

H. Section 3131. Challenges to Ownership or Control Listings and Findings

Louisiana added this new section to establish the requirements of who can challenge a listing or finding of ownership or control.

We find that Louisiana's Section 3131 is substantively the same as the counterpart Federal regulation at 30 CFR 773.25. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

I. Section 3133. Challenging an Ownership or Control Listing or Finding

Louisiana added this new section to provide provisions for the applicant to challenge an ownership or control listing or finding.

We find that Louisiana's Section 3133 is substantively the same as the counterpart Federal regulation at 30 CFR 773.26. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

J. Section 3135. Burden of Proof for Ownership or Control Challenges

Louisiana added this new section to include requirements for meeting the burden of proof by the applicant.

We find that Louisiana's Section 3135 is substantively the same as the counterpart Federal regulation at 30 CFR 773.27. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

K. Section 3137. Written Decision on Challenges to Ownership or Control Listings or Findings

Louisiana added this new section to include requirements for the regulatory authority to review and investigate the evidence and explanatory materials submitted by the applicant when challenging ownership or control listings or findings.

We find that Louisiana's Section 3137 is substantively the same as the counterpart Federal regulation at 30 CFR 773.28. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

L. Chapter 35. Permit Reviews and Renewals; Transfers, Sale and Assignment of Rights Granted Under Permits

Louisiana amended the wording of this title to read as follows:

Chapter 35. Permit Reviews and Renewals; Transfer, Sale and Assignment of Rights Granted Under Permits; Post-Permit Issuance Requirements; and Other Actions Based on Ownership, Control and Violation Information

We find that Louisiana's title change is substantively the same as the Federal counterpart title for part 774. Therefore, we are approving it.

M. Section 3521. Post Permit Issuance Requirements for Regulatory Authorities and Other Actions Based on Ownership, Control, and Violation Information

Louisiana added this new section to include requirements for when the regulatory authority has to enter information into AVS.

We find that Louisiana's Section 3521 is substantively the same as the counterpart Federal regulation at 30 CFR 774.11. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

N. Section 3523. Post-Permit Issuance Information Requirements for Permittees

Louisiana added this new section to include requirements for the permittee in relation to cessation orders.

We find that Louisiana's Section 3523 is substantively the same as the counterpart Federal regulation at 30 CFR 774.12. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

O. Section 3517. Transfer, Assignment or Sale of Permit Rights: Obtaining Approval

Louisiana amended paragraph C.1. by changing a reference to Section 3113.G and 3115.

We find that Louisiana's revision to Section 3517 does not make this section less effective than the counterpart Federal regulations at § 774.17. Therefore, we are approving it. The full text of the revised paragraph can be found in the administrative record or online at Regulations.gov.

P. Section 2304. Certifying and Updating Existing Permit Application Information

Louisiana added this new section to include provisions for updating information contained in AVS.

We find that Louisiana's Section 2304 is substantively the same as the counterpart Federal regulation at 30 CFR 778.9. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

Q. Section 2305. Identification of Interests

Louisiana amended paragraphs A.1, 2, 3, and 4 to closely follow 30 CFR 778.11 and 778.12. We find that Louisiana's revision to Section 2305 does not make this section less effective than the counterpart Federal regulations at §§ 778.11 and 778.12. Therefore, we are approving it. The text of the revised paragraphs can be found in the administrative record or online at Regulations.gov.

R. Section 2307. Compliance Information

Louisiana amended paragraphs A.1 and 3 to closely follow 30 CFR 778.14. We find that Louisiana's revision to Section 2307 does not make this section less effective than the counterpart Federal regulations at § 778.14. Therefore, we are approving it. The full text of the revised paragraphs can be found in the administrative record or online at Regulations.gov.

S. Section 5414. Backfilling and Grading: Previously Mined Areas

Louisiana added this new section to include requirements for backfilling and grading on remining operations.

We find that Louisiana's Section 5414 is substantively the same as the counterpart Federal regulation at 30 CFR 816.106. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

T. Section 6501. Cessation Orders

Louisiana amended paragraph G to closely follow 30 CFR 843.11. We find that Louisiana's Section 6501 is substantively the same as the counterpart Federal regulation at 30 CFR 843.11. Therefore, we are approving it. The full text of the revised paragraph can be found in the administrative record or online at Regulations.gov.

U. Section 8509. Contractor Eligibility

Louisiana added this new section to include requirements for contractor eligibility to successfully bid for an AML contract.

We find that Louisiana's Section 8509 is substantively the same as the counterpart Federal regulation at 30 CFR 874.16. Therefore, we are approving it. The full text of the new section can be found in the administrative record or online at Regulations.gov.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On April 6, 2010, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Louisiana program (Administrative Record No. LA–369.01). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Louisiana proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on April 6, 2010, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. LA–369.01). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 6, 2010, we requested comments on Louisiana' amendment (Administrative Record No. LA–369.01), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Louisiana sent us on March 4, 2010.

To implement this decision, we are amending the Federal regulations at 30 CFR part 918, which codify decisions concerning the Louisiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and

reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Louisiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Louisiana program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 29, 2010.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR part 918 is amended as set forth below:

PART 918—LOUISIANA

■ 1. The authority citation for part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 918.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
March 4, 2010 ..	March 9, 2011 ..	Sections 105; 2913; 3113 C., D., E., F., G., H.; 3114; 3115 A. 17, 18, 19; 3127; 3129; 3131; 3133; 3135; 3137; Chapter 35 title; 3521; 3523; 3517 C.1.; 2304; 2305 A.1., A.2.c., d., e., A.3., A.4.; 2307 A.1., A.3.; 5414; 6501 G.

■ 3. Section 918.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 918.25 Approval of Louisiana abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
March 4, 2010	March 9, 2011	Section 8509.

[FR Doc. 2011–5382 Filed 3–8–11; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–031–FOR; Administrative Record No. OSM–2010–0010]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Montana regulatory program (the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Montana proposed revisions to the Administrative Rules of Montana (ARM) at Chapter 17.24.1109 (BONDING: LETTERS OF CREDIT). Montana is revising its program to incorporate the additional flexibility afforded by the revised Federal regulations and SMCRA, as amended, and to improve operational efficiency.

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Jeffery Fleischman, Field Office Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Room 1018, Casper, Wyoming 82604–1018, 307–261–6552, *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letter dated July 14, 2010, Montana sent us an amendment to its program (Administrative Record Docket ID: OSM–2010–0010) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include the changes made at its own initiative. The amendment changes a condition for irrevocable letters of credit issued by banks as collateral in order to correct an error in the definition.

Specifically, in ARM 17.24.1109(1)(e)(iii), Montana (1) substitutes "capital stock" for "shareholder equity" to tailor the definition of "total stockholder's equity" to that used by the banking industry; and (2) deletes the criterion to evaluate the financial strength of a bank issuing a letter of credit set forth in ARM 17.24.1109(1)(f). The deletion of requirements in subsection (1)(f) recognizes that credit rating agencies change over time and that not all credit rating agencies use a rating scale that includes a 'B+' rating as required by the regulation. In addition, credit rating agencies rate national banks and not state chartered banks. The deletion of subsection (1)(f) now allows qualifying state chartered banks to issue letters of credit as collateral for reclamation bonds. With the deletion of subsection (f), (g) through (j)(iii) will remain the same, but are renumbered (f) through (i)(iii).

We announced receipt of the proposed amendment in the October 5, 2010, **Federal Register** (Vol. 75, No. 192 FR 61366). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM–2010–0010–0004).

We did not receive any comments. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 4, 2010.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Revisions to Montana's Rules With No Corresponding Federal Regulation

The following are proposed revisions to the Montana regulations that have no corresponding Federal regulation.

Administrative Rules of Montana (ARM) 17.24.1109, BONDING: LETTERS OF CREDIT.

The substitution of the term "capital stock" for "shareholders equity" brings subsection (1)(e)(iii) in line with the standard definition used by the banking and financial institutions.

The deletion of the requirements in subsection (1)(f) recognizes that credit rating agencies change over time and that not all credit rating agencies use a rating scale that includes a B+ rating as required by the regulation. In addition, credit rating agencies rate national banks and not state chartered banks. The deletion of subsection (1)(f) now allows qualifying state chartered banks to issue letters of credit as collateral for reclamation bonds.

We find that Montana's revision of ARM 17.24.1109 BONDING: LETTERS OF CREDIT adds specificity beyond that contained in the Federal regulations and is no less effective. Accordingly, we are approving Montana's revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Docket ID: OSM–2010–0010), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. OSM–2010–0010–0003), but did not receive any.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

We note that none of the proposed changes relate to air or water quality standards. Nevertheless, under 30 CFR 732.17(h)(11)(ii), OSM requested comments on the amendment from EPA (Administrative Record No. OSM–2010–0010–0003). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 26, 2010, we requested comments on Montana's amendment (Administrative Record No. OSM–2010–0010–0003), but neither responded to our request.

V. OSM's Decision

Based on the above finding, we approve Montana's July 14, 2010, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR part 926, which codify decisions concerning the Montana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 3, 2011.

Allen D. Klein,

Regional Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
July 14, 2010	March 9, 2011	ARM 17.24.1109.

[FR Doc. 2011–5388 Filed 3–8–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that certain vessels of the SSN Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective March 9, 2011 and is applicable beginning February 23, 2011.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that certain vessels of the SSN Class are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with their special function as naval ships: Rule 21 (a) pertaining to the centerline position of the masthead lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the vessels' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2, Table Two, is amended by adding, in alpha numerical order by vessel number, the following entries for the SSN Class to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2 (g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
*	*	*	*		*	*		*	
USS NORFOLK	SSN 714	0.41							
USS CHICAGO	SSN 721	0.41							
USS KEY WEST	SSN 722	0.41							
*	*	*	*		*	*		*	
USS HELENA	SSN 725	0.41							
*	*	*	*		*	*		*	

* * * * *

Approved: February 23, 2011.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: March 1, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–5168 Filed 3–8–11; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0210; FRL–9277–2]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Kentucky; Louisville Nonattainment Area; Determination of Attainment of the 1997 Annual Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the bi-state Louisville (Indiana and Kentucky) fine particle ($PM_{2.5}$) nonattainment area has attained the 1997 annual average $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 period showing that the area has monitored attainment of the annual $PM_{2.5}$ NAAQS. Preliminary data for 2010 available to date are consistent with continued attainment. As a result of this determination, the requirements for the area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standards shall be suspended for so long as the area continues to attain the annual $PM_{2.5}$ NAAQS.

DATES: This final rule is effective on March 9, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2010–0210. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5 office, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604, or in Region 4 at the Environmental Protection Agency, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia. These facilities are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office or Joel Huey, Environmental Scientist, at (404) 562–9104 before visiting the Region 4 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.* In Region 4, contact Joel Huey, Environmental Scientist, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–9104, *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What action is EPA taking?
II. What is the background for this action?
III. What did EPA propose?
IV. What does the most recent monitoring data show?
V. What is the effect of this action?
VI. When is this action effective?
VII. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is determining that the Louisville $PM_{2.5}$ annual NAAQS nonattainment area (which includes Jefferson and Bullitt Counties in Kentucky and Clark and Floyd Counties and the Madison Township of Jefferson County in Indiana) has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show that the area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. Preliminary data available for 2010 are consistent with continued attainment.

II. What is the background for this action?

On July 18, 1997 (62 FR 36852), EPA established an annual $PM_{2.5}$ NAAQS at 15.0 micrograms per cubic meter (μg/

m³) based on a three-year average of annual mean $PM_{2.5}$ concentrations. At that time, EPA also established a 24-hour standard of 65 μg/m³ (today's action does not address the 24-hour standard). See 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2001–2003. These designations became effective on April 5, 2005. The Louisville area was designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. See 40 CFR 81.315 (Indiana) and 40 CFR 81.318 (Kentucky).

On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS at 15.0 μg/m³ based on a three-year average of annual mean $PM_{2.5}$ concentrations, and promulgated a 24-hour standard of 35 μg/m³ based on a three-year average of the 98th percentile of 24-hour concentrations. On November 13, 2009, EPA designated the Louisville area as attainment for the 2006 24-hour standard (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Louisville area was designated as nonattainment for the annual standards but attainment for the 24-hour standards. Thus, today's action does not address attainment of either the 1997 or the 2006 24-hour standards.

In response to legal challenges of the annual standards promulgated in 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) remanded these standards to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 annual standards are essentially identical, attainment of the 1997 annual standards would also indicate attainment of the remanded 2006 annual standards.

On April 25, 2007 (72 FR 20664), EPA promulgated its $PM_{2.5}$ implementation rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ standards. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of attaining the standards, as discussed below.

III. What did EPA propose?

EPA proposed that the Louisville area (including portions in Indiana and Kentucky) has attained the 1997 $PM_{2.5}$ NAAQS. EPA published this proposed determination on September 14, 2010, at 75 FR 55725. Further details regarding the proposal are available in the proposed rule. EPA's proposed action provided a 30-day public comment period. We did not receive any comments.

IV. What does the most recent monitoring data show?

EPA examined monitoring data for 2010 that are available to date in the EPA Air Quality System (AQS) database, but not yet certified. While these data are insufficient to represent full year average concentrations, all sites within the area average below 15.0 μg/m³ and thus the available data suggest that this area continues to attain the 1997 annual $PM_{2.5}$ NAAQS.

V. What is the effect of this action?

On the basis of this review, EPA has determined that the Louisville area has attained the 1997 annual $PM_{2.5}$ NAAQS based on complete, quality-assured and certified 2007–2009 data. Data available for 2010 that are in the EPA AQS database but not yet certified suggest that the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. As a result of this determination, under the provisions of EPA's $PM_{2.5}$ implementation rule (*see* 40 CFR 51.1004(c)), the requirements for Indiana and Kentucky to submit attainment demonstrations and associated RACM, RFP plans, contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS for the Louisville $PM_{2.5}$ nonattainment area are suspended for so long as the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. This suspension will continue until such time, if any, that EPA subsequently determines that the area has violated the 1997 annual $PM_{2.5}$ NAAQS.

If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist for the pertinent area, and EPA would take action to withdraw the determination and direct the pertinent area to address the suspended requirements.

The determination that the air quality data show attainment of the 1997 annual $PM_{2.5}$ NAAQS is not equivalent to the redesignation of the area to attainment for the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the area as required under section 175A of the CAA, nor does it involve a determination that the area has met all requirements for a redesignation. The designation status of the area will remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment for that standard.

VI. When is this action effective?

EPA finds that there is good cause for this determination to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the action. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." As noted above, this determination of attainment will result in a suspension of the requirements for the Louisville area to submit an attainment demonstration, a RFP plan, section 172(c)(9) contingency measures, and any other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS for so long as the area continues to attain the $PM_{2.5}$ NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, the suspension of the obligations of Indiana and Kentucky to make submissions for these requirements provides good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the Louisville area, do not need time to adjust and prepare before the rule takes effect.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data and results in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal applications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks" (62 FR 19885, April 23, 1997) because it determines that air quality in the affected area is meeting Federal standards.

The requirements of 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA. This rule does not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule, pertaining to the determination of attainment of the fine particle standards for the Louisville (Indiana and Kentucky) area, involves determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because there is no federally recognized Indian country located in the states, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2011. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 12, 2011.

Susan Hedman,

Regional Administrator, Region 5.

Dated: February 25, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.776 is amended by adding paragraph (t) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(t) *Determination of Attainment.* EPA has determined, as of March 9, 2011, that the Louisville, IN-KY $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. These determinations, in accordance with 40 CFR 51.1004(c), suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 1997 $PM_{2.5}$ NAAQS.

Subpart S—Kentucky

■ 3. Section 52.933 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.933 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(b) *Determination of Attainment.* EPA has determined, as of March 9, 2011, that the Louisville, IN-KY $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. These determinations, in accordance with 40 CFR 51.1004(c), suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 1997 $PM_{2.5}$ NAAQS.

[FR Doc. 2011–5214 Filed 3–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0708, FRL–9277–3]

RIN 2060–AQ78

National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: EPA is taking direct final action to promulgate amendments to a final rule that provided national emission standards for hazardous air pollutants for existing stationary spark ignition reciprocating internal combustion engines. The final rule was published on August 20, 2010. This direct final action amends certain regulatory text to clarify compliance requirements related to continuous parameter monitoring systems. EPA is also correcting minor typographical errors in the regulatory text to the August 20, 2010, action.

DATES: The direct final rule is effective on May 9, 2011, without further notice, unless EPA receives significant adverse written comment by April 8, 2011 on any portion of this rule, or if a public hearing is requested by March 16, 2011. If significant adverse comments are received on any or all of the amendments, EPA will publish a timely withdrawal in the **Federal Register** clarifying which provisions will become effective and which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0708, 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), National Emission Standards for Hazardous Air Pollutant for Stationary Reciprocating Internal Combustion Engines Docket, Docket ID No. EPA–HQ–OAR–2008–0708, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), National Emission Standards for Hazardous Air Pollutant for Stationary Reciprocating Internal Combustion Engines Docket, Docket ID No. EPA–HQ–OAR–2008–0708, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0708. 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. EPA also relies on documents in Docket ID Nos. EPA–HQ–OAR–2002–0059, EPA–HQ–OAR–2005–0029, and EPA–HQ–OAR–2005–0030, and incorporated those dockets into the record for this action. 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: Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2469; facsimile number (919) 541–5450; e-mail address *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. What is the background for the amendments?
II. What are the changes to the final rule?
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. What is the background for the amendments?

On August 20, 2010 (75 FR 51570), EPA issued final amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines (RICE). EPA has subsequently determined, following discussions with affected parties, that the final rule warrants clarification in certain areas. First, certain portions of

the operation and maintenance requirements for continuous parameter monitoring systems (CPMS) are unclear. Second, sources asked for guidance regarding the requirement to conduct a temperature measurement calibration check. Finally, EPA is correcting an inadvertent error in the definition for "spark ignition." This action makes these clarifications and corrects these errors.

EPA is issuing the amendments as a direct final rule, without a prior proposal, because we view the revisions as noncontroversial and anticipate no adverse comment. However, in the Proposed Rules section of this **Federal Register** notice, EPA is publishing a separate document that will serve as the proposal to amend the RICE NESHAP if significant adverse comments are filed. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. EPA would address all public comments in any subsequent final rule based on the proposed rule.

II. What are the changes to the final rule?

This direct final rule clarifies the provisions related to the data collection requirements for CPMS. After promulgation of the August 20, 2010, final rule, affected sources indicated that the CPMS operation, maintenance, and data collection requirements in 40 CFR 63.6625(b) were unclear. In particular, sources were not clear about the intent of the requirements for minimum availability of data. This action clarifies those requirements. It specifies that the requirement to monitor operating parameters on a continuous basis applies at all times the process is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities. This direct final rule also corrects an inadvertent error in the averaging time for the operating parameter data. Paragraph 40 CFR 63.6625(b)(4) required sources to determine a 3-hour block average of the parameter, which was not consistent with the requirements in Table 6 of 40 CFR part 63, subpart ZZZZ to determine a 4-hour rolling average. This action clarifies that sources should determine the 4-hour rolling average as specified in Table 6 to 40 CFR part 63, subpart ZZZZ and removes the reference to a 3-hour block average in 40 CFR 63.6625(b). The operating parameter data should be reduced to 1-hour averages, and the 4-hour rolling average should be determined using the rolling average of the four hourly averages.

Affected sources were also unclear regarding the requirement in 40 CFR 63.6625(k)(4) to conduct a temperature measurement calibration check at least every 3 months, and asked EPA for guidance on appropriate methods for conducting the calibration check. More specifically, sources struggled with the intention of the term "calibration check," wondering whether classical techniques such as the use of ice and boiling water baths would be the sole acceptable means of demonstrating a "calibration check." In addition, sources wondered whether just the sensor or the entire system should be subject to a "calibration check." This action replaces the term "calibration check" with "system accuracy audit" to better reflect EPA's intent. EPA recognizes that there are many ways for a source to demonstrate that its measurement system—as opposed to individual sensors—are producing and should be expected to continue producing valid data, and EPA affords sources the ability to tailor their monitoring plans to accommodate their system accuracy audit preferences. System accuracy audit techniques could include, but are not limited to, the use of redundant sensors or the use of a reference temperature gauge inserted in a thermal well co-located with the CPMS sensor. In both of the examples given above, each sensor would provide an assessment of the other's operation as demonstrated through a comparison of their individual values, and, when coupled with the other parts of a system accuracy audit and approved by EPA, could fulfill the rule requirements. Affected sources also indicated that the requirement to conduct quarterly checks of the temperature measurement device was unreasonable because engines may be located in remote locations that could be difficult for personnel trained in the equipment performance check procedures to reach on a quarterly basis. EPA recognizes that for these sources, the requirement to conduct quarterly checks may be too burdensome given the remote location of the engines, and has determined that annual checks of the temperature measurement device equipment are acceptable for stationary engines to ensure the equipment is producing valid data. EPA therefore is amending the requirement to specify that the temperature measurement device checks must be performed on an annual basis rather than quarterly.

The August 20, 2010, final amendments specified that the engine owner/operator must develop and submit for approval a site-specific monitoring plan for each CPMS. The monitoring plan must address elements of monitoring system design, performance, and data quality assurance and quality control consistent with the general provisions in part 63 and requirements of 40 CFR part 63, subpart ZZZZ. EPA notes that 40 CFR 63.8(f)(4) of the General Provisions allows the source to use the monitoring plan development and approval process to propose and apply alternatives to CPMS quality assurance and quality control requirements identified in the rule.

Affected sources also indicated that there was insufficient time for sources that were already subject to 40 CFR part 63 subpart ZZZZ to comply with the CPMS operation and maintenance requirements established in the August 20, 2010, final rule. EPA agrees that it is appropriate to provide a period of lead time for sources that would have been immediately affected by the new specifications for CPMS operation and maintenance. EPA is therefore amending the final rule to provide an additional 180 days before sources must comply with the CPMS operation and maintenance procedures in 40 CFR 63.6625(b).

This action also corrects an inadvertent error in 40 CFR 63.6603(a), which should have referenced Table 1b to 40 CFR part 63, subpart ZZZZ in addition to Table 2b. Table 1b includes the operating limitation requirements for existing stationary spark ignition four-stroke rich burn engines greater than 500 horsepower (HP) located at area sources of hazardous air pollutants. The introductory text to Tables 1b and 2b should also have contained a reference to 40 CFR 63.6603, and this action corrects that inadvertent error. This action also corrects an inadvertent error in Table 1b to 40 CFR part 63, subpart ZZZZ. The last line of Item 2 in Table 6 should have read "* * * and not using NSCR," and this action corrects that inadvertent error.

This action also clarifies the initial compliance requirements in Table 5 to 40 CFR part 63, subpart ZZZZ. The table as finalized did not clearly indicate the initial compliance requirements for existing non-emergency stationary engines larger than 500 HP complying with the option to limit the concentration of carbon monoxide (CO) or formaldehyde. The requirements were only shown for existing non-emergency stationary engines larger than 500 HP complying with the option to meet a percent reduction requirement for CO or formaldehyde. The requirements for those engines meeting a concentration limit are the same as those meeting a percent reduction limit,

except that for those engines meeting a concentration limit, emissions are not required to be measured at the inlet of the emission control device as well as the outlet. This action also corrects an inadvertent error in Table 6 to 40 CFR part 63, subpart ZZZZ. Item 13.a. in Table 6 should have read "* * * and not using an oxidation catalyst or NSCR," and this action corrects that inadvertent error.

Finally, this action corrects the definition for "Spark ignition." The word "with" was inadvertently omitted from the definition, and EPA is amending the definition to insert "with" immediately following the phrase "A gasoline-fueled engine; or any other type of engine. * * *"

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget (OMB). This action is a clarification of and correction to certain text in the final rule and is not a "major rule" as defined by 5 U.S.C. 804(2). However, the final rule promulgated on August 20, 2010, was reviewed by OMB.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action adds clarifications and corrections to the final standards. However, OMB has previously approved the information collection requirements contained in the existing regulation under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0548. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this rule on small entities, small entity is defined as: (1) A small business as defined by Small Business Administration (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of this direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small because it does not add any additional regulatory requirements because this action only clarifies the existing compliance requirements and corrects typographical errors.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this final rule is not subject to the requirements of section 202 and 205 of the UMRA.

This final action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final action contains no requirements that apply to such governments, imposes no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to these final rules.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the regulation and develops a tribal summary impact statement.

This direct final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The final rule imposes no new requirements on the one tribally owned facility. Thus, Executive Order 13175 does not apply to this action.

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

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

Order 13045 because it is based solely on technology performance.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

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

Executive Order 12898 (59 FR 7629) (February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The direct final rule does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), because it does not change any regulatory requirements. This action merely corrects and clarifies existing requirements.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action is effective May 9, 2011.

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: March 1, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart ZZZZ—[Amended]

■ 2. Section 63.6603 is amended by revising paragraph (a) to read as follows:

§ 63.6603 What emission limitations and operating limitations must I meet if I own or operate an existing stationary RICE located at an area source of HAP emissions?

* * * * *

(a) If you own or operate an existing stationary RICE located at an area source of HAP emissions, you must comply with the requirements in Table 2d to this subpart and the operating limitations in Table 1b and Table 2b to this subpart that apply to you.

* * * * *

■ 3. Section 63.6625 is amended by revising paragraph (b) and removing paragraph (k) to read as follows:

§ 63.6625 What are my monitoring, installation, collection, operation, and maintenance requirements?

* * * * *

(b) If you are required to install a continuous parameter monitoring system (CPMS) as specified in Table 5 of this subpart, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (b)(1) through (5) of this section. For an affected source that is complying with the emission limitations and operating limitations on March 9, 2011, the requirements in paragraph (b) of this section are applicable September 6, 2011.

(1) You must prepare a site-specific monitoring plan that addresses the monitoring system design, data collection, and the quality assurance and quality control elements outlined in paragraphs (b)(1)(i) through (v) of this section and in § 63.8(d). As specified in § 63.8(f)(4), you may request approval of monitoring system quality assurance and quality control procedures alternative to those specified in paragraphs (b)(1) through (5) of this section in your site-specific monitoring plan.

(i) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations;

(ii) Sampling interface (*e.g.,* thermocouple) location such that the monitoring system will provide representative measurements;

(iii) Equipment performance evaluations, system accuracy audits, or other audit procedures;

(iv) Ongoing operation and maintenance procedures in accordance with provisions in § 63.8(c)(1) and (c)(3); and

(v) Ongoing reporting and recordkeeping procedures in accordance with provisions in § 63.10(c), (e)(1), and (e)(2)(i).

(2) You must install, operate, and maintain each CPMS in continuous operation according to the procedures in your site-specific monitoring plan.

(3) The CPMS must collect data at least once every 15 minutes (see also § 63.6635).

(4) For a CPMS for measuring temperature range, the temperature sensor must have a minimum tolerance of 2.8 degrees Celsius (5 degrees Fahrenheit) or 1 percent of the measurement range, whichever is larger.

(5) You must conduct the CPMS equipment performance evaluation, system accuracy audits, or other audit procedures specified in your site-

specific monitoring plan at least annually.

(6) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

* * * * *

■ 4. Section 63.6635 is amended by revising paragraphs (b) and (c) to read as follows:

§ 63.6635 How do I monitor and collect data to demonstrate continuous compliance?

* * * * *

(b) Except for monitor malfunctions, associated repairs, required performance evaluations, and required quality assurance or control activities, you must monitor continuously at all times that the stationary RICE is operating. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels. You must, however, use all the valid data collected during all other periods.

■ 5. Section 63.6675 is amended by revising the definition of *Spark ignition* to read as follows:

§ 63.6635 What definitions apply to this subpart?

* * * * *

Spark ignition means relating to either: A gasoline-fueled engine; or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for CI and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

* * * * *

■ 6. Table 1b to Subpart ZZZZ of Part 63 is revised to read as follows:

Table 1b to Subpart ZZZZ of Part 63—Operating Limitations for Existing, New, and Reconstructed Spark Ignition 4SRB Stationary RICE >500 HP Located at a Major Source of HAP Emissions and Existing Spark Ignition 4SRB Stationary RICE >500 HP Located at an Area Source of HAP Emissions

As stated in §§ 63.6600, 63.6603, 63.6630 and 63.6640, you must comply with the following operating limitations for existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions and existing 4SRB stationary RICE >500 HP located at an area source of HAP emissions that operate more than 24 hours per calendar year:

For each . . .	You must meet the following operating limitation . . .
1. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and using NSCR; or 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 and using NSCR; or 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 2.7 ppmvd or less at 15 percent O_2 and using NSCR.	a. Maintain your catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst measured during the initial performance test; and b. Maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 750 °F and less than or equal to 1250 °F.
2. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and not using NSCR; or 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 and not using NSCR; or 4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 2.7 ppmvd or less at 15 percent O_2 and not using NSCR.	Comply with any operating limitations approved by the Administrator.

■ 7. Table 2b to Subpart ZZZZ of Part 63 introductory text is revised to read as follows:

Table 2b to Subpart ZZZZ of Part 63—Operating Limitations for New and Reconstructed 2SLB and Compression Ignition Stationary RICE >500 HP Located at a Major Source of HAP Emissions, New and Reconstructed 4SLB Stationary RICE ≥250 HP Located at a Major Source of HAP Emissions, Existing Compression Ignition Stationary RICE >500 HP, and Existing 4SLB Stationary RICE >500 HP Located at an Area Source of HAP Emissions

As stated in §§ 63.6600, 63.6601, 63.6603, 63.6630, and 63.6640, you must comply with the following operating limitations for new and reconstructed 2SLB and compression ignition stationary RICE located at a major source of HAP emissions; new and reconstructed 4SLB stationary RICE ≥250 HP located at a major source of HAP emissions; existing compression ignition stationary RICE >500 HP; and existing 4SLB stationary RICE >500 HP located at an area source of HAP emissions that operate more than 24 hours per calendar year:

* * * * *

■ 8. Table 5 to Subpart ZZZZ of Part 63 is revised to read as follows:

Table 5 to Subpart ZZZZ of Part 63—Initial Compliance With Emission Limitations and Operating Limitations

As stated in §§ 63.6612, 63.6625 and 63.6630, you must initially comply with the emission and operating limitations as required by the following:

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
1. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, non-emergency stationary CI RICE >500 HP located at a major source of HAP, existing non-emergency stationary CI RICE >500 HP located at an area source of HAP, and existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Reduce CO emissions and using oxidation catalyst, and using a CPMS.	i. The average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
2. Non-emergency stationary CI RICE >500 HP located at a major source of HAP, existing non-emergency stationary CI RICE >500 HP located at an area source of HAP, and existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Limit the concentration of CO, using oxidation catalyst, and using a CPMS.	i. The average CO concentration determined from the initial performance test is less than or equal to the CO emission limitation; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
3. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, non-emergency stationary CI RICE >500 HP located at a major source of HAP, existing non-emergency stationary CI RICE >500 HP located at an area source of HAP, and existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Reduce CO emissions and not using oxidation catalyst.	i. The average reduction of emissions of CO determined from the initial performance test achieves the required CO percent reduction; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
4. Non-emergency stationary CI RICE >500 HP located at a major source of HAP, existing non-emergency stationary CI RICE >500 HP located at an area source of HAP, and existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Limit the concentration of CO, and not using oxidation catalyst.	i. The average CO concentration determined from the initial performance test is less than or equal to the CO emission limitation; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
5. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, non-emergency stationary CI RICE >500 HP located at a major source of HAP, existing non-emergency stationary CI RICE >500 HP located at an area source of HAP, and existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Reduce CO emissions, and using a CEMS	i. You have installed a CEMS to continuously monitor CO and either O_2 or CO_2 at both the inlet and outlet of the oxidation catalyst according to the requirements in § 63.6625(a); and ii. You have conducted a performance evaluation of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B; and iii. The average reduction of CO calculated using § 63.6620 equals or exceeds the required percent reduction. The initial test comprises the first 4-hour period after successful validation of the CEMS. Compliance is based on the average percent reduction achieved during the 4-hour period.
6. Non-emergency stationary CI RICE >500 HP located at a major source of HAP, existing non-emergency stationary CI RICE >500 HP located at an area source of HAP, and existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Limit the concentration of CO, and using a CEMS.	i. You have installed a CEMS to continuously monitor CO and either O_2 or CO_2 at the outlet of the oxidation catalyst according to the requirements in § 63.6625(a); and ii. You have conducted a performance evaluation of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B; and

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
		iii. The average concentration of CO calculated using § 63.6620 is less than or equal to the CO emission limitation. The initial test comprises the first 4-hour period after successful validation of the CEMS. Compliance is based on the average concentration measured during the 4-hour period.
7. Non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP, and existing non-emergency 4SRB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Reduce formaldehyde emissions and using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
8. Non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP, and existing non-emergency 4SRB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Reduce formaldehyde emissions and not using NSCR.	i. The average reduction of emissions of formaldehyde determined from the initial performance test is equal to or greater than the required formaldehyde percent reduction; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
9. Existing non-emergency 4SRB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Limit the concentration of formaldehyde and not using NSCR.	i. The average formaldehyde concentration determined from the initial performance test is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
10. New or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE 250≤HP≤500 located at a major source of HAP, and existing non-emergency 4SRB stationary RICE >500 HP.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR.	i. The average formaldehyde concentration, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor catalyst inlet temperature according to the requirements in § 63.6625(b); and iii. You have recorded the catalyst pressure drop and catalyst inlet temperature during the initial performance test.
11. New or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE 250≤HP≤500 located at a major source of HAP, and existing non-emergency 4SRB stationary RICE >500 HP.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and not using oxidation catalyst or NSCR.	i. The average formaldehyde concentration, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde emission limitation; and ii. You have installed a CPMS to continuously monitor operating parameters approved by the Administrator (if any) according to the requirements in § 63.6625(b); and iii. You have recorded the approved operating parameters (if any) during the initial performance test.
12. Existing non-emergency stationary RICE 100≤HP≤500 located at a major source of HAP, and existing non-emergency stationary CI RICE 300<HP≤500 located at an area source of HAP.	a. Reduce CO or formaldehyde emissions	i. The average reduction of emissions of CO or formaldehyde, as applicable determined from the initial performance test is equal to or greater than the required CO or formaldehyde, as applicable, percent reduction.

For each . . .	Complying with the requirement to . . .	You have demonstrated initial compliance if . . .
13. Existing non-emergency stationary RICE 100≤HP≤500 located at a major source of HAP, and existing non-emergency stationary CI RICE 300<HP≤500 located at an area source of HAP.	a. Limit the concentration of formaldehyde or CO in the stationary RICE exhaust.	i. The average formaldehyde or CO concentration, as applicable, corrected to 15 percent O_2, dry basis, from the three test runs is less than or equal to the formaldehyde or CO emission limitation, as applicable.

■ 9. Table 6 to Subpart ZZZZ of Part 63 is revised to read as follows:

Table 6 to Subpart ZZZZ of Part 63—Continuous Compliance With Emission Limitations, Operating Limitations, Work Practices, and Management Practices

As stated in § 63.6640, you must continuously comply with the emissions and operating limitations and work or management practices as required by the following:

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
1. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, and new or reconstructed non-emergency CI stationary RICE >500 HP located at a major source of HAP.	a. Reduce CO emissions and using an oxidation catalyst, and using a CPMS.	i. Conducting semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved; [a] and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
2. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, and new or reconstructed non-emergency CI stationary RICE >500 HP located at a major source of HAP.	a. Reduce CO emissions and not using an oxidation catalyst, and using a CPMS.	i. Conducting semiannual performance tests for CO to demonstrate that the required CO percent reduction is achieved; [a] and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
3. New or reconstructed non-emergency 2SLB stationary RICE >500 HP located at a major source of HAP, new or reconstructed non-emergency 4SLB stationary RICE ≥250 HP located at a major source of HAP, new or reconstructed non-emergency stationary CI RICE >500 HP located at a major source of HAP, existing non-emergency stationary CI RICE >500 HP, existing non-emergency 4SLB stationary RICE >500 HP located at an area source of HAP that are operated more than 24 hours per calendar year.	a. Reduce CO emissions or limit the concentration of CO in the stationary RICE exhaust, and using a CEMS.	i. Collecting the monitoring data according to § 63.6625(a), reducing the measurements to 1-hour averages, calculating the percent reduction or concentration of CO emissions according to § 63.6620; and ii. Demonstrating that the catalyst achieves the required percent reduction of CO emissions over the 4-hour averaging period, or that the emission remain at or below the CO concentration limit; and iii. Conducting an annual RATA of your CEMS using PS 3 and 4A of 40 CFR part 60, appendix B, as well as daily and periodic data quality checks in accordance with 40 CFR part 60, appendix F, procedure 1.
4. Non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP.	a. Reduce formaldehyde emissions and using NSCR.	i. Collecting the catalyst inlet temperature data according to § 63.6625(b); and ii. Reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
		iv. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
5. Non-emergency 4SRB stationary RICE >500 HP located at a major source of HAP.	a. Reduce formaldehyde emissions and not using NSCR.	i. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and ii. Reducing these data to 4-hour rolling averages; and iii. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
6. Non-emergency 4SRB stationary RICE with a brake HP ≥5,000 located at a major source of HAP.	a. Reduce formaldehyde emissions	Conducting semiannual performance tests for formaldehyde to demonstrate that the required formaldehyde percent reduction is achieved.[a]
7. New or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP and new or reconstructed non-emergency 4SLB stationary RICE 250 ≤HP≤500 located at a major source of HAP.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and using oxidation catalyst or NSCR.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit; [a] and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
8. New or reconstructed non-emergency stationary RICE >500 HP located at a major source of HAP and new or reconstructed non-emergency 4SLB stationary RICE 250 ≤HP≤500 located at a major source of HAP.	a. Limit the concentration of formaldehyde in the stationary RICE exhaust and not using oxidation catalyst or NSCR.	i. Conducting semiannual performance tests for formaldehyde to demonstrate that your emissions remain at or below the formaldehyde concentration limit; [a] and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
9. Existing emergency and black start stationary RICE ≤500 HP located at a major source of HAP, existing non-emergency stationary RICE <100 HP located at a major source of HAP, existing emergency and black start stationary RICE located at an area source of HAP, existing non-emergency stationary CI RICE ≤300 HP located at an area source of HAP, existing non-emergency 2SLB stationary RICE located at an area source of HAP, existing non-emergency landfill or digester gas stationary SI RICE located at an area source of HAP, existing non-emergency 4SLB and 4SRB stationary RICE ≤500 HP located at an area source of HAP, existing non-emergency 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that operate 24 hours or less per calendar year.	a. Work or Management practices	i. Operating and maintaining the stationary RICE according to the manufacturer's emission-related operation and maintenance instructions; or ii. Develop and follow your own maintenance plan which must provide to the extent practicable for the maintenance and operation of the engine in a manner consistent with good air pollution control practice for minimizing emissions.

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
10. Existing stationary CI RICE >500 HP that are not limited use stationary RICE, and existing 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that operate more than 24 hours per calendar year and are not limited use stationary RICE.	a. Reduce CO or formaldehyde emissions, or limit the concentration of formaldehyde or CO in the stationary RICE exhaust, and using oxidation catalyst or NSCR.	i. Conducting performance tests every 8,760 hours or 3 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit; and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
11. Existing stationary CI RICE >500 HP that are not limited use stationary RICE, and existing 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that operate more than 24 hours per calendar year and are not limited use stationary RICE.	a. Reduce CO or formaldehyde emissions, or limit the concentration of formaldehyde or CO in the stationary RICE exhaust, and not using oxidation catalyst or NSCR.	i. Conducting performance tests every 8,760 hours or 3 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit; and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.
12. Existing limited use CI stationary RICE >500 HP and existing limited use 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that operate more than 24 hours per calendar year.	a. Reduce CO or formaldehyde emissions or limit the concentration of formaldehyde or CO in the stationary RICE exhaust, and using an oxidation catalyst or NSCR.	i. Conducting performance tests every 8,760 hours or 5 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit; and ii. Collecting the catalyst inlet temperature data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and iv. Maintaining the 4-hour rolling averages within the operating limitations for the catalyst inlet temperature; and v. Measuring the pressure drop across the catalyst once per month and demonstrating that the pressure drop across the catalyst is within the operating limitation established during the performance test.
13. Existing limited use CI stationary RICE >500 HP and existing limited use 4SLB and 4SRB stationary RICE >500 HP located at an area source of HAP that operate more than 24 hours per calendar year.	a. Reduce CO or formaldehyde emissions or limit the concentration of formaldehyde or CO in the stationary RICE exhaust, and not using an oxidation catalyst or NSCR.	i. Conducting performance tests every 8,760 hours or 5 years, whichever comes first, for CO or formaldehyde, as appropriate, to demonstrate that the required CO or formaldehyde, as appropriate, percent reduction is achieved or that your emissions remain at or below the CO or formaldehyde concentration limit; and ii. Collecting the approved operating parameter (if any) data according to § 63.6625(b); and iii. Reducing these data to 4-hour rolling averages; and

For each . . .	Complying with the requirement to . . .	You must demonstrate continuous compliance by . . .
		iv. Maintaining the 4-hour rolling averages within the operating limitations for the operating parameters established during the performance test.

[a] After you have demonstrated compliance for two consecutive tests, you may reduce the frequency of subsequent performance tests to annually. If the results of any subsequent annual performance test indicate the stationary RICE is not in compliance with the CO or formaldehyde emission limitation, or you deviate from any of your operating limitations, you must resume semiannual performance tests.

[FR Doc. 2011–5196 Filed 3–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0117; FRL–8863–2]

Potassium Benzoate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of potassium benzoate (Cas No. 582–25–2) under 40 CFR 180.910 when used as an inert ingredient (preservative) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest, and under 40 CFR 180.930 when used as an inert ingredient (preservative) in pesticide formulations applied to animals (used for food). Landis International, on behalf of Whitmire Micro-Gen submitted two petitions to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of potassium benzoate.

DATES: This regulation is effective March 9, 2011. Objections and requests for hearings must be received on or before May 9, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0117. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8560; *e-mail address: fertich.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0117 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 9, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0117, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation

(8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Exemption

In the **Federal Register** of February 6, 2008 (73 FR 6964) (FRL–8350–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 7E7241) by Landis International, on behalf of Whitmire Micro-Gen, 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126, under docket ID number EPA–HQ–OPP–2008–0040. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of potassium benzoate (Cas No. 582–25–2) when used as an inert ingredient (preservative) in pesticide formulations applied pre- and post-harvest. In the **Federal Register** of June 4, 2008 (73 FR 31862) (FRL–8365–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 8E7333) by Landis International, on behalf of Whitmire Micro-Gen, 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603–5126, under docket ID number EPA–HQ–OPP–2008–0059. The petition requested that 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of potassium benzoate (Cas No. 582–25–2) when used as an inert ingredient (preservative) in pesticide formulations applied to animals. Both notices referenced a summary of the petition prepared by Landis International, on behalf of Whitmire Micro-Gen, the petitioner, which is available in the docket, *http://www.regulations.gov.* Two comments were received in the docket for PP 7E7241, however they are unrelated to potassium benzoate and the Agency believes they were placed in this docket in error by the commenters. There were no comments received in response to the notice of filing for PP 8E7333.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

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

Potassium benzoate is an approved food preservative, similar in structure and reactivity to the more widely used sodium benzoate. Both are classified by the U.S. Food and Drug Administration (FDA) as Generally Recognized as Safe (GRAS). In conducting this assessment, toxicity data on potassium benzoate and the surrogate chemicals sodium benzoate and benzoic acid were used. Both potassium benzoate and sodium benzoate are salts of benzoic acid. Because all benzoates, in particular benzoic acid and sodium benzoate, react similarly to potassium benzoate, they were used as surrogates in the development of this profile.

Available data show that the acute toxicity of potassium benzoate is negligible, having an oral median lethal dose (LD_{50}) of >10,000 milligrams per kilogram body weight (mg/kg/bw). Acute dermal and inhalation toxicity is low as indicated by the >2,000 mg/kg/bw LD_{50} and >12.2 milligrams per liter (mg/L) median lethal concentration (LC_{50}) of benzoic acid. Sodium benzoate was not irritating to the skin and induced only slight eye irritation in rabbits. Sodium benzoate and benzoic acid were non-sensitizing in animal tests but showed a very low incidence of sensitization in humans patch tested. Both sodium benzoate and benzoic acid are known to induce non-immunogenic contact reactions, and that is the likely explanation for the low positive response.

Subacute, subchronic and chronic toxicity data also indicate that potassium benzoate should be relatively nontoxic. Available oral and dermal studies had a no-observed-adverse-effect-level (NOAEL) ≥2,000 mg/kg/bw and the inhalation study had a NOAEL >25 milligrams per cubic meter (mg/m^3). Sodium benzoate was not

carcinogenic in a lifetime mouse feeding study and there is no indication that potassium benzoate should be neurotoxic. Genotoxicity studies indicate the benzoates are not mutagenic; however chromosomal aberration studies gave ambiguous results. Benzoic acid did not induce reproductive toxicity in a 4-generation study. In the human body under normal physiological conditions, potassium benzoate changes from the ionized form to the undissociated benzoic acid. Benzoic acid and its salts are rapidly absorbed by mammals, conjugated with glycine, and rapidly excreted in the urine as hippuric acid. There is no reported accumulation of benzoate in the body. However, the ability to conjugate benzoic acid depends upon adequate liver function and nutritional supply of glycine.

All data indicates that potassium benzoate is relatively non-toxic as are the other benzoates. No toxicity would be expected from potassium benzoate when used at low concentrations in pesticides.

No developmental toxicity studies are available in the database. However, no systemic toxicity was observed at doses up to 750 mg/kg/day, the highest dose tested (HDT), in a 4-generation reproductive study with benzoic acid. In addition, no systemic toxicity was observed in the laboratory animals at high doses >2,000 mg/kg/day of potassium benzoate and benzoates indicating relatively low hazard potential.

Specific information on the studies received and the nature of the adverse effects caused by potassium benzoate as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "PC Code 709103: Potassium Benzoate (CAS Reg. No. 582–25–2); Human Health Risk Assessment and Ecological Effects Assessment to the Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations," page 7 docket ID number EPA–HQ–OPP–2011–0117.

B. Toxicological Points of Departure/ Levels of Concern

Subacute, subchronic and chronic toxicity data indicate that potassium benzoate is relatively nontoxic. Available oral and dermal toxicity studies had a NOAEL greater than or equal to 2,000 mg/kg/day and the inhalation study had a NOAEL greater than 25 mg/m^3. Sodium benzoate was not shown to be carcinogenic and there is no indication that potassium benzoate will be neurotoxic. Studies also indicate that benzoates are not mutagenic and benzoic acid did not induce reproductive toxicity in a 4-generation study. Since no toxicity was observed at high doses, quantitative risk assessment is deemed unnecessary.

C. Exposure Assessment

No hazard was identified for the acute and chronic dietary assessment (food and drinking water), or for the short, intermediate, and long term residential assessments, therefore no aggregate risk assessments were performed. Available toxicological studies indicate lack of systemic toxicity at doses up to 2,000 mg/kg/day. Therefore, no quantitative dietary or occupational and residential risk assessment was conducted.

1. *Dietary exposure from food and feed uses and drinking water.* In evaluating dietary exposure to potassium benzoate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. Since toxicity was seen only at doses greater than 2,000 mg/kg/day for potassium benzoate, a quantitative exposure assessment for potassium benzoate was not conducted. Any possible dietary exposure to potassium benzoate from its use as an inert ingredient in pesticide products would be through consumption of food to which pesticide products containing it have been applied and possibly through drinking water (from runoff). Metabolism data indicates that potassium benzoate would be rapidly absorbed, metabolized, and excreted.

2. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). Potassium benzoate is used in pharmaceuticals and cosmetics. It can also be used in nonfood use pesticide products. Considering the low toxicity of potassium benzoate, residues of concern are not anticipated from residential exposures (inhalation and dermal) and therefore a quantitative aggregate risk assessment was not performed.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found potassium benzoate to share a common mechanism of toxicity with any other substances, and potassium benzoate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that potassium benzoate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, *see* EPA's Web site at *http://www.epa.gov/pesticides/ cumulative.*

D. Safety Factor for Infants and Children

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

No developmental toxicity studies are available in the database. However, no systemic toxicity was observed at doses up to 750 mg/kg/day in a 4-generation reproductive study with benzoic acid. In addition, no systemic toxicity was observed in the laboratory animals at high doses >2,000 mg/kg/day of potassium benzoate and benzoates indicating relatively low hazard potential. There was no evidence of clinical signs of neurotoxicity, therefore, a developmental neurotoxicity study is not required. In addition, no evidence of immunotoxicity is available in the database, therefore, an immunotoxicity study is not required. In terms of hazard, there are low concerns and low residual uncertainties regarding prenatal and/or postnatal toxicity. Based on this information, there is no concern at this time for increased sensitivity to infants and children to potassium benzoate when used as an inert ingredient in pesticide formulations and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

Given the lack of concern for hazard posed by potassium benzoate, EPA concludes that there are no dietary or aggregate dietary/non-dietary risks of concern as a result of exposure to potassium benzoate in food and water or from residential exposure. Residues of concern are not anticipated for dietary exposure (food and drinking water) or for residential exposure (dermal and inhalation) from the use of potassium benzoate as an inert ingredient in pesticide products. As discussed in this unit, EPA expects aggregate exposure to potassium benzoate to pose no appreciable dietary risk given that the data show a lack of any systemic toxicity at doses up to 2,000 mg/kg/day and a lack of any apparent developmental effects.

Taking into consideration all available information on potassium benzoate, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to potassium benzoate under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 for residues of potassium benzoate when used as an inert ingredient in pesticide formulations applied pre- and post-harvest and under 40 CFR 180.930 for residues of potassium benzoate when used as an inert ingredient in pesticide formulations applied to animals, is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

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

The Codex has not established a MRL for potassium benzoate.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 and 40 CFR 180.930 for potassium benzoate when used as an inert ingredient (preservative) in pesticide formulations applied pre- and post-harvest and applied to animals.

VII. Statutory and Executive Order Reviews

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

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 25, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.910, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre-harvest and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	*	*
Potassium benzoate (as No. 582–25–2).	none	preservative
* * *	*	*

■ 3. In § 180.930, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	*	*
Potassium benzoate (as No. 582–25–2).	none	preservative
* * *	*	*

[FR Doc. 2011–5051 Filed 3–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0122; FRL–8858–5]

Fomesafen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fomesafen in or on pepper (bell and non-bell), potato, and tomato. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 9, 2011. Objections and requests for hearings must be received on or before May 9, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (*see also* Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0122. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0122 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 9, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0122, by one of the following methods:

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

II. Summary of Petitioned-for Tolerance

In the **Federal Registers** of September 4, 2009 (74 FR 45848) (FRL–8434–4) and March 19, 2010 (75 FR 13277) (FRL–8813–2), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 9F7563 and PP 9F7667) by Syngenta Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419–8300. The petitions requested that 40 CFR 180.433

be amended by establishing tolerances for residues of the herbicide fomesafen, 5-[2-cloro-4-(trifluoromethyl)phenoxy]-N-(methylsulfonyl)-2-nitrobenzamide, in or on potato and tomato (PP 9F7563); and pepper (PP 9F7667) at 0.025 parts per million (ppm). Those notices referenced summaries of the petitions prepared by Syngenta Crop Protection, Inc., the registrant, which are available in the dockets, *http://www.regulations.gov.* There were no comments received in response to the notice of filing of PP 9F7563. Comments were received on the notice of filing of PP 9F7667. EPA's response to these comments is discussed in Unit IV.C.

EPA has revised the proposed tolerance expression and the commodity terms for peppers in accordance with current Agency policy. These revisions are discussed in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Fomesafen has a low order of acute toxicity by the oral route of exposure, is severely irritating to the eye, and is moderately irritating to the skin. In the subchronic and chronic toxicity studies in rats and mice, food consumption or food efficiency, body weight/body weight gain, and histopathological changes in the liver were the parameters that were most often affected. Dogs and mice also showed hematological changes (*e.g.,* decreased erythrocyte count, hemoglobin, or hematocrit). There was no evidence of neurotoxicity or immunotoxicity in the toxicological studies with fomesafen. There was no evidence that fomesafen results in increased susceptibility of rat or rabbit fetuses in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

There was no evidence of carcinogenicity in the rat chronic toxicity/carcinogenicity study. Liver tumors were produced in the mouse carcinogenicity study; however, EPA classified fomesafen as "Not Likely to be Carcinogenic to Humans," based on the weight-of-evidence supporting activation of peroxisome proliferator-activated receptor alpha (PPARα) as the mode of action for fomesafen-induced hepatocarcinogenesis in mice. The data did not support either mutagenesis or cytotoxicity followed by regenerative proliferation as alternative modes of action. While the proposed mode of action for liver tumors in mice is theoretically plausible in humans, it is unlikely to take place in humans based on quantitative species differences in PPARα activation and toxicokinetics. Detailed information on the factors EPA considered in making this determination can be found at *http://www.regulations.gov* in the document "FOMESAFEN: Second Report of the Cancer Assessment Review Committee" in docket ID number EPA–HQ–OPP–2010–0122.

Specific information on the studies received and the nature of the adverse effects caused by fomesafen as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "Fomesafen Sodium: Human Health Risk Assessment for the Establishment of Tolerances and Registration of New Uses of Fomesafen Sodium on Potatoes and Peppers," p. 30 in docket ID number EPA–HQ–OPP–2010–0122.

B. Toxicological Points of Departure/Levels of Concern

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

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

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All population subgroups, including Females 13–49 years of age, infants and children).	No toxic effects attributable to a single dose of fomesafen were found in the database.		
Chronic dietary (All populations)	NOAEL= 0.25 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.0025 mg/kg/day cPAD = 0.0025 mg/kg/day.	Chronic toxicity—rat LOAEL = 5 mg/kg/day based on hyalinization of the liver in males.
Cancer (Oral, dermal, inhalation) ..	Fomesafen is classified as "Not Likely to be Carcinogenic to Humans."		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fomesafen, EPA considered exposure under the petitioned-for tolerances as well as all existing fomesafen tolerances in 40 CFR 180.433. EPA assessed dietary exposures from fomesafen in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for fomesafen; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that residues would be present in all commodities at the tolerance level and that 100% of all crops are treated with fomesafen. Dietary Exposure Evaluation Model/Food Commodity Intake Database (DEEM–FCID™), Version 2.03, default processing factors were used to determine residues in processed commodities.

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

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for fomesafen. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used a screening-level water exposure model to estimate residues of fomesafen in surface water. This simulation model, the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), takes into account data on the physical, chemical, and fate/transport characteristics of fomesafen. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the model results, the estimated drinking water concentration (EDWC) of fomesafen for chronic exposures for non-cancer assessments is estimated to be 10.535 parts per billion (ppb) for surface water.

The Agency estimated residues of fomesafen in ground water based on the results of a prospective ground water monitoring study, submitted by the registrant, Syngenta Crop Protection, Inc. The maximum residue found in the study, which was conducted on a vulnerable North Carolina soil using a soybean cropping system, was 1 ppb, an order of magnitude lower than the modeled estimate for surface water.

The modeled estimate of fomesafen in surface water was used in the dietary exposure analysis and risk assessment for fomesafen in drinking water. For chronic dietary risk assessment, the water concentration of value 10.535 ppb was directly entered into the dietary exposure model to assess the contribution to drinking water.

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

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Fomesafen is a member of the diphenyl ether chemical family. The common toxicity that these compounds share is induction of liver effects (liver hypertrophy, increase in liver weight, tumors). Members of this class have been shown to induce rodent liver effects/tumors through the activation of the peroxisome proliferator-activated receptor (PPARα). It should be noted that liver hypertrophy and increases in liver weight are part of the range of morphological changes that result from chemically-mediated effects on the PPARα receptor and hepatocarcinogenesis. Although PPARα agonists can induce liver rodent tumors, the potential for PPARα agonists to induce liver tumors in other species, including humans, appears to be unlikely. This is because evidence shows that these other species are quantitatively less sensitive to the effects of PPARα agonism due to toxicodynamic differences between the human and rodent nuclear PPARα receptor. Thus, while this mode of action for liver tumors in rodent is

qualitatively possible in humans, it is unlikely to take place in humans based on quantitative species differences in PPARα activation and toxicokinetics. Accordingly, although members of the diphenyl ether family, as well as other classes of compounds, may share a common hepatocarcinogenic mode of action, cumulative exposure to PPARα agonists is unlikely to induce liver carcinogenesis in humans.

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The pre- and postnatal database for fomesafen includes a prenatal developmental toxicity study in rabbits, two prenatal developmental toxicity studies in rats, and a 2-generation reproduction toxicity study in rats. The rabbit developmental study was classified as unacceptable because of bacterial infection in the colony; however, the study provided information to assess potential developmental toxicity in rabbits. There was no significant difference between the treated and control animals for developmental abnormalities in the rabbit study. In the two rat developmental studies (considered together), developmental effects (postimplantation loss) occurred at the same dose causing maternal toxicity (staining of the ventral fur and significantly decreased body weight gain (>10%)). In the rat reproduction study, offspring effects (increased incidence of liver hyalinization in males) occurred at the same dose causing parental effects (liver histopathology in males and females of both generations).

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

i. The toxicity database for fomesafen is largely complete, lacking only immunotoxicity and acute and subchronic neurotoxicity studies. EPA has evaluated the available toxicity data for fomesafen and determined that an additional database uncertainty factor is not needed to account for the lack of these studies. As stated in Unit III.A, fomesafen primarily impacts the parameters of food consumption or food efficiency, body weight/body weight gain, and histopathological changes in the liver. There is no evidence that fomesafen causes immunotoxic or neurotoxic effects in any of the available toxicity studies, and EPA does not believe that conducting immunotoxicity and acute/subchronic neurotoxicity testing will result in a NOAEL less than 0.25 mg/kg/day, which is presently used as the point of departure for chronic risk assessment.

ii. There is no indication that fomesafen is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fomesafen results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the surface water modeling used to assess exposure to fomesafen in drinking water. These assessments will not underestimate the exposure and risks posed by fomesafen.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fomesafen is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fomesafen from food and water will utilize 32% of the cPAD for infants, less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for fomesafen.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- or intermediate-term residential exposure plus chronic exposure from food and water (considered to be a background exposure level). Short-/intermediate-term adverse effects (hyalinization of hepatocytes, increased eosinophilia, reduced granulation, increased liver weights in males and females, and increases in plasma alkaline phosphatase, alanine transminase and aspartate transaminase in males in the 90-day rat feeding study) were identified; however, fomesafen is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risks are assessed based on short- or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for fomesafen.

4. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A, EPA has concluded that the mode of action for fomesafen-induced hepatocarcinogenesis in mice is unlikely to take place in humans; therefore, fomesafen is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for fomesafen on pepper, potato, or tomato.

C. Response to Comments

An anonymous citizen objected to the presence of any pesticide residues on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) contemplates that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-for Tolerances

In its petition PP 9F7667, the registrant proposed a tolerance of 0.025 ppm for residues of fomesafen in or on the commodity "pepper." Consistent with recommendations in the Agency's Food and Feed Commodity Vocabulary, EPA is establishing separate tolerances for "pepper, bell" and "pepper, non-bell" at 0.025 ppm each.

EPA is also revising the requested tolerance expression to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the tolerances cover residues of the herbicide fomesafen, including its metabolites and degradates, but that compliance with the tolerance levels is to be determined by measuring only fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-N-(methylsulfonyl)-2-nitrobenzamide.

V. Conclusion

Therefore, tolerances are established for residues of fomesafen, including its metabolites and degradates, in or on pepper, bell; pepper, non-bell; potato; and tomato at 0.025 ppm. Compliance with the tolerance levels is to be determined by measuring only fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-N-(methylsulfonyl)-2-nitrobenzamide.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 28, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.433 is amended by revising the introductory text in paragraph (a) and alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.433 Fomesafen; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide fomesafen, including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels specified in the following table below is to be determined by measuring only fomesafen, 5-[2-chloro-4-(trifluoromethyl)phenoxy]-N-(methylsulfonyl)-2-nitrobenzamide, in or on the commodity.

Commodity	Parts per million
* * * *	
Pepper, bell	0.025
Pepper, non-bell	0.025
Potato	0.025
* * * *	
Tomato	0.025

* * * * *

[FR Doc. 2011–5070 Filed 3–8–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XA229

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, March 9, 2011, until 12:01 a.m., local time, January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for golden tilefish in the South Atlantic is 282,819 lb (128,284 kg) for the current fishing year, January 1 through December 31, 2011, as specified in 50 CFR 622.42(e)(2).

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for golden tilefish when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic golden tilefish will have been reached by March 9, 2011. Accordingly, the commercial sector for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, March 9, 2011, until 12:01 a.m., local time, January 1, 2012.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having golden tilefish onboard must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., local time, March 9, 2011. During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(ii) and (d)(2), respectively, apply to all harvest or possession of golden tilefish in or from the South Atlantic EEZ, and the sale or purchase of golden tilefish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of golden tilefish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, March 9, 2011, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for golden tilefish would apply regardless of whether the fish are harvested in State or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: March 4, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–5360 Filed 3–4–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XA228

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the vermilion snapper resource.

DATES: This rule is effective 12:01 a.m., local time, March 10, 2011, until 12:01 a.m., local time, July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for vermilion snapper in the South Atlantic is 315,523 lb (143,119 kg) for the current fishing period, January 1 through June 30, 2011, as specified in 50 CFR 622.42(e)(4)(i).

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for vermilion snapper when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic vermilion snapper will have been reached by March 10, 2011. Accordingly, the commercial sector for South Atlantic vermilion snapper is closed effective 12:01 a.m., local time, March 10, 2011, until 12:01 a.m., local time, July 1, 2011.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, March 10, 2011. During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(v) and (d)(2), respectively, apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, and the sale or purchase of vermilion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, March 10, 2011, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for vermilion snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: March 4, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–5362 Filed 3–4–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271170–0576–03]

RIN 0648–AY10

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 17A

Correction

In rule document 2010–30394, appearing on pages 76874–76890, in the issue of December 9, 2010, make the following correction:

§ 622.41 [Corrected]

On page 76890, in the first column, in § 622.41(n)(2), in the last line, make the following correction:

"28E N. lat." should read "28° N. lat."

[FR Doc. C1–2010–30394 Filed 3–8–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA276

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2011 total allowable catch (TAC) of pollock in the West Yakutat District of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 5, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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

The 2011 TAC of pollock in the West Yakutat District of the GOA is 2,339 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2011 TAC of pollock in the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,319 mt, and is setting aside the remaining 20 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in the West Yakutat District of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 3, 2011.

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

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

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

Dated: March 4, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–5359 Filed 3–4–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 100413185–1155–02]

RIN 0648–AY84

Groundfish Fisheries of the Exclusive Economic Zone Off Alaska; American Fisheries Act; Recordkeeping and Reporting

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

ACTION: Final rule.

SUMMARY: NMFS issues this rule to amend the American Fisheries Act implementing regulations that previously required cooperatives participating in the directed fishery for pollock in the Bering Sea to prepare and submit preliminary annual reports to the North Pacific Fishery Management Council (Council). The Council determined that the requirement for cooperatives to submit a preliminary annual report is no longer necessary, and this action eliminates that requirement. This action does not eliminate the requirement for the cooperatives to submit a single annual report to the Council. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

DATES: Effective April 8, 2011.

ADDRESSES: Electronic copies of this rule, the Regulatory Impact Review (RIR), and the categorical exclusion memorandum may be obtained from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by e-mail to *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone of the Bering Sea and Aleutian Islands Management Area under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations implementing the FMP appear at subpart F of 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

In October 1998, Congress enacted the American Fisheries Act (AFA), 16 U.S.C. 1851, which "rationalized" the Bering Sea pollock fishery by identifying the vessels and processors eligible to participate in the fishery and allocating pollock among those eligible participants. The AFA allocates 10 percent of the Bering Sea pollock total allowable catch to the Western Alaska Community Development Quota (CDQ) Program. After subtracting the CDQ Program allocation, and an amount set aside for the catch of pollock in other Bering Sea fisheries, the AFA allocates the remaining available pollock quota (the "directed fishing allowance") among the AFA inshore sector (50 percent), the AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent).

The AFA allowed for development of pollock fishing cooperatives in the non-CDQ sectors. Thirteen cooperatives were developed under the AFA: Ten inshore catcher vessel cooperatives, two offshore catcher/processor cooperatives, and one mothership cooperative. After NMFS allocates pollock quota to each of the inshore catcher vessel cooperatives, the cooperatives further subdivide each cooperative's pollock allocation among vessel owners in the cooperative through private contractual agreements. The cooperatives manage these allocations to optimize their harvest and to ensure that individual vessels and companies do not harvest more than their agreed upon share of pollock. The cooperatives also enforce contract

provisions and participate in a cooperative agreement to reduce salmon bycatch by the directed pollock fishery.

The regulations establishing the AFA cooperative reporting requirements were published on December 30, 2002 (67 FR 79692). These regulations required that each cooperative prepare preliminary and final annual reports describing the cooperative's harvest of pollock, prohibited species, and non-pollock groundfish, including species for which NMFS establishes annual sideboards that limit incidental catch by AFA participants. The purpose of the annual reports was "to assist the Council and NMFS in meeting the requirements of paragraph 210(a)(1) of the AFA, which requires that NMFS make such information available to the public in a manner that NMFS and the Council decide is appropriate" (67 FR 79692). Another purpose of the AFA cooperative annual report was to provide the Council information upon which it could make decisions on cooperative allocations and sideboard protection measures.

Prior to this action, all AFA cooperatives were required to submit both preliminary and final annual written reports on directed pollock fishing activity to the Council. The preliminary report was due on December 1, one month after the pollock fishery's closure on November 1, while the final report was due on April 1 of the following year. The two reports resulted from the Council's recognition that one month following the fishery's closure may not be enough time for the AFA cooperative representatives to compile all of the required information for the annual report. Requiring cooperatives to file a second report also allowed cooperatives to update catch and bycatch data after the end of the year.

In recent years, the Council has found that the preliminary AFA cooperative report is no longer necessary to develop recommendations on final groundfish specifications or on cooperative allocations and sideboard protection measures. The Council instead uses the Stock Assessment and Fishery Evaluation (SAFE) Reports provided by the Council's Bering Sea and Aleutian Islands Management Area Groundfish Plan Team, and the total allowable catch (TAC) recommendations provided at the December Council meeting to develop these recommendations. The data in the SAFE Reports are more encompassing than the data found in the preliminary AFA cooperative reports.

The SAFE Reports for the groundfish fisheries managed by the Council are compiled by the respective Plan Teams from chapters contributed by scientists at the NMFS Alaska Fisheries Science Center and the Alaska Department of Fish and Game. These SAFE Reports include separate stock assessment and fishery evaluation sections. The stock assessment section includes recommended acceptable biological catch (ABC) levels for each stock and stock complex managed under the FMP. For purposes of determining TACs, the data provided in these reports is a sufficient substitute for that which has been provided by the preliminary reports on the pollock fishery from the cooperatives. The Council considers the ABC recommendations, together with social and economic factors, in determining TACs and other management strategies for the fisheries.

At its June 2010 meeting, the Council determined that, combined with the SAFE Report and TAC recommendations, a single annual report from each AFA cooperative, renamed the "annual AFA cooperative report," will provide sufficient information to the Council, the industry, and the public about the directed fisheries for pollock in the Bering Sea. Under this rule, the cooperatives will be required to submit one report containing the same information previously contained in two reports.

Each AFA cooperative annual report will continue to be required to provide the following information:

- How the cooperative allocated pollock, other groundfish species, and prohibited species catch among the vessels in the cooperative;
- The catch and discard of these species by area for each vessel in the cooperative;
- How the cooperative monitored fisheries in which its members participate;
- A description of any actions taken by the cooperative in response to any vessel that exceeded the allocations made to the vessel by the cooperative;
- The total weight of pollock landed outside the State of Alaska on a vessel-by-vessel basis; and
- The number of salmon taken by species and season, and list each vessel's number of appearances on the weekly dirty 20 lists for non-Chinook salmon.

This action does not result in a substantial change in the reporting requirements. Some decrease in miscellaneous costs might occur due to postage cost differences. It is also possible that the burden will decrease due to planning and writing of one report instead of two reports, one revising the other.

NMFS published the proposed rule for this action in the **Federal Register** on December 20, 2010 (75 FR 79330), with a public comment period that closed January 4, 2011. No comments were received during this comment period.

NMFS made the following change from the proposed rule to the final rule. In the final rule, NMFS changes the proposed report submittal language at § 679.61(f)(1) to maintain the regulatory language currently in use. The proposed rule stated "Annual reports must be postmarked or received by the submission deadline." This text is revised to read "Annual reports must be postmarked by the submission deadline or received by a private courier service by the submission deadline."

This change gives equal treatment to cooperatives that send the annual report via postal service and those that send the report via private courier. As compared to the proposed rule, the final rule allows a cooperative that uses a private courier service a small amount of additional time to complete and send the report; however, this change does not necessarily delay the Council's receipt of the report or its availability to the public.

Classification

The NMFS Assistant Administrator for Fisheries has determined that this rule is necessary for the conservation and management of the Bering Sea and Aleutian Islands groundfish fisheries and that it is consistent with the FMP, the national standards, and other provisions of the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here.

No comments were received regarding this certification, and no changes have been made from the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

This action will not increase recordkeeping and reporting costs.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by the Office

of Management and Budget (OMB) under OMB Control Number 0648–0401.

Public reporting burden per response is estimated to average 8 hours for an AFA preliminary annual report and 4 hours for an AFA final annual report under old requirements. This rule removes the AFA preliminary annual report and renames the AFA final annual report as the AFA cooperative annual report, which is estimated to average 8 hours per response. This rule reduces the reporting burden without imposing any new, additional reporting burden.

These estimates of public reporting burden include 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 NMFS (*see* **ADDRESSES**); e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 4, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.61, revise paragraph (f) introductory text, paragraph (f)(1), and paragraph (f)(2) introductory text to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

* * * * *

(f) *Annual reporting requirement.* Any fishery cooperative governed by this section must submit an annual written report on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501. The Council will make copies of each report available to the public upon request.

(1) *What is the submission deadline?* The cooperative must submit the annual report by April 1 of each year. Annual reports must be postmarked by the submission deadline or received by a private courier service by the submission deadline.

(2) *What information must be included?* The annual report must contain, at a minimum:

* * * * *

[FR Doc. 2011–5369 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 46
Wednesday, March 9, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Doc. No. AMS–LS–11–0017]

Wholesale Pork Reporting Negotiated Rulemaking Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of negotiated rulemaking committee meeting.

SUMMARY: This document announces the second meeting of the Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee). The primary purpose of the Committee is to develop proposed language to amend the Livestock Mandatory Reporting (LMR) regulations to implement mandatory pork price reporting, as directed by the Mandatory Price Reporting Act of 2010 (Pub. L. 111–239).

DATES: The Committee meeting will be held Tuesday, March 15, 2011, through Thursday, March 17, 2011. On all three days, the meeting will begin at 8:30 a.m. and is scheduled to end at 5 p.m.

ADDRESSES: The meeting will take place at the Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Highway, Arlington VA 22202; Phone (703) 920–8600.

FOR FURTHER INFORMATION CONTACT: Michael Lynch, Chief; USDA, AMS, LS, LGMN Branch; 1400 Independence Ave., SW., Room 2619–S; Washington, DC 20250; Phone (202) 720–6231; Fax (202) 690–3732; or e-mail at *Michael.Lynch@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 28, 2010, the Mandatory Price Reporting Act of 2010 (2010 Reauthorization Act) reauthorizing LMR for 5 years and adding a provision for mandatory reporting of wholesale pork cuts was enacted. The 2010 Reauthorization Act directed the Secretary to engage in negotiated rulemaking to make required regulatory changes for mandatory wholesale pork reporting. For background on LMR, please see the background section of the Notice of Establishment of Negotiated Rulemaking Committee published November 24, 2010 (75 FR 71568). On January 26, 2011, AMS published a notice announcing the final list of members on the Wholesale Pork Reporting Negotiated Rulemaking Committee, responding to comments from the November 24, 2010, **Federal Register** notice, and announcing the first meeting (76 FR 4554).

II. Statutory Provisions

The Negotiated Rulemaking Act of 1996 (5 U.S.C. 561–570); the Mandatory Price Reporting Act of 2010 (Pub. L. 111–239); the Livestock Mandatory Reporting Act of 1999 (7 U.S.C. 1635–1636i); and 7 CFR part 59.

III. Negotiated Rulemaking Committee Meeting

This document announces the second meeting of the Committee. The meeting will take place as described in the **DATES** and **ADDRESSES** sections of this notice. The agenda for the meeting will be posted in advance at *http://www.ams.usda.gov/NegotiatedRulemaking.* The proposed agenda for the second meeting includes the following items: specifications used for reporting pork, product delivery periods, reporting basis, packaging and related costs, transaction types (*e.g.,* intra company sales, affiliate sales), and other topics relevant to determining appropriate methodology and scope to implement a mandatory wholesale pork reporting program. The Committee may, however, modify its agenda during the course of its work.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be given opportunities to make statements during the meeting at the discretion of the Committee, and will be able to file written statements with the Committee for its consideration. Written statements may be submitted in advance to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Notice of future meetings will be announced in the **Federal Register**.

Dated: February 2, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–5260 Filed 3–8–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 090210156–0416–01]

RIN 0625–AA81

Foreign-Trade Zones in the United States

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Extension of public comment period.

SUMMARY: On December 30, 2010, the Foreign-Trade Zones Board (the Board) published a proposed rule in the **Federal Register** and invited comment. The Board's proposed rule would amend the substantive and procedural rules for the authorization of Foreign-Trade Zones (FTZs or zones) and the regulation of zone activity. Specifically, the proposed rule contains changes related to manufacturing and value-added activity in zones, as well as new rules designed to address compliance with the Act's requirement that a grantee provide uniform treatment for all users of a zone. The current comment period is open through April 8, 2011. The Board hereby extends the comment period to May 26, 2011. Additionally, the Board will accept reply comments that are filed by June 27, 2011.

DATES: The public comment period on the proposed rule published at 75 FR 82340–82362, December 30, 2010, will be extended from the original due date of April 8, 2011. Comments must be received on or before May 26, 2011. The FTZ Board also invites reply comments addressing comments submitted pertaining to the proposed regulations; the deadline for reply comments will be June 27, 2011.

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at *http://*

www.Regulations.gov, Docket No. ITA–2010–0012, unless the commenter does not have access to the internet. Commenters that do not have access to the internet may submit their comments by mail or hand delivery/courier. All comments should be addressed to Andrew McGilvray, Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2111, Washington, DC 20230.

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 (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information, as such information may become part of the public record.

The FTZ Board will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only. All comments to Regulations.gov must be submitted into Docket Number ITA–2010–0012, and comments should refer to RIN 0625–AA81. The public record concerning these regulations will be maintained in the Office of the Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2111, Washington, DC 20230. Written public comments will be available at the facility in accordance with 15 CFR part 4 and may also be available electronically over the internet via *http://www.trade.gov/ftz* or *http://www.Regulations.gov.* Questions may be directed to the Foreign-Trade Zones Board staff by calling (202) 482–2862 or via e-mail to *ftz@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray, Executive Secretary, Foreign Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2111, Washington, DC 20230, (202) 482–2862 or Matthew Walden, Senior Attorney, Office of Chief Counsel for Import Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4610, Washington, DC 20230, (202) 482–2963.

Dated: March 3, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 2011–5387 Filed 3–8–11; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AD50

Registration of Intermediaries

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) hereby proposes regulations to further implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding registration of intermediaries. Specifically, the Commission proposes certain conforming amendments to the Commission's regulations regarding the registration of intermediaries, consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act; and other modernizing and technical amendments to the regulations.

DATES: Comments must be received on or before May 9, 2011.

ADDRESSES: You may submit comments, identified by RIN 3038–AD50 and Part 3, by any of the following methods:

- Agency Web site, *http://www.cftc.gov,* via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Andrew Chapin, Associate Director, Division of Clearing and Intermediary Oversight, (202) 418–5465, *achapin@cftc.gov;* or Claire Noakes, Attorney Advisor, Division of Clearing and Intermediary Oversight, (202) 418–5444, *cnoakes@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Act.[2] Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)[3] to establish a comprehensive new regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers (SDs) and major swap participants (MSPs); (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight. The regulations in this proposal concern conforming, modernizing and technical

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010), as amended by 75 FR 55409, Sep. 23, 2010, and may be accessed on the Commission's Web site.

[2] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at: *http://www.cftc.gov/ucm/groups/public/swaps/documents/file/hr4173_enrolledbill.pdf.*

[3] 7 U.S.C. 1 *et seq.*

amendments to part 3 governing the registration of intermediaries.

II. Proposed Regulations

The Commission's existing registration process for futures, commodity options and retail foreign exchange intermediaries, their associated persons (APs), and floor traders and floor brokers is set forth in part 3. Currently, part 3 does not address SDs and MSPs, nor does it reference a swap execution facility (SEF).[4] The Commission recently published two other notices of proposed rulemaking that would apply certain provisions of part 3 to SDs and MSPs.[5] This proposal would amend further part 3 to conform the regulations regarding registration by incorporating references to SDs, MSPs and SEFs where appropriate. The Commission expects to harmonize any distinctions between this proposal and the other rulemakings in the order that they become final. Therefore, this proposal does not contain the changes to part 3 proposed elsewhere; it is intended to work in conjunction with these other proposed rulemakings.

A. Conforming Amendments

Some of the proposed amendments involve substantive changes to existing regulations because of the particular attributes or characteristics of SDs, MSPs and SEFs. Other proposed amendments to part 3 consist entirely of adding references, where appropriate, to SDs, MSPs and SEFs in existing regulations, based on the fact that the Commission has not decided to issue regulations that impose a registration requirement on floor brokers and floor traders that solely engage in swaps activity. As a result, SEFs were not added alongside the term designated contract market if the provision was only addressing registration activities of floor brokers and floor traders. SDs and MSPs were not added if the provision was only addressing registration activities of APs, because at this time the Commission has not decided to issue regulations requiring registration of APs of SDs and MSPs.[6]

Specific section-by-section proposed revisions follow.

1. Section 3.1—Definitions

Current § 3.1(a) sets forth the definition of a principal, and § 3.1(a)(3) carves out from the definition of principal certain persons that have made capital contributions in the form of subordinated debt to a registrant, including unaffiliated banks operating in the U.S. and U.S. branches of foreign banks. The Commission is proposing to clarify the carve-out by referencing terms defined elsewhere in federal regulations. More specifically, the proposal would tie the carve-out to the definitions of "foreign bank" and "office of a foreign bank" currently used by the Board of Governors of the Federal Reserve System under regulation K[7] for foreign banking organizations.

Currently, any foreign bank that had made capital contributions in the form of subordinated debt would be included within the definition of principal.[8] In response to the likelihood that foreign-domiciled persons with capital contributions from foreign banks might register as SDs, the Commission is proposing to expand the carve-out. The proposed expansion would cover any foreign bank itself that currently operates an office licensed in the U.S. In so doing, the Commission would be relying on the approval process of the office by the Board of Governors of the Federal Reserve System as a proxy for discerning whether the foreign bank itself is otherwise regulated. The Commission specifically seeks comments on whether this provision is warranted to ensure uniform listing of principals by domestic and foreign-domiciled registrants, and whether the expansion would ensure that the list of principals remains a meaningful reflection of the persons who actually exercise control over the registrant's regulated activities.

2. Section 3.10—Registration of Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants. Section 3.12—Registration of Associated Persons of Futures Commission Merchants, Retail Foreign Exchange Dealers, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators and Leverage Transaction Merchants

Current § 3.10(c) generally sets forth exemptions from registration for certain persons. The Commission is proposing to add an exemption from registration in new paragraph (c)(5) to clarify that an individual employed by either an SD or a MSP and acting as its AP is not required separately to register as an SD or MSP, respectively, solely arising out of their activities as an AP. The Commission specifically seeks comment as to whether this exemption is necessary to clarify the registration responsibilities of employees, in light of the current absence of a registration requirement as an AP of an SD or a MSP, and in light of the proposed definition requiring persons who engage in certain activities to register as an SD or MSP.[9]

The Commission also is proposing to amend § 3.12(h)(1)(i) to provide that a person is not required to register as an AP in any capacity if he or she is registered in one of the other enumerated categories, including an SD or MSP. The Commission specifically seeks comment as to whether this exemption is necessary, in light of the improbability that an individual, rather than an entity, would register as an SD or MSP.

Section 3.10(c)(2) and (3) also currently provide exemptions from registration as a futures commission merchant for foreign brokers and other foreign intermediaries conducting activities in commodity interest transactions on designated contract markets solely on behalf of customers located outside the U.S. The Commission is proposing to expand the exemption to commodity interest transactions made on or subject to the rules of an SEF. The Commission is proposing this expansion to create uniformity in treatment of commodity interest transactions that do not involve a U.S. customer, regardless of whether the transaction is made on a designated contract market or an SEF. Additionally, the Commission seeks comment as to whether it should expand the existing

[4] Section 1(a)(50) of the CEA generally provides that a SEF is a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system.

[5] 75 FR 70881, Nov. 19, 2010; 75 FR 71379, Nov. 23, 2010.

[6] *See* 75 FR at 71380, Nov. 23, 2010.

[7] *See generally* 12 CFR 211.

[8] In the Commission's initial proposal of this exemption, the Commission was concerned with whether the bank was "otherwise regulated," but did not attempt to determine whether any foreign bank qualified as such. *See* 56 FR 37026, 37031, Aug. 2, 1991.

[9] *See* 75 FR 80173, Dec. 21, 2010.

exemption from registration to foreign brokers and other foreign intermediaries that execute a bilateral swap transaction and voluntarily clear it on a derivatives clearing organization on an omnibus basis. Further, the Commission seeks comment as to whether such an exemption should distinguish between bilateral swap transactions that occur within the U.S., or those that occur abroad.

3. Derivatives Transaction Execution Facilities

The Dodd-Frank Act abolished derivatives transaction execution facilities as a market category. Additionally, no derivatives transaction execution facility has ever registered with the Commission. Therefore, that term is proposed to be deleted from §§ 3.2(c), 3.2(c)(2), 3.10(a)(3)(i)(A), 3.10(c)(2)(i), 3.10(c)(3)(i), 3.10(c)(4)(ii) and (iv), 3.11(a)(2) and (3), 3.11(b), 3.31(d), 3.40(a)(2)(iv), 3.42(a)(6), and 3.46(a)(8).

B. Modernization and Technical Amendments

The Commission proposes to make certain modernization and technical amendments to part 3. These are discussed below.

1. Section 3.1—Definitions

Section 3.1(a)(2) defines a principal to include persons who exceed a threshold for equity ownership. As a technical matter, the Commission is proposing to harmonize the references to outstanding classes of securities in § 3.1(a)(2)(i) and (ii) to refer to "outstanding shares of any class of equity securities, other than non-voting securities" throughout. This term should address any existing ambiguity related to calculations involving authorized but unissued securities, or debt securities. Also, the Commission is proposing to move the concept of indirect owners found in the definition of beneficial ownership in § 3.1(d) to § 3.1(a)(4) to serve as a backstop to the requirement to list indirect owners in § 3.1(a)(2).

2. Section 3.31—Deficiencies, Inaccuracies, and Changes To Be Reported. Section 3.33—Withdrawal from Registration

Current § 3.31 sets forth procedural requirements for a registrant to update and/or correct information previously provided to the Commission and the National Futures Association (NFA). Among other goals, the purpose of the registration process is to ensure that principals are subject to proper fitness checks prior to the registrant engaging in regulated activities. Historically, the Commission required re-registration upon a change in a registrant's name, a change in its form of organization,[10] or a change in its control, with limited exemptions.[11] In practice, however, re-registering creates a new NFA identification number, which disassociates past disciplinary information connected to the previous NFA identification number with the re-registered entity's new NFA identification number. A member of the public would need to take additional steps to uncover the disciplinary information associated with the previous entity's NFA identification number by researching whether any principals of the new entity were also principals of the old entity. Also, re-registration could disrupt the continuity of business of a registrant if a background check is not completed before a principal is added.

The Commission recognizes that the rules no longer explicitly require re-registration in response to changes in a registrant's name, its form of organization, or its control. Instead, NFA determines whether a firm must re-register, subject to certain safe-harbors from re-registration in § 3.31(a)(2) and (3). For example, current § 3.31(a)(2) permits firms to avoid re-registration after a change to the form of the organization if the successor organization consents to be liable for all obligations of the predecessor organization, and (a)(3) permits firms to avoid re-registration, despite the addition of a new principal. Otherwise, these exemptions do not address what happens when a firm changes both its form of organization and some of its principals, such as during a merger.

The Commission seeks to improve the transparency and predictability of the re-registration requirements in expectation of an influx of new registrants. Therefore, the Commission is proposing to amend § 3.31(a) to explicitly address additional scenarios. Proposed § 3.31(a)(2) restates an existing requirement to re-register if a sole proprietorship is involved, in recognition of the unique attributes of the sole proprietor name type under NFA's online registration system. Proposed § 3.31(a)(3) requires re-registration in the event of a change in name or form of organization, but preserves the existing safe harbor if there is no change in principal and the registrant wishes to consent to liability for its predecessor organization. Proposed § 3.31(a)(4) preserves the existing safe harbor from re-registration for additions of a new principal. Proposed § 3.31(a)(5), however, requires re-registration if a registrant changes its legal name or its form of the organization and adds a principal.

Currently, a registration is tied to an entity's legal name that is registered with a state, and that denotes information about its form of organization. The Commission believes it is appropriate to connect the NFA identification number to that name and form of organization. It is unavoidable that members of the public will need to take an additional step to acquire information about a previous registrant by researching shared principals, because an entity that is a bad actor could still voluntarily withdraw its registration to obtain a new NFA identification number and disassociate itself from past disciplinary actions. The Commission specifically requests comment on whether the additional transparency under the new provisions of § 3.31 is beneficial and necessary to fulfill the Commission's mandate to protect customers, and whether the existing safe harbors from re-registration should be maintained.

Also, the Commission is proposing to amend § 3.33(a) to compel a registrant to request a withdrawal of its registration at the same time it files articles of dissolution or a certificate of cancellation. For example, if a partnership decides to wind-up its affairs and cancel its partnership statement with the state, it must request withdrawal from registration at least contemporaneously with, or on a voluntary basis prior to, it canceling its partnership statement.

3. Consolidation of Existing Regulations

The Commission is also proposing that several provisions of part 3 should be consolidated to streamline the regulations. None of these proposals create new regulatory requirements. First, the Commission proposes to move the delegation provision found in § 3.12(g) into § 3.75, "Delegation and reservation of authority." Second, the Commission is proposing to amend § 3.11 to add a new paragraph (c) to replace the existing exemption from registration as a floor trader for registered floor brokers that was previously found in § 3.4(a). Similarly, proposed § 3.21, "Exemption from fingerprinting requirement in certain

[10] In 1979, § 1.15 stated, "a new registration shall be required in the event of a change: (a) In the name of the registrant; (b) In the form of organization of the registrant * * *."

[11] *See, e.g.,* 57 FR 23136, 23142, Jun. 2, 1992, requiring written certifications that control remains the same after a reorganization in order to avoid re-registration, or requiring a corporate resolution prohibiting a new director from exercising control until NFA could complete its background check in order to avoid re-registration.

cases," contains an exemption from submitting fingerprint cards for persons who have a current form 8–R on file, which would replace the same exemption found in §§ 3.31(a)(3) and 3.44(a)(5). In both cases, the regulations permitted a principal that was moving between registrants to dispense with the fingerprint card filing requirement. The proposed rules consolidate this exemption with the other exemptions in § 3.21.

4. Registration Forms

The Commission also is proposing to amend certain provisions to update several references to the forms used during the registration process. For example, certain provisions in part 3 refer to a registrant's use of the form 3–R. However, under NFA's online registration system, a registrant cannot presently fill out a form 3–R, either electronically or on paper. Instead, a registrant can update its existing form 7–R or form 8–R, and a record of those changes will be automatically created by NFA and designated as the registrant's completed form 3–R. For clarity, the Commission is proposing to reference the distinction between actually filing out a form and creating a record of changes to another form in proposed §§ 3.11(b), 3.31(a)(1), 3.31(b), and 3.31(c)(1). Elsewhere, §§ 3.42(a)(8) and 3.46(a)(10) refer to a numerical list of items on forms 7–R and 8–R, but these forms no longer contain numbers associated with the particular questions. The Commission therefore is proposing to amend these regulations to instead reference the failure to disclose relevant disciplinary history information, or the failure to disclose an event leading to a required disclosure. These proposals do not create any new regulatory requirement, but merely clarify existing obligations.

C. Corrections

As published, the regulations contain vestigial definitions, outdated cross-references to other regulations, and typographical errors that are in need of clarification or updating. The Commission is proposing to amend the following: §§ 3.1(e), 3.11(b), 3.10(c)(4)(iii), 3.12(b), 3.12(c), 3.12(h)(1)(ii), 3.13(d)(2), 3.21(a)(1–2), 3.21(b)(1)–(2), 3.21(c)(4)(iii), 3.22(b), 3.30(b), 3.42(a), 3.44(a)(5), 3.46(a), and 3.46(a)(6) to address such errors.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") was adopted to address the concerns that government regulations may have a significant and/or disproportionate effect on small businesses. To mitigate this risk, the RFA requires agencies to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.[12] These analyses must describe the impact of the proposed rule on small entities, including a statement of the objectives and the legal bases for the rulemaking; an estimate of the number of small entities to be affected; identification of Federal rules that may duplicate, overlap, or conflict with the proposed rules; and a description of any significant alternatives to the proposed rule that would minimize any significant impacts on small entities.[13]

The proposed rules will amend existing rules in part 3 regarding the registration of intermediaries consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act. The proposed rules also will make other technical and modernizing amendments to part 3.

The rules proposed by the Commission shall affect only FCMs, introducing brokers, commodity trading advisors, commodity pool operators, SDs and MSPs, and the rules will impose no new significant obligations on any of these entities. Therefore, the Commission has determined that the proposed rules will not create a significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.[14] The proposed rules 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 PRA. The Commission invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements would result from the rules proposed herein.

C. Cost-Benefit Analysis

Section 15(a) of the CEA[15] requires the Commission to consider the costs and benefits of its actions before issuing new rules under the Act. By its terms, it does not require the Commission to quantify the costs and benefits of new rules or to determine whether the benefits of the proposed rules outweigh their costs; it requires the Commission to "consider" the cost and benefits of its actions. Section 15(a) of the CEA further specifies that the costs and benefits of the 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 the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, 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 CEA.

The proposed rules would amend existing rules in part 3 regarding the registration of intermediaries to ensure that the Commission's current rules are consistent with other Commission rulemakings issued pursuant to the Dodd-Frank Act. The proposed rules also would make other technical and modernizing amendments to part 3. As these rules impose no new significant obligations, the Commission does not anticipate that they will result in either costs or benefits in light of the five areas of concern enumerated in § 15(a) of the CEA. The substantive proposed rulemakings with which this rulemaking is associated have addressed the costs and benefits of the proposals, as required by § 15(a) of the CEA.

The Commission invites public comment on its cost-benefit considerations. Commenters also are invited to submit any data or other information that they may have quantifying or qualifying the costs.

List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

[12] 5 U.S.C. 601 *et seq.*

[13] 5 U.S.C. 603, 604.

[14] 44 U.S.C. 3501 *et seq.*

[15] 7 U.S.C. 19(a).

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 3 as follows:

PART 3—REGISTRATION

Authority and Issuance

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

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

2. Amend § 3.1 by revising paragraph (a) introductory text, (a)(2), and (a)(3), adding paragraph (a)(4), and removing and reserving paragraphs (d) and (e) to read as follows:

§ 3.1 Definitions.

(a) *Principal. Principal* means, with respect to an entity that is an applicant for registration, a registrant or a person required to be registered under the Act or these regulations:

* * * * *

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities, is entitled to vote or has the power to sell or direct the sale of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities, or is entitled to receive ten percent or more of the profits of the entity; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of the outstanding shares of any class of equity securities, other than non-voting securities; or

(3) Any person that has contributed ten percent or more of the capital of the entity, provided, however, that if such capital contribution consists of subordinated debt contributed by either

(i) An unaffiliated bank insured by the Federal Deposit Insurance Corporation,

(ii) An unaffiliated "foreign bank," as defined in 12 CFR 211.21(n) that currently operates an "office of a foreign bank," as defined in 12 CFR 211.21(t), which is licensed under 12 CFR 211.24(a),

(iii) Such unaffiliated office of a foreign bank that is licensed, or

(iv) An insurance company subject to regulation by any State, such bank, foreign bank, office of a foreign bank, or insurance company will not be deemed to be a principal for purposes of this section, provided such debt is not guaranteed by another party not listed as a principal.

(4) Any individual who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of direct or indirect ownership of an equity security of the entity, other than a non-voting security, or preventing the vesting of such ownership, or of avoiding making a contribution of ten percent or more of the capital of the entity, as part of a plan or scheme to evade being deemed a principal of the entity, shall be deemed to be a principal of the entity.

* * * * *

(d) [Reserved.]

(e) [Reserved.]

* * * * *

3. Amend § 3.2 by revising paragraphs (c) introductory text and (c)(2) to read as follows:

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

* * * * *

(c) The National Futures Association shall notify the registrant, or the sponsor in the case of an applicant for registration as an associated person, and each designated contract market that has granted the applicant trading privileges in the case of an applicant for registration as a floor broker or floor trader, if registration has been granted under the Act.

* * * * *

(2) If an applicant for registration as a floor broker or floor trader receives a temporary license in accordance with § 3.40, the National Futures Association shall notify the designated contract market that has granted the applicant trading privileges that only a temporary license has been granted.

* * * * *

4. Amend § 3.10 by revising paragraphs (a)(3)(i)(A), (c)(2)(i), (c)(3)(i), (c)(4)(ii), (c)(4)(iii), and (c)(3)(iv) and add paragraph (c)(5) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) * * *

(3) * * *

(i) * * *

(A) The broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market, to security futures products as defined in section 1a(44) of the Act;

* * * * *

(c) * * *

(2)(i) A foreign broker, as defined in § 1.3(xx) of this chapter, is not required to register as a futures commission merchant if it submits any commodity interest transactions executed on or subject to the rules of designated contract market or swap execution facility for clearing on an omnibus basis through a futures commission merchant registered in accordance with section 4d of the Act.

* * * * *

(3)(i) A person located outside the United States, its territories or possessions engaged in the activity of: An introducing broker, as defined in § 1.3(mm) of this chapter; a commodity trading advisor, as defined in § 1.3(bb) of this chapter; or a commodity pool operator, as defined in § 1.3(cc) of this chapter, in connection with any commodity interest transaction made on or subject to the rules of any designated contract market or swap execution facility only on behalf of persons located outside the United States, its territories or possessions, is not required to register in such capacity provided that any such commodity interest transaction executed on or subject to the rules of designated contract market or swap execution facility is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

* * * * *

(4) * * *

(ii) Such a person introduces, on a fully-disclosed basis in accordance with § 1.57 of this chapter, any institutional customer, as defined in § 1.3(g) of this chapter, to a registered futures commission merchant for the purpose of trading on a designated contract market;

(iii) Such person's affiliated futures commission merchant has filed with the National Futures Association (*Attn:* Vice President, Compliance) an acknowledgement that the affiliated futures commission merchant will be jointly and severally liable for any violations of the Act or the Commission's regulations committed by such person in connection with those introducing activities, whether or not the affiliated futures commission merchant submits for clearing any trades resulting from those introducing activities; and

(iv) Such person does not solicit any person located in the United States, its territories or possessions for trading on a designated contract market, nor does such person handle the customer funds of any person located in the United States, its territories or possessions for

the purpose of trading on any designated contract market.

* * * * *

(5) An associated person of a swap dealer or an associated person of a major swap participant, as defined in 1a(4) of the Act, is not required to register as a swap dealer or major swap participant, respectively, solely as a consequence of being an associated person of a swap dealer, or an associated person of a major swap participant.

* * * * *

5. Amend § 3.11 by revising paragraphs (a)(2), (a)(3) and (b) and adding paragraph (c) to read as follows:

§ 3.11 Registration of floor brokers and floor traders.

(a) * * *

(2) An applicant for registration as a floor broker or floor trader will not be registered or issued a temporary license as a floor broker or floor trader unless the applicant has been granted trading privileges by a board of trade designated as a contract market by the Commission.

(3) When the Commission or the National Futures Association determines that an applicant for registration as a floor broker or floor trader is not disqualified from such registration or temporary license, the National Futures Association will notify the applicant and any contract market that has granted the applicant trading privileges that the applicant's registration or temporary license as a floor broker or floor trader is granted.

(b) *Duration of registration.* A person registered as a floor broker or floor trader in accordance with paragraph (a) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets have ceased: Provided, that if a floor broker or floor trader whose trading privileges on all contract markets have ceased for reasons unrelated to any Commission action or any contract market disciplinary proceeding and whose registration is not revoked, suspended or withdrawn is granted trading privileges as a floor broker or floor trader, respectively, by any contract market where he held such privileges within the preceding sixty days, such registration as a floor broker or floor trader, respectively, shall be deemed to continue and no new Form 8–R or Form 3–R record of a change to Form 8–R need be filed solely on the basis of the resumption of trading privileges. A floor broker or floor trader is prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. Each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must provide notice in accordance with § 3.31(d) after such person's trading privileges on such contract market have ceased.

(c) *Exceptions.* (1) A registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

(2) [Reserved]

6. Amend § 3.12 by revising paragraphs (b), (c), (g) and (h) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

* * * * *

(b) *Duration of registration.* A person registered in accordance with paragraphs (c), (d), (f), or (i) of this section and whose registration has not been revoked will continue to be so registered until the revocation or withdrawal of the registration of each of the registrant's sponsors, or until the cessation of the association of the registrant with each of his sponsors. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of his or his sponsor's registration. Each of the registrant's sponsors must file a notice in accordance with § 3.31(c) reporting the termination of the association of the associated person.

(c) *Application for registration.* Except as otherwise provided in paragraphs (d), (f), and (i) of this section, application for registration as an associated person in any capacity must be on Form 8–R, completed and filed in accordance with the instructions thereto.

* * * * *

(g) *Petitions for exemption.* Any person adversely affected by the operation of this section may file a petition with the Secretary of the Commission, which petition must set forth with particularity, the reasons why that person believes that an applicant should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest and the purposes of the provision from which exemption is sought. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which exemption is sought. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(h) *Exemption from registration.* (1) A person is not required to register as an associated person in any capacity if that person is:

(i) Registered under the Act as a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, floor broker, or as an introducing broker;

(ii) Engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the Financial Industry Regulatory Authority as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission;

* * * * *

7. Amend § 3.13 by revising paragraph (d)(2) to read as follows:

§ 3.13 Registration of agricultural trade option merchants and their associated persons.

* * * * *

(d) * * *

(2) Applicants for registration as an associated person of an agricultural trade option merchant must meet the following conditions. Such persons must:

* * * * *

8. Amend § 3.21 by revising paragraphs (a)(1), (a)(2), (b)(1), (b)(2), (b)(3), and (c)(4)(iii), and add paragraph (a)(3) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

(a) * * *

(1) A legible, accurate and complete photocopy of a fingerprint card that has been submitted to the Federal Bureau of Investigation for identification and appropriate processing and of each report, record, and notation made available by the Federal Bureau of Investigation with respect to that fingerprint card if such identification and processing has been completed satisfactorily by the Federal Bureau of Investigation not more than ninety days

prior to the filing with the National Futures Association of the photocopy;

(2) A statement that such person's application for initial registration in any capacity was granted within the preceding ninety days, provided that the provisions of paragraph (a)(2) of this section shall not be applicable to any person who, by Commission rule, regulation, or order, was not required to file a fingerprint card in connection with such application for initial registration; or

(3) A statement that such person has a current Form 8–R on file with the Commission or the National Futures Association.

(b) * * *

(1) With respect to the fingerprints of an associated person: An officer, if the sponsor is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship;

(2) With respect to fingerprints of a floor broker or floor trader: The applicant for registration; or

(3) With respect to the fingerprints of a principal: An officer, if the futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal will be affiliated is a corporation; a general partner, if a partnership; or the sole proprietor, if a sole proprietorship.

(c) * * *

(4) * * *

(iii) The internal controls used to ensure that the outside director for whom exemption under paragraph (c) of this section is sought does not have access to the keeping, handling or processing of the items described in paragraphs (c)(2)(i) and (c)(2)(ii) of this section; and

* * * * *

9. Amend § 3.22 by revising paragraph (b) to read as follows:

§ 3.22 Supplemental filings.

* * * * *

(b) That the person, or any individual who, based upon his or her relationship with that person is required to file a Form 8–R in accordance with the requirements of this part, as applicable, must, within such period of time as the Commission or the National Futures Association may specify, complete and file with the Commission or the National Futures Association a current Form 7–R, or if appropriate, a Form 8–R, in accordance with the instructions thereto.

* * * * *

10. Amend § 3.30 by revising paragraph (b) to read as follows:

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

* * * * *

(b) Each registrant, while registered and for two years after termination of registration, and each principal, while affiliated and for two years after termination of affiliation, must notify in writing the National Futures Association of any change of the address on the application for registration, biographical supplement, or other address filed with the National Futures Association for the purpose of receiving communications from the Commission or the National Futures Association. Failure to file a required response to any communication sent to the latest such address filed with the National Futures Association that is caused by a failure to notify in writing the National Futures Association of an address change may result in an order of default and award of claimed monetary damages or other appropriate order in any National Futures Association or Commission proceeding, including a reparation proceeding brought under part 12 of this chapter.

11. Amend § 3.31 by revising paragraphs (a), (b), (c)(1) introductory text and (d) to read as follows:

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

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Form 8–R that no longer renders accurate and current the information contained therein, with the exception of any change that requires withdrawal from registration under § 3.33. Each such correction shall be prepared and filed in accordance with the instructions thereto to create a Form 3–R record of such change.

(2) Where the deficiency or inaccuracy is created by a change in the "form of organization" field on Form 7–R from or to a sole proprietorship, the registrant must request withdrawal from registration in accordance with § 3.33.

(3) Where the deficiency or inaccuracy is created by a change in the "firm name" field, if a non-natural person, or the "form of organization" field on Form 7–R, the registrant must request withdrawal from registration in accordance with § 3.33; provided, however, that if there is no addition of a new principal, the registrant may instead update its Form 7–R to create a Form 3–R record of change, which is deemed in such circumstance to include a consent that the new legal entity shall be liable for all obligations of the pre-existing organization under the Act, and the rules, regulations, or orders that have been promulgated thereunder.

(4) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), and there is no change in firm name or form of organization:

(i) If the new principal is not a natural person, the registrant shall update such Form 7–R to create a Form 3–R record of change.

(ii) If the new principal is a natural person, the registrant shall file a Form 8–R, completed in accordance with the instructions thereto and executed by such person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto.

(5) Where the deficiency or inaccuracy is created by the addition of a new principal not listed on the registrant's application for registration (or amendment of such application prior to the granting of registration), and there is a change in the "firm name" field, if a non-natural person, or the "form of organization" field on the registrant's Form 7–R, the registrant must request withdrawal from registration in accordance with § 3.33.

(b) Each applicant or registrant as a floor broker, floor trader or associated person, and each principal of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto to create a Form 3–R record of change.

(c)(1) After the filing of a Form 8–R or updating a Form 8–R to create a Form 3–R record of change by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, retail foreign exchange dealer, commodity

trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

* * * * *

(d) Each contract market that has granted trading privileges to a person who is registered, has received a temporary license, or has applied for registration as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person has ceased having trading privileges on such contract market.

* * * * *

12. Amend § 3.33 by revising paragraph (a) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant must request that its registration be withdrawn upon filing articles (or a certificate) of dissolution (or cancellation), and upon notice of any involuntary dissolution initiated by a third-party. A futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

13. Amend § 3.40 by revising paragraph (a)(2)(iv) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.

(a) * * *

(2) * * *

(iv) Evidence that the applicant has been granted trading privileges by a contract market that has filed with the National Futures Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

* * * * *

14. Amend § 3.42 by revising paragraphs (a) introductory text, (a)(6), and (a)(8) to read as follows:

§ 3.42 Termination.

(a) A temporary license issued pursuant to § 3.40 shall terminate:

* * * * *

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum.

* * * * *

(8) Immediately upon notice to the applicant and the applicant's sponsor or the contract market that has granted the applicant trading privileges that:

(i) The applicant failed to disclose relevant disciplinary history information on the applicant's Form 8–R; or

(ii) An event has occurred leading to a required disclosure on the applicant's Form 8–R.

* * * * *

15. Amend § 3.44 by revising paragraph (a)(5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose.

* * * * *

16. Amend § 3.46 by revising paragraph (a) introductory text, (a)(6), (a)(8), and (a)(10) to read as follows:

§ 3.46 Termination.

(a) A temporary license issued pursuant to § 3.44 shall terminate:

* * * * *

(6) Immediately upon failure to comply with an order to pay a civil monetary penalty, restitution, or disgorgement within the time permitted under section 6(e), 6b, or 6c(d) of the Act;

* * * * *

(8) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to the rules of a designated contract market, swap execution facility, or registered futures association within the time specified in section 10(g) of the National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a designated contract market, swap execution facility, or other appropriate arbitration forum.

* * * * *

(10) Immediately upon notice to the applicant and the guarantor futures commission merchant that:

(i) The applicant or any principal (including any branch officer manager) failed to disclose relevant disciplinary history information on the applicant's Form 7–R or on a principal's Form 8–R; or

(ii) An event has occurred leading to a required disclosure on the applicant's Form 7–R or on a principal's Form 8–R.

* * * * *

17. Amend § 3.75 by revising paragraph (a) to read as follows:

§ 3.75 Delegation and reservation of authority.

(a) The Commission hereby delegates, until such time as it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight or his designee the authority to grant or deny requests filed pursuant to § 3.12(g). The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated to him pursuant to § 3.12(g). The Commission hereby delegates, until such time as it orders otherwise, the authority to perform all functions specified in subparts B through D to the persons authorized to perform them thereunder.

* * * * *

Issued in Washington, DC, on February 24, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

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

Appendices to Registration of Intermediaries—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking that will amend certain provisions of Part 3 of the Commission's regulations regarding the registration of intermediaries. The proposed amendments are necessary to conform existing regulations to the new requirements in the Dodd-Frank Act. The proposed rulemaking would amend Part 3 to ensure that the registration process applies to new categories of registrants, such as swap dealers and major swap participants. The proposed

amendments also will modernize existing provisions that will apply to all Commission registrants.

[FR Doc. 2011–4799 Filed 3–8–11; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–9193; IC–29592; File No. S7–07–11]

RIN 3235–AL02

References to Credit Ratings in Certain Investment Company Act Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: This is one of several releases that the Securities and Exchange Commission ("Commission") will be considering relating to the use of credit ratings in our rules and forms. In this release, we are proposing a new rule as well as rule and form amendments under the Securities Act of 1933 and the Investment Company Act of 1940 to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Commission is proposing amendments to two rules and four forms under the Investment Company Act and the Securities Act that contain references to credit ratings. The proposed amendments would give effect to provisions of the Dodd-Frank Act that call for the amendment of Commission regulations that contain credit rating references. In addition, the Commission is proposing a new rule under the Investment Company Act to establish a standard of credit-worthiness in place of a statutory reference to credit ratings in that Act that the Dodd-Frank Act removes.

DATES: Comments should be received on or before April 25, 2011.

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/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–07–11 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 S7–07–11. 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 Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also 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. 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 publicly available.

FOR FURTHER INFORMATION CONTACT: With respect to the proposed rule, rule amendments or Form N–MFP, Anu Dubey, Attorney, or Penelope Saltzman, Assistant Director (202) 551–6792, Office of Regulatory Policy, or with respect to Forms N–1A, N–2 and N–3, Jane H. Kim, Attorney, or Mark T. Uyeda, Assistant Director, (202) 551–6784, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment amendments to rules 2a–7 [17 CFR 270.2a–7] and 5b–3 [17 CFR 270.5b–3] and new rule 6a–5 [17 CFR 270.6a–5] under the Investment Company Act of 1940 ("Investment Company Act").[1] The Commission is also proposing for comment amendments to Forms N–1A [17 CFR 239.15A and 17 CFR 274.11A], N–2 [17 CFR 239.14 and 17 CFR 274.11a–1] and N–3 [17 CFR 239.17a and 17 CFR 274.11b] under the Investment Company Act and the Securities Act of 1933 ("Securities Act")[2] and Form N–MFP [17 CFR 274.201] under the Investment Company Act.

[1] 15 U.S.C. 80a–1. Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

[2] 15 U.S.C. 77a.

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I. Background

The Dodd-Frank Act was enacted on July 21, 2010.[3] Section 939A of the Act requires the Commission to review its regulations for any references to or requirements regarding credit ratings that require the use of an assessment of the credit-worthiness of a security or money market instrument, remove these references or requirements and substitute in those regulations other standards of credit-worthiness in place of the credit ratings that we determine to be appropriate.[4] Section 939 of the Dodd-Frank Act removes a reference to credit ratings from section 6(a)(5) of the Investment Company Act and replaces it with a reference to "such standards of credit-worthiness as the Commission shall adopt."[5]

In 2008, we undertook a review similar to that required under section 939A for references to credit ratings in our rules. As a result of that review, we proposed to eliminate references to ratings issued by nationally recognized statistical rating organizations ("NRSROs") in four rules under the Investment Company Act.[6] Specifically,

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] Section 939A(a)–(b) of the Dodd-Frank Act.

[5] Section 939(c) of the Dodd-Frank Act (amending section 6(a)(5)(A)(iv)(I) of the Investment Company Act). The Dodd-Frank Act also requires the Commission to adopt a number of rules concerning the integrity and transparency of the credit rating process and the accountability of credit rating agencies. *See* sections 931 to 939H of the Dodd-Frank Act.

[6] *See* References to Ratings of Nationally Recognized Statistical Rating Organizations, Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124 (July 11, 2008)] ("2008 Ratings Removal Proposing Release"). The Commission also proposed to eliminate references to credit ratings in rules under the Securities Act and the Securities Exchange Act of 1934 (15 U.S.C. 78a) ("Exchange Act"). *See* Security Ratings, Securities Act Release No. 8940 (July 1, 2008) [73

we proposed to remove references to credit ratings in rules 2a–7, 3a–7, 5b–3 and 10f–3 under the Investment Company Act. In 2009, we adopted certain of the proposed amendments to rules 5b–3 and 10f–3 and reopened the comment period for the other proposed amendments to rules 3a–7 and 5b–3.[7] In 2010, when we adopted amendments to rule 2a–7 (which governs the operation of money market funds), we retained the use of credit ratings in rule 2a–7 as an initial threshold requirement for whether a money market fund may invest in the security, but eliminated a requirement that all asset-backed securities in which a money market fund invests have received a rating.[8]

As directed by section 939A of the Dodd-Frank Act, we have reviewed our regulations for any references to or requirements regarding credit ratings in regulations that require the use of an assessment of the credit-worthiness of a security or money market instrument. In light of our review, and as further directed by the Dodd-Frank Act, we are proposing in this release to amend two rules and four forms under the Investment Company Act and the Securities Act.[9] In addition, in order to implement section 939(c) of the Dodd-Frank Act, we are proposing a new rule to establish a standard of credit-worthiness for purposes of section 6(a)(5) of the Investment Company Act.

II. Discussion

Three rules—rules 2a–7, 3a–7 and 5b–3 and four forms—Forms N–1A, N–2, N–3 and N–MFP under the Investment Company Act currently contain references to credit ratings issued by NRSROs.[10] We propose to remove the references to credit ratings in rules 2a–7 and 5b–3 and replace them with alternative standards of credit-worthiness that are designed to appropriately achieve the same purposes as the ratings requirements. In addition to the amendments to rules 2a–7 and 5b–3, we are proposing a new rule—rule 6a–5 under the Investment Company Act—to establish a credit-worthiness standard to replace the credit rating reference in section 6(a)(5) of that Act that the Dodd-Frank Act eliminates.[11] Finally, we propose to eliminate required disclosures of credit ratings in Form N–MFP and remove from Forms N–1A, N–2 and N–3 the requirement that NRSRO credit ratings be used when portraying credit quality in shareholder reports. We discuss our proposed amendments and new rule in greater detail below.

A. Rule 2a–7

Rule 2a–7 under the Investment Company Act governs the operation of money market funds. Unlike other investment companies ("funds"), money market funds seek to maintain a stable share price, typically at $1.00 per share. To do so, most money market funds use the amortized cost method of valuation ("amortized cost method") and the penny-rounding method of pricing ("penny-rounding method") permitted by rule 2a–7.[12] The Investment Company Act and applicable rules generally require funds to calculate current net asset value per share by valuing their portfolio instruments at market value or, if market quotations are not readily available, at fair value as determined in good faith by the board of directors.[13] These valuation requirements are designed to prevent unfair share pricing from diluting or otherwise adversely affecting the interests of investors.[14]

Rule 2a–7 exempts money market funds from these provisions but contains conditions designed to minimize the amount of risk a money market fund may assume and thus reduce the deviation between a money market fund's stabilized share price and the market value of its portfolio.[15] Among these conditions, rule 2a–7 limits a money market fund's portfolio investments to securities that have received credit ratings from the "requisite NRSROs" in one of the two highest short-term rating categories or comparable unrated securities (*i.e.,* "eligible securities").[16] A requisite NRSRO must be one of the NRSROs that a money market fund's board of directors has designated ("designated NRSRO") for use, and determines at least annually issues credit ratings that

FR 40106 (July 11, 2008)]; References to Ratings of Nationally Recognized Statistical Rating Organizations, Securities Exchange Act Release No. 58070 (July 1, 2008) [73 FR 40088 (July 11, 2008)]. Prior to this initiative, in 2003, the Commission published a concept release in which we sought comment on the use of NRSRO ratings in our rules. *See* Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws, Investment Company Act Release No. 26066 (June 4, 2003) [68 FR 35258 (June 12, 2003)].

[7] *See* References to Ratings of Nationally Recognized Statistical Rating Organizations, Investment Company Act Release No. 28939 (Oct. 5, 2009) [74 FR 52358 (Oct. 9, 2009)] ("2009 Ratings Removal Adopting Release") (adopting amendments to rule 5b–3, with respect to the treatment of refunded securities, and rule 10f–3); References to Ratings of Nationally Recognized Statistical Rating Organizations, Investment Company Act Release No. 28940 (Oct. 5, 2009) [74 FR 52374 (Oct. 9, 2009)] at Section IV (reopening the comment period for the proposed amendments to rules 3a–7 and 5b–3, with respect only to repurchase agreements). We also sought comment on removing references to credit ratings in rule 2a–7 in our 2009 proposal for certain reforms for money market funds. *See* Money Market Fund Reform Proposing Release, *infra* note 8. We received over 70 comments in response to the 2008 proposed amendments. Most commenters opposed the proposals. These comment letters are available on the Commission's Internet Web site (*http://www.sec.gov/comments/s7-19-08/s71908.shtml; http://www.sec.gov/comments/s7-17-08/s71708.shtml*). In light of today's proposal to amend rule 5b–3, we are withdrawing the 2008 proposed amendments to rule 5b–3 from further consideration.

[8] *See* Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)] ("Money Market Fund Reform Adopting Release"). *See also* Money Market Fund Reform, Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] ("Money Market Fund Reform Proposing Release"). Most commenters that responded to our request for additional comment on the 2008 proposed amendments to rule 2a–7 in the Money Market Fund Reform Proposing Release opposed that approach.

[9] We have already proposed to remove references to credit ratings in certain rules and forms under the Securities Act and the Exchange Act. *See* Security Ratings, Securities Act Release No. 9186 (Feb. 9, 2011) [76 FR 8946 (Feb. 16, 2011)].

[10] Rule 2a–7 defines the term NRSRO to have the same meaning as in section 3(a)(62) of the Exchange Act [15 U.S.C. 78c(a)(62)]. Rule 5b–3 defines NRSRO with reference to Exchange Act rule 15c3–1(c)(2)(vi)(E), (F), and (H) [17 CFR 240.15c3–1(c)(2)(vi)(E), (F), (H)].

[11] We intend to propose amendments to rule 3a–7 in a separate release.

[12] Under the amortized cost method, portfolio instruments are valued by reference to their acquisition cost as adjusted for amortization of premium or accretion of discount. *See* rule 2a–7(a)(2). Share price is determined under the penny-rounding method by valuing securities at market value, fair value or amortized cost and rounding the per share net asset value to the nearest cent on a share value of a dollar, as opposed to the nearest one tenth of one cent as otherwise would be required. *See* Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)] ("1983 Money Market Fund Adopting Release") at n.6 ("Release 9786 sets the amount of less than 1/10 of one cent on a share value of one dollar as the benchmark for materiality."); Valuation of Debt Instruments by Money Market Funds and Certain Other Open-End Investment Companies, Investment Company Act Release No. 9786 (May 31, 1977) [42 FR 28999 (June 7, 1977)] at text accompanying n.11; rule 2a–7(a)(20) (defining penny-rounding method).

[13] *See* section 2(a)(41) of the Investment Company Act (defining value) and rules 2a–4 (defining current net asset value) and 22c–1 (generally requiring open-end funds to sell and redeem their shares at a price based on the funds' current net asset value as next computed after receipt of a redemption, purchase or sale order).

[14] If shares are sold or redeemed based on a net asset value that turns out to have been either understated or overstated compared to the amount at which portfolio instruments could have been sold, then the interests of either existing shareholders or new investors will have been diluted. *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Sen. Comm. on Banking and Currency,* 76th Cong., 3d Sess. 136–138, 288–289 (1940).

[15] Rule 2a–7 contains conditions that apply to each investment a money market fund proposes to make, as well as conditions that apply to a money market fund's entire portfolio.

[16] The term "eligible security" is currently defined in rule 2a–7(a)(12).

are sufficiently reliable for the fund to use, in determining the eligibility of portfolio securities.[17] Rule 2a–7 further restricts money market funds to securities that the fund's board of directors (or its delegate[18]) determines present minimal credit risks, and specifically requires that determination "be based on factors pertaining to credit quality in addition to any ratings assigned to such securities by an NRSRO."[19]

We are proposing to remove references to credit ratings in rule 2a–7, which would affect five elements of the rule: Determination of whether a security is an eligible security; determination of whether a security is a first tier security; credit quality standards for securities with a conditional demand feature; requirements for monitoring securities for ratings downgrades and other credit events; and stress testing.[20] The proposed amendments to rule 2a–7, which are similar to those we proposed in 2008, are designed to offer protections comparable to those provided by the NRSRO ratings.[21]

1. Eligible Securities

Under the proposed amendments, a money market fund would continue to be limited to investing in securities that money market fund boards of directors (or their delegates) determine present minimal credit risks,[22] and each of which is either a "first tier security" or a "second tier security" under the rule.[23] Fund boards of directors (which typically rely on the fund's adviser) would still be able to consider quality determinations prepared by outside sources, including NRSRO ratings, that fund advisers conclude are credible and reliable, in making credit risk determinations. We would expect the fund advisers to understand the method for determining the rating and make an independent judgment of credit risks, and to consider an outside source's record with respect to evaluating the types of securities in which the fund invests.

We propose to eliminate the requirement that an eligible security be rated by an NRSRO or be of comparable quality while maintaining the two-step analysis currently required by rule 2a–7. Under the proposed amendments, a security would be a first tier security (regardless of the ratings it has received from any credit rating agency) if the fund's board (or its delegate) determines that the issuer (or in the case of a security subject to a guarantee, the guarantor)[24] has the "highest capacity to meet its short-term financial obligations."[25] A security would be a second tier security if it is an eligible security but is not a first tier security.[26] In addition, a security would be an eligible security only if the board of directors (or its delegate) determines that it presents minimal credit risks, which determination must be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations.[27]

We have designed these amendments to retain a degree of risk limitation on money market funds similar to the current rule. The proposed amendments would continue to require that funds invest at least 97 percent of their total assets in the highest quality short-term debt securities.[28] Money market fund holdings of these first tier securities would have to satisfy a standard similar to the credit quality standards that have been articulated by the credit ratings agencies.[29] An issuer of a first tier

[17] *See* rule 2a–7(a)(11) (defining "designated NRSRO"); 2a–7(a)(23) (defining "requisite NRSRO").

[18] *See* rule 2a–7(e).

[19] Rule 2a–7(c)(3)(i). Thus, under the current rule, where the security is rated, having the requisite NRSRO rating is a necessary but not sufficient condition for investing in the security and cannot be the sole factor considered in determining whether a security presents minimal credit risks. *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 18005 (Feb. 20, 1991) [56 FR 8113 (Feb. 27, 1991)] ("1991 Money Market Fund Adopting Release") at text preceding n.18.

[20] The proposed rule also would make conforming amendments to rule 2a–7's recordkeeping and reporting requirements. *See* proposed rule 2a–7(c)(11)(iii).

[21] We previously adopted certain of the amendments that we proposed in 2008 as part of the 2010 money market fund reforms. *See* Money Market Fund Reform Adopting Release, *supra* note 8, at Sections II.C.2, II.G.2. Specifically, we expressly limited money market funds' investments in illiquid securities. *See* rule 2a–7(c)(5)(i). We also required money market funds to notify the Commission promptly when an affiliate has purchased certain securities, including a security that is no longer an eligible security, from the fund in reliance on rule 17a–9, which permits certain affiliated persons to purchase certain portfolio securities from a money market fund under certain conditions. *See* rule 2a–7(c)(7)(iii)(B). *See also* 2008 Ratings Removal Proposing Release, *supra* note 6, at Sections III.A.2, III.A.4.

[22] *See* proposed rule 2a–7(a)(11).

[23] The proposal would not change current rule 2a–7 limitations on money market fund investments in second tier securities, under which a money market fund cannot acquire second tier securities with remaining maturities greater than 45 days, generally must limit its investments in second tier securities to no more than three percent of fund assets, and limit investments in the second tier securities of any one issuer to one half of one percent of fund assets. Rule 2a–7(c)(3)(ii); 2a–7(c)(4)(i)(C).

[24] *See* rule 2a–7(c)(3)(iii) (allowing the credit quality of a guarantee to substitute for the credit quality of the security subject to the guarantee); 2a–7(a)(17) (defining "guarantee" to mean "an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an unconditional demand feature, an obligation that entitles the holder to receive upon exercise the approximate amortized cost of the underlying security or securities, plus accrued interest, if any.").

[25] Proposed rule 2a–7(a)(13). As under the current rule, government securities and securities issued by a money market fund also would be first tier securities. Proposed rule 2a–7(a)(13); see rule 2a–7(a)(14).

Our proposed amendments would eliminate the defined terms "designated NRSRO," "rated security," "requisite NRSRO," and "unrated security" from the rule. As a result, under the proposal, fund boards would no longer be required to designate NRSROs and funds would not have to disclose designated NRSROs in their statements of additional information ("SAI"). *See* rule 2a–7(a)(11) (defining "designated NRSRO" as one of at least four NRSROs that, among other things, the fund's board has designated as an NRSRO whose credit ratings will be used by the fund to determine the eligibility of portfolio securities, the board determines at least annually issues credit ratings sufficiently reliable for such use, and the fund discloses in its SAI is a designated NRSRO, including any limitations on the fund's use of the designation). We note that after enactment of the Dodd-Frank Act, money market funds received Commission staff assurances that the staff would not recommend enforcement action if a money market fund board did not designate NRSROs and did not make related disclosures in its SAI before the Commission had completed its review of rule 2a–7 required by the Dodd-Frank Act and made any modifications to the rule. *See* Investment Company Institute, SEC No-Action Letter (Aug. 19, 2010).

[26] *See* proposed rule 2a–7(a)(21). The specific language of this provision would not change (*compare* current rule 2a–7(a)(24)), but the definitions of "eligible security" and "first tier security" would change under the proposal.

[27] Proposed rule 2a–7(a)(11). Currently, the requirement that the fund board (or its delegate) determine that a security presents minimal credit risks is contained in paragraph (c)(3)(i) of the rule. In connection with the amendments discussed above, we propose to restructure the rule to incorporate the minimal credit risk determination into the definition of "eligible security," currently in paragraph (a)(12) of the rule, but which would be renumbered as paragraph (a)(11).

[28] *See* proposed rule 2a–7(a)(13) (defining first tier security); rule 2a–7(c)(3)(ii) (prohibiting money market funds from acquiring second tier securities if, as a result of the acquisition, second tier securities would comprise more than three percent of the fund's total assets).

[29] *See, e.g.,* Standard & Poor's Ratings Definitions, Short-Term Issue Credit Ratings, *http://www.standardandpoors.com/ratings/articles/en/us/?assetID=1245219848760* ("S&P Ratings Definitions") (a short-term obligation rated "A–1" is rated in the highest category, and the obligor's capacity to meet its financial commitment on the obligation is strong; obligations within the category designated with a plus sign (+) indicates that the obligor's capacity to meet its financial commitment on these obligations is extremely strong); Moody's Investors Service Rating Symbols and Definitions, *http://v3.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_79004* ("Moody's Ratings Definitions") at 5–6 (issuers rated Prime-1 "have a superior ability to repay short-term debt obligations."); FitchRatings, International Issuer and Credit Rating Scales, *http://www.fitchratings.com/creditdesk/public/ratings_definitions/index.cfm?rd_file=ltr* ("Fitch Ratings Definitions") (stating that a rating of F1 is the highest short-term rating, indicating the "strongest intrinsic capacity for

security that would satisfy our proposed standard should have an exceptionally strong ability to repay its short-term debt obligations and the lowest expectation of default.[30] The credit risk associated with a second tier security, which would continue to be limited to three percent of total fund assets,[31] would differ from that associated with first tier securities only to a small degree. Thus, the issuer of a second tier security that would satisfy our proposed standard should have a very strong ability to repay its short-term debt obligations, and a very low vulnerability to default.[32] Finally, we propose to eliminate the requirement that guarantors or guarantees of securities held by a money market fund be rated by an NRSRO.[33]

Our proposal would eliminate the objective standard provided by credit ratings in the definitions of eligible security and first tier security and instead require a subjective determination of both eligible securities and first tier securities. We request comment on this proposed approach.

- Would our proposed approach achieve the goal of retaining a degree of risk limitation on money market funds similar to the current rule?
- Are there alternatives to our proposed approach that would provide a more robust or objective evaluation of credit quality?
- Is there a better way to describe the characteristics of a first tier security?
- Should we instead simply limit money market funds to investing in securities solely based on a minimal credit risk determination, *i.e.,* establish a single test for determining whether a fund could invest in a security?
- Would such an approach allow money market funds to invest a large portion of their portfolios in what are currently second tier securities?

2. Securities With a Conditional Demand Feature

Under rule 2a–7, a security subject to a conditional demand feature[34] may be determined to be an eligible security or a first tier security if, among other conditions, (i) the conditional demand feature is an eligible security or a first tier security, and (ii) the underlying security (or its guarantee) has received either a short-term rating or a long-term rating, as the case may be, within the highest two categories from the requisite NRSROs or is a comparable unrated security.[35] We propose to remove the credit rating requirement from this provision of the rule and amend the provision to require that the fund's board (or its delegate) determine that the underlying security be of high quality and subject to very low credit risk.[36] The proposed standard is designed to retain a similar degree of risk limitation to that in the current rule. An issuer that is determined to have a very strong capacity to meet its financial commitments, a very low risk of default, and a capacity for payment of its financial commitments that is not significantly vulnerable to reasonably foreseeable events would satisfy the proposed definition.[37] In making the credit quality determinations required under the proposed amendment, a fund board (or its delegate) would continue to be able to consider analyses provided by third parties, including ratings provided by ratings agencies, that it concludes are credible and reliable for such purposes.[38]

We request comment on the proposed credit quality standard for securities with a conditional demand feature.

- Does our proposed standard retain the same or similar degree of risk limitation as that under the current rule?
- Are there alternative standards that would provide a more robust or objective evaluation of credit quality?

3. Monitoring Minimal Credit Risks

Rule 2a–7 currently requires a money market fund board (or its delegate) promptly to reassess whether a security that has been downgraded by an NRSRO continues to present minimal credit risks, and take such action as it

timely payment of financial commitments; may have an added '+' to denote any exceptionally strong credit feature.").

[30] We note that all money market fund portfolio securities also must be eligible securities (i.e., present minimal credit risks under the proposed amendments). *See* proposed rule 2a–7(a)(13). Thus, even if the issuer had the highest capacity to meet its short-term financial obligations, a security, such as a subordinated short-term security secured by assets that are not of high credit quality, likely would not present minimal credit risks to a money market fund's portfolio and therefore likely would not be an eligible security.

[31] Rule 2a–7(c)(3)(ii).

[32] Nothing in the proposed rule would prohibit a money market fund from relying on policies and procedures it has adopted to comply with the current rule as long as the board (or its delegate) concluded that the ratings specified in the policies and procedures establish similar standards to those proposed, and are credible and reliable for that use. A fund also would be able to revise its policies and procedures to change or eliminate the use of specific NRSRO ratings or to incorporate other third party evaluations of credit quality.

[33] *See* rule 2a–7(a)(12)(iii)(A). We also propose to move the provision that conditions the eligibility of a demand feature or guarantee of the issuer, or another institution, on an undertaking promptly to notify the fund in the event of a substitution of a demand feature or guarantee, which is currently in paragraph (a)(12)(iii)(B), to paragraphs (c)(3)(iii) (permitting money market funds to substitute the credit quality of a guarantee for the credit quality of the security subject to the guarantee in determining whether a security is an eligible or first tier security) and (c)(3)(iv)(D) (conditions under which a security subject to a conditional demand feature may be determined to be an eligible security or first tier security).

[34] A conditional demand feature is a demand feature that a fund may be precluded from exercising because of the occurrence of a condition. *See* rule 2a–7(a)(6) (defining "conditional demand feature" as a demand feature that is not an unconditional demand feature); 2a–7(a)(28) (defining "unconditional demand feature" as a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security). For purposes of rule 2a–7, a demand feature allows the security holder to receive, upon exercise, the approximate amortized cost of the security, plus accrued interest, if any. In addition, a demand feature must be exercisable either: (i) At any time on no more than 30 calendar days' notice; or (ii) at specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice. Rule 2a–7(a)(9)(i). If an asset-backed security is subject to a demand feature, the feature must permit the security holder unconditionally to receive principal and interest within 397 calendar days of making demand. Rule 2a–7(a)(9)(ii).

[35] Rule 2a–7(c)(3)(iv).

[36] Proposed rule 2a–7(c)(3)(iv)(C). The rule references both short-term and long-term ratings because most money market fund portfolio securities with demand features are long-term securities (that would not meet the portfolio maturity requirements of rule 2a–7 without the demand feature). Under current rule 2a–7, a money market fund must limit its investments in securities subject to a demand feature or guarantee of the same issuer that are second tier securities to 2.5% of the fund's total assets. Rule 2a–7(c)(4)(iii). If, as a result of a downgrade, a fund exceeds this limitation on such securities, the fund must reduce its investment in the securities to no more than 2.5% of total assets by exercising the demand feature at the next succeeding exercise date(s). Rule 2a–7(c)(7)(i)(C). In a conforming change, we propose to amend this provision to require the fund to reduce its investment in securities subject to a demand feature or guarantee of a single issuer that are second tier securities, if, as a result of a portfolio security that ceases to be a first tier security, the fund exceeds the 2.5% investment limit on such securities. Proposed rule 2a–7(c)(7)(i)(B).

[37] These credit quality characteristics are similar to credit quality standards that have been articulated by credit rating agencies. *See, e.g.,* S&P Ratings Definitions, *supra* note 29 (describing the capacity of an issuer of long-term obligations rated "AA" as "very strong"); Moody's Ratings Definitions, *supra* note 29 (describing Aa-rated long-term obligations as "judged to be of high quality and are subject to very low credit risk."); Fitch Ratings Definitions, *supra* note 29 (describing AA-rated long-term obligations as denoting expectations of very low default risk and indicating that the issuer's capacity for payment of financial commitments is very strong and "not significantly vulnerable to foreseeable events").

[38] The proposed amendment would not prohibit a money market fund from relying on policies and procedures it has adopted to comply with the current rule regarding the credit quality of securities with conditional demand features as long as the board (or its delegate) concluded that the ratings specified in the policies and procedures establish similar standards to those proposed, and that the agencies providing ratings used in the policies and procedures are credible and reliable for that use. A fund also could revise its policies and procedures to change or eliminate the consideration of specific NRSRO ratings or to incorporate other third party evaluations of credit quality.

determines is in the best interests of the fund and its shareholders.[39] We propose to amend the rule to require that, in the event the money market fund's adviser (or any person to whom the board has delegated portfolio management responsibilities) becomes aware of any credible information about a portfolio security or an issuer of a portfolio security that suggests that the security is no longer a first tier security or a second tier security, as the case may be, the board or its delegate would have to reassess promptly whether the portfolio security continues to present minimal credit risks.[40] To satisfy the proposed standard, an investment adviser would be required to exercise reasonable diligence in keeping abreast of new information about a portfolio security that the adviser believes to be credible. We understand that most money market fund advisers currently exercise a similar degree of diligence in monitoring their portfolios in order to meet the rule 2a–7 requirement that portfolio investments be limited to securities that the board determines present minimal credit risks.

We request comment on the proposed amendments for monitoring minimal credit risks.

- Would our proposed approach to describing when reassessment of whether a portfolio security presents minimal credit risks is required achieve the objective of retaining a degree of risk limitation on money market funds similar to the current rule?
- Is there an alternative or more objective standard for determining when the board must reassess the credit risk of a security that would provide adequate investor protections?
- Are we correct in our understanding of current monitoring practices?

4. Stress Testing

Rule 2a–7 currently requires money market funds to adopt written procedures for stress testing their portfolios. Specifically they must test the fund's ability to maintain a stable net asset value per share based on certain hypothetical events, including a downgrade of portfolio securities.[41] We propose to replace this reference to ratings downgrades with a hypothetical event that is designed to have a similar impact on a money market fund's portfolio. Our proposal would require that money market funds stress test for an adverse change in the ability of a portfolio security issuer to meet its short-term financial obligations.[42] Under the proposed rule, funds could continue to test their portfolios by treating a downgrade as a credit event that might adversely affect the value or liquidity of the portfolio security (and affect the fund's ability to maintain a stable net asset value per share).

We request comment on our proposed amendment to the stress testing requirements.

- Does the standard we propose adequately address the same concerns that arise when a security is downgraded?
- Is the proposed standard too broad?
- Would the proposed standard provide adequate guidance to funds?
- Is there a narrower standard that we should specify?

B. Form N–MFP

As part of the money market fund reforms we adopted in 2010, money market funds must provide to the Commission a monthly electronic filing of portfolio holdings information on Form N–MFP.[43] The information money market funds must disclose with respect to each portfolio security (and any guarantee, demand feature or other enhancement associated with the portfolio security) includes the name of each designated NRSRO for the portfolio security and the rating assigned to the security.[44] We propose to eliminate the items requiring disclosure of ratings information from the form. We also propose to amend Item 33 of Form N–MFP to remove the reference to a rating in this item so that funds would only disclose whether a portfolio security is first or second tier or no longer an eligible security.[45]

We request comment on the proposed form amendments.

C. Rule 5b–3

Rule 5b–3 under the Investment Company Act permits a fund, subject to certain conditions, to treat a repurchase agreement as an acquisition of the securities collateralizing the repurchase agreement in determining whether the fund is in compliance with two provisions of the Investment Company Act that may affect a fund's ability to invest in repurchase agreements. In a typical investment company repurchase agreement, a fund enters into a contract with a broker, dealer or bank (the "counterparty" to the transaction) for the purchase of securities. The counterparty agrees to repurchase the securities at a specified future date, or on demand, for a price that is sufficient to return to the fund its original purchase price, plus an additional amount representing the return on the fund's investment.[46]

Section 12(d)(3) of the Investment Company Act generally prohibits a fund from acquiring an interest in a broker, dealer, or underwriter. Because a repurchase agreement may be considered to be the acquisition of an

[39] Rule 2a–7(c)(7)(i)(A). This current reassessment is not required, however, if the downgraded security is disposed of or matures within five business days of the specified event and in the case of events specified in rule 2a–7(c)(7)(i)(A)(2), the board is subsequently notified of the adviser's actions. Rule 2a–7(c)(7)(i)(B).

[40] Proposed rule 2a–7(c)(7)(i)(A). As under the current rule, the proposal would not require reassessment in certain circumstances. *See supra* note 39. Our proposed standard differs slightly from our proposal in 2008, which would have required the board's reassessment if the money market fund's investment adviser became aware of any information about a portfolio security or an issuer of a portfolio security that suggested that the security might not have continued to present minimal credit risks. *See* 2008 Ratings Removal Proposing Release, *supra* note 6, at Section III.A.3. We believe that requiring the relevant information to relate to whether the portfolio security may no longer be first or second tier (as compared with the standard proposed in 2008) is more similar to the current standard. In addition, as noted by several commenters on the standard proposed in 2008, without limiting the information to be monitored in any way, the standard could be interpreted to require monitoring of all information regarding portfolio securities, including unreliable sources or unsubstantiated market rumors. *See, e.g.,* Comment Letter of CFA Institute Centre for Financial Market Integrity (Mar. 26, 2009); Comment Letter of Charles Schwab & Co., Inc. (Sept. 5, 2008); Comment Letter of Federated Investors, Inc. (Sept. 5, 2008).

[41] Rule 2a–7(c)(10)(v)(A).

[42] Proposed rule 2a–7(c)(10)(v)(A).

[43] *See* rule 30b1–7. *See also* Money Market Fund Reform Adopting Release, *supra* note 8, at n.301 and accompanying and preceding text.

[44] *See* Items 34 (requiring disclosure of each designated NRSRO for a portfolio security and the credit rating given by the designated NRSRO for each portfolio security); 37b–c (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security demand feature); 38b–c (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security guarantee); 39c–d (requiring disclosure of each designated NRSRO and the credit rating given by the designated NRSRO for each portfolio security enhancement) of Form N–MFP.

[45] *See* Item 33 of Form N–MFP (requiring money market funds to disclose whether a security is a "rated" first or second tier security, an unrated security, or no longer an eligible security).

[46] Repurchase agreements provide funds with a convenient means to invest excess cash on a secured basis, generally for short periods of time. Economically, a repurchase agreement functions as a loan from the fund to the counterparty, in which the securities purchased by the fund serve as collateral for the loan and are placed in the possession or under the control of the fund's custodian during the term of the agreement. *See* Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities, Investment Company Act Release No. 25058 (July 5, 2001) [66 FR 36156 (July 11, 2001)] ("Rule 5b–3 Adopting Release"). Various issues arose during the market events of 2007 to 2009 that affected the market for repurchase agreements. In response, a task force of participants in the market for tri-party repurchase agreements was formed and issued a report setting forth its findings and recommendations for improvements. *See* Report of Task Force on Tri-Party Repo Infrastructure, (May 17, 2010) at *http://www.ny.frb.org/prc/report_100517.pdf.*

interest in the counterparty, section 12(d)(3) may limit a fund's ability to enter into repurchase agreements with many of the firms that act as repurchase agreement counterparties. Section 5(b)(1) of the Investment Company Act limits the amount that a fund that holds itself out as being a diversified investment company may invest in the securities of any one issuer (other than the U.S. Government). This provision may limit the number and principal amounts of repurchase agreements a diversified fund may enter into with any one counterparty.

Rule 5b–3 allows funds to treat the acquisition of a repurchase agreement as an acquisition of securities collateralizing the repurchase agreement for purposes of sections 5(b)(1) and 12(d)(3) of the Investment Company Act if the obligation of the seller to repurchase the securities from the fund is "collateralized fully."[47] A repurchase agreement is collateralized fully if, among other things, the collateral for the repurchase agreement consists entirely of (i) cash items, (ii) government securities, (iii) securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the "requisite NRSROs"[48] or (iv) unrated securities that are of a comparable quality to securities that are rated in the highest rating category by the requisite NRSROs, as determined by the fund's board of directors or its delegate.[49] In proposing rule 5b–3, the Commission explained that the highest rating category requirement in the definition of collateralized fully was designed to help ensure that the market value of the collateral would remain stable and that the fund could more readily liquidate the collateral quickly in the event of a default.[50]

We propose to eliminate the requirement that collateral other than cash or government securities be rated in the highest category by the requisite NRSROs or be of comparable quality. In place of this requirement, we propose to require that collateral other than cash or government securities consist of securities that the fund's board of directors (or its delegate) determines at the time the repurchase agreement is entered into are: (i) Issued by an issuer that has the highest capacity to meet its financial obligations; and (ii) sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven calendar days.[51] For purposes of rule 5b–3, an issuer would be defined to include an issuer of an unconditional guarantee of the security.[52] Thus, a collateral security with an unconditional guarantee, the issuer of which meets the proposed credit quality test, would satisfy that element of the proposed standard.

We have designed the proposed amendments to retain a degree of credit quality similar to that under the current rule. An issuer of collateral securities that the board (or its delegate) determined has an exceptionally strong capacity to repay its short or long-term debt obligations, as appropriate, the lowest expectation of default, and a capacity for repayment of its financial commitments that is the least susceptible to adverse effects of changes in circumstances would satisfy the proposed standard.[53]

Our proposal also would require that at the time the repurchase agreement is entered into, collateral could be sold at approximately its carrying value in the ordinary course of business within seven calendar days.[54] We expect that securities that trade in a secondary market at the time of the acquisition of the repurchase agreement would satisfy this liquidity standard. We also understand that most securities that are currently used to collateralize repurchase agreements[55] generally trade in a secondary market.

We have designed the proposed amendments to be clear enough to permit a fund board or fund investment adviser to make a determination regarding credit quality and liquidity that would achieve the same objectives that the credit rating requirement was designed to achieve, i.e., to limit collateral securities to those that are likely to retain a fairly stable market value and that, under ordinary circumstances, the fund would be able to liquidate quickly in the event of a counterparty default.[56] We believe that fund advisers have experience with or knowledge of the evaluation of securities and would be qualified to make the credit and liquidity

[47] Rule 5b–3(a). The term "collateralized fully" is defined in rule 5b–3(c)(1). In general, a fund investing in a repurchase agreement looks to the value and liquidity of the securities collateralizing the repurchase agreement rather than the credit quality of the counterparty for satisfaction of the repurchase agreement. *See* Rule 5b–3 Adopting Release, *supra* note 46, at Section II.A.3. *But see* rule 2a–7(c)(4)(ii)(A) (requiring money market funds to evaluate the counterparty's credit-worthiness).

[48] The term "requisite NRSROs" means any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer or, if only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the investment company acquires the security, that NRSRO. Rule 5b–3(c)(6).

[49] Rule 5b–3(c)(1)(iv). The term "unrated securities" means securities that have not received a rating from the requisite NRSROs. Rule 5b–3(c)(8). We note, however, that as a result of our recent money market fund reforms, money market funds seeking similar treatment with respect to the diversification requirements under rule 2a–7 are subject to stricter limitations. In order to qualify for such special treatment, a repurchase agreement is collateralized fully only if the collateral for the repurchase agreement consists entirely of cash or government securities. Rule 2a–7(a)(5). *See* Money Market Fund Reform Adopting Release, *supra* note 8, at Section II.D.

[50] *See* Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities, Investment Company Act Release No. 24050 (Sept. 23, 1999) [64 FR 52476 (Sept. 29, 1999)] ("Rule 5b–3 Proposing Release") at n.43 and accompanying text (noting that the high quality requirement is designed to limit a fund's exposure to the ability of the counterparty to maintain sufficient collateral, and that securities of lower quality may be subject to greater price fluctuation).

[51] Proposed rule 5b–3(c)(1)(iv)(C). Under the proposal, the board would make credit quality determinations for all collateral securities that are not government securities, rather than just unrated securities. As in the current rule, the proposed rule would permit the board to delegate the credit quality and liquidity determination. The proposed amendment to rule 5b–3 would not affect a money market fund that seeks special treatment under the diversification provisions of rule 2a–7 because in order to obtain such treatment, a money market fund is limited to investing in repurchase agreements collateralized by cash items or government securities. *See supra* note 49. We are proposing to amend rule 2a–7(a)(5), which defines "collateralized fully," to conform the references in that provision to the proposed amendments to rule 5b–3.

The first element of this proposed standard reflects the same standard as that proposed for the definition of first tier security under rule 2a–7. *See* proposed rule 2a–7(a)(13).

[52] Proposed rule 5b–3(c)(4) (defining "issuer" to mean "the issuer of a collateral security or the issuer of an unconditional obligation of a person other than the issuer of the collateral security to undertake to pay, upon presentment by the holder of the obligation (if required), the principal amount of the underlying collateral security plus accrued interest when due or upon default.").

[53] *See supra* text accompanying note 30.

[54] The proposed liquidity standard is the same as that we use for rule 2a–7. *See, e.g.,* rule 2a–7(a)(19) (defining illiquid security to mean a security that cannot be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value ascribed to it by the fund).

[55] *See* Tri-Party Repo Infrastructure, Reform Task Force, Tri-Party Repo Margin Data, Summary Statistics for the U.S. Tri-Party Repo Market (as of Jan. 11, 2011), *http://www.newyorkfed.org/tripartyrepo/margin_data.html* (describing 98.7% of tri-party repurchase agreement collateral as composed of asset-backed securities, agency collateralized mortgage backed obligations ("CMOs"), agency debentures and strips, agency mortgage-backed securities, private label CMOs, corporate debt, equity securities, money market instruments and U.S. Treasury securities).

[56] *See supra* note 50. A fund that acquires repurchase agreements would, under rule 38a–1, have to adopt and implement a written policy reasonably designed to comply with the conditions of rule 5b–3, including any credit quality and liquidity requirements we might adopt under the rule. *See* rule 38a–1(a) (requiring registered funds to adopt and implement written policies and procedures reasonably designed to prevent the fund's violation of Federal securities laws).

determinations proposed under the rule.[57]

Under the proposal, the board could delegate day-to-day determinations regarding the quality and liquidity of collateral if it chooses, provided that the board retained sufficient oversight. In addition, although the rule would no longer require the collateral to be rated by an NRSRO, fund boards (or their delegates) would still be able to consider analysis provided by outside sources, including credit agency ratings, that they conclude are credible and reliable, for purposes of making these credit quality evaluations.[58]

We request comment on our proposed amendment to rule 5b–3.

- Would the proposed determinations sufficiently address our concerns that collateral securities be of high quality in order to limit a fund's exposure to counterparties' credit risks? If not, are there additional or alternative standards that do not use credit ratings that would better address our concerns?
- Should a fund board (or its delegate) be permitted to consider assessments issued by third parties, as we anticipate? What, if any, criteria or standards should be imposed on the use of such assessments? Would the use of third party assessments help fund boards (or their delegates) arrive at consistent determinations regarding the credit quality of collateral under the rule?
- We propose to allow the credit quality of an issuer of an unconditional guarantee to substitute for the credit quality of the issuer of a collateral security subject to the guarantee.[59] This is designed to preserve a fund's ability to use the same types of collateral securities as it currently uses to satisfy the conditions of rule 5b–3. Should we instead limit collateral to securities that alone satisfy the proposed credit quality standard regardless of whether the security is subject to an unconditional guarantee?
- Would the proposed standard adequately address our concern that a fund be able to readily liquidate collateral securities in the event of a counterparty default?
- As noted above, we expect that, in general, securities that trade in secondary markets and most securities that are used as collateral for repurchase agreements would meet the proposed liquidity requirement. Are there securities typically used for collateral that would not meet the proposed liquidity standard?
- We have noted before that high quality securities generally are more liquid than lower quality securities.[60] Would the proposed credit quality requirement alone be sufficient to address concerns regarding liquidity of the collateral?
- We acknowledge that securities that may be liquid at the time of acquisition of the repurchase agreement may be less liquid when the counterparty defaults.[61] Would a different standard of liquidity provide any greater protection? For example, if we required that collateral could be sold at carrying value almost immediately, would it be more likely to remain liquid if many holders of the security are trying to sell at the same time? Would such a standard limit collateral securities to U.S. Treasury securities as a practical matter?
- In light of the potential for decreased liquidity of collateral securities at the time of a counterparty default, should we limit the exemption to repurchase agreements that are collateralized only by cash or government securities?
- Would we better achieve the goals of rule 5b–3 if the rule provided that a fund could no longer rely on rule 5b–3 if, at any point after the time a fund enters into a repurchase agreement, the collateral no longer met the proposed liquidity standard?

D. Proposed Rule 6a–5

Business and industrial development companies ("BIDCOs") are companies that operate under state statute that provide direct investment and loan financing, as well as managerial assistance, to state and local enterprises.[62] Because they invest in securities, BIDCOs frequently meet the definition of "investment company" under the Investment Company Act.[63] In 1996, the Investment Company Act was amended to add section 6(a)(5) to exempt these companies from most provisions of the Act subject to certain conditions.[64] The statutory exemption was premised on states having a strong interest in overseeing the structure and operations of these companies, thus rendering regulation under the Investment Company Act largely duplicative and unnecessary.[65]

BIDCOs that seek to rely on the exemption in section 6(a)(5) are limited with respect to the types of securities issued by investment companies and companies exempt from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act ("private funds") that they may purchase. Specifically, section 6(a)(5)(A)(iv) limits these BIDCOs from purchasing securities issued by investment companies and private funds other than debt securities that are rated investment grade by at least one NRSRO and securities issued by registered open-end investment companies that invest at

[57] We note that under the current rule, if collateral securities are unrated, fund boards of directors (or their delegates) must determine that the securities are of comparable quality to securities rated in the highest category by an NRSRO. Rule 5b–3(c)(iv)(D).

[58] We understand that credit quality standards for securities collateralizing repurchase agreements are typically contained in the agreements between funds and counterparties. We expect that those standards include a rating (for rated collateral securities) and any additional criteria a fund manager considers necessary to ensure that the credit quality of collateral securities meets the fund's requirements, or for unrated securities, a comparable credit quality standard. The proposed amendment would not prohibit fund boards (or their delegates) from relying on the credit quality standards in current repurchase agreements and policies and procedures adopted to comply with the current rule regarding the credit quality of collateral securities as long as they conclude that the ratings specified in the repurchase agreements and policies and procedures establish similar standards to those proposed, and that the agencies providing the ratings used in the policies and procedures are credible and reliable for that use. A fund could also revise its repurchase agreements and policies and procedures to change or eliminate the consideration of specific NRSRO ratings or to incorporate other third party evaluations of credit quality.

[59] *See* proposed rule 5b–3(c)(1)(iv)(C)(4).

[60] *See* Rule 5b–3 Proposing Release, *supra* note 50, at n.43.

[61] We have noted before the difficulties of liquidating collateral in the case of a default by a large counterparty when many investors in repurchase agreements seek to liquidate similar collateral at the same time. *See* Money Market Fund Reform Proposing Release, *supra* note 8, at n.229 and accompanying and preceding text.

[62] *See* S. Rep. No. 103–166, at 11 (1993) ("1993 Senate Report").

[63] For purposes of the Investment Company Act, an "investment company" means any issuer that (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. 15 U.S.C. 80a–3(a)(1).

[64] 15 U.S.C. 80a–6(a)(5); Pub. L. 104–290 § 501, 110 Stat. 3416, 3444 (1996). Section 6(a)(5)(B) provides that section 9 and, to the extent necessary to enforce section 9, sections 38 through 51, apply to a BIDCO as though the company were a registered investment company. Among other conditions to reliance on the exemption in section 6(a)(5), a BIDCO may not issue redeemable securities.

[65] *See* 1993 Senate Report, *supra* note 62, at 19 (further stating that states are well positioned to monitor these companies and address the needs of resident investors). Prior to the addition of section 6(a)(5), the Commission had granted orders to exempt BIDCOs from regulation under the Act. *See, e.g.,* The Idaho Company, Investment Company Release Nos. 18926 (Sept. 3, 1992) (notice) and 18985 (Sept. 30, 1992) (order).

least 65 percent of their assets in investment grade securities or securities that the fund determines are comparable in quality.[66] This provision was intended to provide limited flexibility to invest capital not immediately needed for the company's long-term commitments.[67] Although the legislative history of the provision does not specifically explain why Congress restricted BIDCOs to acquiring "investment grade" debt of investment companies and private funds, it may have been designed to limit BIDCOs to investing in debt securities of sufficiently high credit quality that they are likely to maintain a fairly stable market value and that could be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities.

As described above, section 939(c) of the Dodd-Frank Act eliminates the credit rating reference in section 6(a)(5)(A)(iv) of the Investment Company Act. Instead of limiting BIDCOs to purchasing debt securities issued by investment companies and private funds that are rated "investment grade," the amendment requires such debt securities to meet "such standards of credit-worthiness as the Commission shall adopt."

We are proposing new rule 6a–5 to establish this standard of credit-worthiness. Proposed rule 6a–5 would deem a BIDCO to have met the requirements for credit-worthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) if the board of directors or members of the company (or its delegate) determines that the debt security is (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that the security can be sold at or near its carrying value within a reasonably short period of time.[68] The proposed standard is designed to limit BIDCOs to purchasing debt securities issued by investment companies or private funds of sufficiently high credit quality that they are likely to maintain a fairly stable market value and may be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities. The board of directors or members of a BIDCO (or its delegate) would have to make the determination at the time of acquisition.[69] As a result of the proposed rule, section 6(a)(5) of the Act would also limit a BIDCO's investments in registered open-end funds to those funds that invest at least 65 percent of their assets in debt securities that meet our proposed standard.[70]

Moderate credit risk would denote current low expectations of default risk, with an adequate capacity for payment of principal and interest.[71] Debt securities (or their issuers) subject to a moderate level of credit risk would demonstrate at least average credit-worthiness relative to other similar debt issues (or issuers of similar debt).[72] In making these determinations, a BIDCO's board of directors, members or managers would be able to consider credit quality reports prepared by outside sources, including NRSRO ratings, that they conclude are credible and reliable for this purpose.

We request comment on proposed rule 6a–5.

- Does the standard we have proposed provide BIDCOs with flexibility to invest in certain debt securities that are likely to retain their value and that a BIDCO could sell quickly if necessary to support its investment and financing activities? If not, are there additional or alternative standards that do not use credit ratings that would be more appropriate to the statutory intent of section 6(a)(5)?
- Is our understanding that BIDCOs are organized as corporations with a board of directors or limited liability companies with members or managers correct? Are there BIDCOs that are formed as partnerships or other structures?
- Do BIDCO directors or members have sufficient experience with or knowledge of evaluating securities to allow them to make the determinations called for by proposed rule 6a–5 or to oversee decisions made by a delegate?

E. Forms N–1A, N–2 and N–3

We are proposing to amend Forms N–1A, N–2 and N–3 to remove the required use of credit ratings assigned by an NRSRO. Forms N–1A, N–2 and N–3, among other things, contain the requirements for shareholder reports of mutual funds, closed-end funds, and certain insurance company separate accounts that offer variable annuities.[73]

Currently, Forms N–1A, N–2 and N–3 each require shareholder reports to include a table, chart, or graph depicting portfolio holdings by reasonably identifiable categories (*e.g.,* type of security, industry sector, geographic region, credit quality or maturity).[74] The forms require the categories to be selected in a manner reasonably designed to depict clearly the types of investments made by the fund, given its investment objectives. If credit quality is

[66] 15 U.S.C. 80a–6(a)(5)(A), as in effect prior to July 21, 2012 (exempting any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business in that state if, among other things, the company does not purchase any security issued by an investment company or by any company that would be an investment company except for the exclusions from the definition of the term "investment company" under sections 3(c)(1) or 3(c)(7), other than (I) any debt security that is rated investment grade by not less than 1 nationally recognized statistical rating organization; or (II) any security issued by a registered open-end fund that is required by its investment policies to invest not less than 65% of its total assets in securities described in subclause (I) or securities that are determined by such registered open-end fund to be comparable in quality to securities described in subclause (I)).

[67] *See* 1993 Senate Report, *supra* note 62, at 20.

[68] Proposed rule 6a–5. The standard for credit-worthiness that we are proposing in rule 6a–5 is similar to the standard that we adopted in rule 10f–3 under the Investment Company Act. *See* 2009 Ratings Removal Adopting Release, *supra* note 7, at Section II.B.2; rule 10f–3(a)(3). This credit quality standard differs from those we propose for rules 2a–7 and 5b–3 because it reflects the different standard of credit quality associated with the ratings referenced in rule 10f–3 and section 6(a)(5)(A)(iv)(I) of the Act before the amendment of each provision. *Compare supra* notes 16, 48, and accompanying text *with supra* note 66 and accompanying text and rule 10f–3(a)(3), as in effect before November 12, 2009 (conditioning an exemption to permit an investment company that is affiliated with members of an underwriting syndicate to purchase securities from the syndicate if certain conditions are met, including if the securities are municipal securities, that have received an investment grade rating, or if the securities are less seasoned, one of the three highest ratings, from an NRSRO).

[69] Proposed rule 6a–5. From our review of the state statutes under which BIDCOs are formed and operate, we understand that BIDCOs must be organized as corporations with boards of directors or limited liability companies that are managed by members or managers. *See, e.g.,* Mich. comp. Laws § 301 (2010) (stating that a company other than a Michigan corporation or a limited liability company cannot apply for a license to be a BIDCO); Mont. Code Ann. § 102 (2010) (defining a BIDCO as a corporation that is licensed under the act to provide financial and management assistance to businesses); Alaska Stat. § 20 (2010) (stating that a license to operate a BIDCO will be issued to a corporation if certain conditions are met); Tenn. Code Ann. § 208 (2010) (stating that a person other than a Tennessee corporation cannot apply for a license to be a BIDCO).

[70] Section 6(a)(5)(A)(iv)(II) (permitting a BIDCO to purchase any security issued by a registered open-end fund that is required by its investment policies to invest not less than 65% of its total assets in securities described in subclause (I) (*i.e.,* securities that meet the standards of credit-worthiness that the Commission adopts) or securities that are determined by such registered open-end fund to be comparable in quality to securities described in subclause (I)).

[71] *See* 2009 Ratings Removal Adopting Release, *supra* note 7, at n.86.

[72] *Id.*

[73] Form N–1A is used by open-end management investment companies, commonly known as mutual funds. Form N–2 is used by closed-end management investment companies. Form N–3 is used by separate accounts, organized as management investment companies, that offer variable annuity contracts.

[74] Item 27(d)(2) of Form N–1A; Instruction 6(a) to Item 24 of Form N–2; Instruction 6(i) to Item 28(a) of Form N–3.

used to present portfolio holdings, the forms require that credit quality be depicted using the credit ratings assigned by a single NRSRO.

We are proposing to amend Forms N–1A, N–2 and N–3 to eliminate the required use of NRSRO credit ratings by funds that choose to use credit quality categorizations in the required table, chart or graph of portfolio holdings. If a fund chooses to use NRSRO credit ratings to depict credit quality of portfolio holdings, the proposal, like the current forms, generally would require the fund to use the credit ratings of a single NRSRO. This requirement is intended to eliminate the possibility that a fund could choose to use NRSRO credit ratings and then select the most favorable ratings among credit ratings assigned by multiple NRSROs. The proposal would clarify that, if credit ratings of the NRSRO selected by a fund are not available for certain holdings, the fund must briefly discuss the methodology for determining credit quality for those holdings, including, if applicable, the use of credit ratings assigned by another NRSRO.[75] Funds typically provide this discussion in their shareholder reports today.[76]

We request comment on the proposal to eliminate the required use of NRSRO credit ratings by funds that choose to use credit quality categorizations in shareholder reports.

- Are there better methods than the proposal by which funds could portray credit quality for purposes of the required table, chart or graph that presents portfolio holdings?
- Does the proposal adequately address situations where a fund would choose to portray credit quality using NRSRO ratings and there is no single NRSRO that has rated all of the fund's portfolio holdings?

III. Request for Comment

We request comment on the rule and form amendments and new rule proposed in this release. We also request suggestions for additional changes to existing rules, and comments on other matters that might have an effect on the proposals contained in this release. Commenters are requested to provide empirical data to support their views.

IV. Paperwork Reduction Act

Certain provisions of our proposal contain "collections of information" within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[77] The titles for the existing collections of information are: (1) "Rule 2a–7 under the Investment Company Act of 1940, Money market funds"; (2) "Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies";[78] (3) "Rule 38a–1 under the Investment Company Act of 1940, Compliance procedures and practices of registered investment companies"; and (4) "Form N–MFP under the Investment Company Act of 1940, Portfolio Holdings of Money Market Funds." We adopted the rules and form pursuant to the Investment Company Act. The Commission is submitting these collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

There is currently no approved collection of information for rule 5b–3 and the proposed amendments would not create any new collections under that rule. The proposed amendments to rule 5b–3 would, however, affect the collection of information burden for rule 38a–1. Proposed rule 6a–5 also would not create any new collections of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The approved collection of information associated with rule 2a–7 displays control number 3235–0268. The approved collection of information associated with rule 30e–1 displays control number 3235–0025. The approved collection of information associated with rule 38a–1, which would be revised by the proposed amendments to rule 5b–3, displays control number 3235–0586. The approved collection of information associated with Form N–MFP displays control number 3235–0657.

A. Money Market Funds

1. Rule 2a–7

As discussed above, we are proposing to remove references to credit ratings in rule 2a–7, which would affect five elements of the rule. First, we propose to eliminate the requirement that an eligible security be rated by an NRSRO or be of comparable quality, while maintaining the two-step analysis currently required by rule 2a–7. A security would be an eligible security only if the board of directors (or its delegate) determines that it presents minimal credit risks, which determination must be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations.[79] Second, we propose to define first tier security as a security whose issuer the fund's board (or its delegate) determines has the "highest capacity to meet its short-term financial obligations."[80] Third, we propose to require that with respect to a security (or its guarantee) subject to a conditional demand feature, in addition to other conditions, the underlying security (or its guarantee) must itself be of high quality and subject to very low credit risk as determined by the fund's board (or its delegate).[81] Fourth, we propose to eliminate the use of credit ratings in the rule's downgrade and default provisions. The proposed amendment would require that in the event the money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware of any credible information about a portfolio security or an issuer of a portfolio security that suggests that the security is no longer a first tier security or a second tier security, as the case may be, the money market fund's board of directors would have to reassess promptly whether the portfolio security continues to present minimal credit risks.[82] Finally, we propose to eliminate the reference to portfolio securities' downgrades in the stress testing provisions. Under the proposal, a money market fund's stress testing procedures would be required to include as a hypothetical event, "an adverse change in the ability of the issuer of a portfolio security to meet its

[75] Proposed Item 27(d)(2) of Form N–1A; proposed Instruction 6(a) to Item 24 of Form N–2; proposed Instruction 6(i) to Item 28(a) of Form N–3. In these items, we are also proposing to define NRSRO by reference to the Exchange Act definition, rather than by reference to Exchange Act rule 15c3–1 as is currently the case, and to replace the use of the term "rating" with "credit rating" as defined under the Exchange Act. See sections 3(a)(60) [15 U.S.C. 78c(a)(60)] and 3(a)(62) [15 U.S.C. 78c(a)(62)] of the Exchange Act, which define "credit rating" and "nationally recognized statistical rating organization," respectively.

[76] This statement is based on a staff review of a sample of fund shareholder reports filed with the Commission.

[77] 44 U.S.C. 3501–3520.

[78] The proposed amendments to Forms N–1A, N–2 and N–3 relate solely to the contents of fund shareholder reports. The PRA burden associated with fund shareholder reports is included in the burden associated with the collection of information for rule 30e–1 under the Investment Company Act rather than Forms N–1A, N–2 and N–3.

[79] Proposed rule 2a–7(a)(11). *See supra* Section II.A.1.

[80] Proposed rule 2a–7(a)(13). *See supra* Section II.A.1.

[81] Proposed rule 2a–7(c)(3)(iv)(C). *See supra* Section II.A.2.

[82] Proposed rule 2a–7(c)(7)(i)(A). *See supra* Section II.A.3.

short-term financial obligations."[83] The respondents to these collections of information are money market funds. A fund must comply with the requirements of rule 2a–7, including the collections of information, in order to obtain the exemptive relief provided under the rule and to operate as a money market fund.

We do not anticipate that the proposed amendments would significantly change collection of information requirements under rule 2a–7 because we believe funds would likely rely on their current policies and procedures to comply with the proposed amendments. Under current rule 2a–7, money market fund boards, or their delegates, are required to perform a minimal credit risk evaluation with respect to each of the fund's portfolio securities. Funds also must adopt policies and procedures regarding those determinations.[84] Eligible securities and first tier securities currently are defined with reference to credit ratings, and securities subject to a conditional demand feature must meet a minimum credit rating threshold or if unrated, be of comparable quality. With respect to monitoring for downgrades and defaults, Commission staff understands that money market funds generally monitor for information regarding credit events that may affect the portfolio in addition to those specified in the rule. In addition, a fund could treat a downgrade as a credit event that might adversely affect a portfolio security. Finally, staff also understands that money market funds stress test for credit events other than downgrades that might affect the fund's portfolio. As we have noted above, with respect to each of the amendments we propose today, money market funds could continue to consider evaluations of outside sources, including credit ratings, in making credit quality determinations, monitoring and stress testing. Moreover, we anticipate that funds would likely continue to rely on their current policies and procedures with respect to credit quality determinations, monitoring for credit events and stress testing because that is likely to be less costly than revising policies. Accordingly, we do not expect the proposed amendments would significantly change current collection of information burden estimates for rule 2a–7.[85] Nevertheless, money market funds may make technical changes to their policies and procedures in response to the proposed amendments, if adopted. Staff estimates that it would take, on average, 1.5 hours of a senior business analyst's time to make any technical changes for an individual money market fund, for an estimated one-time burden of 978 hours for all money market funds at a total cost of $226,896.[86] Amortized over three years, we estimate that the total annual burden would be 326 hours at a cost of $75,632.

- We request comment on these assumptions. If commenters believe these assumptions are not accurate, we request they provide specific data that would allow us to make more accurate estimates.

2. Form N–MFP

Rule 30b1–7 requires money market funds to file electronically a monthly report on Form N–MFP within five business days after the end of each month. The information required by the form must be data-tagged in XML format and filed through EDGAR. Preparing Form N–MFP is a collection of information under the PRA.[87] The respondents to the requirement to prepare Form N–MFP are investment companies that are regulated as money market funds under rule 2a–7. Compliance with the requirement to prepare Form N–MFP is mandatory for any fund that holds itself out as a money market fund in reliance on rule 2a–7. Responses to the disclosure requirement of Form N–MFP are not kept confidential.

As discussed previously, the proposed amendments would eliminate the items requiring disclosure for each portfolio security (and any guarantee, demand feature or enhancement associated with the portfolio security) of the designated NRSROs for the security and the rating assigned to the security in Items 34, 37, 38 and 39 of the Form. The proposed amendments would also eliminate the requirement in Item 33 that a money market fund disclose whether a security is a rated security or an unrated security.

The staff estimates that, as of December 31, 2010, there are approximately 652 money market funds that are required to file Form N–MFP.[88] The staff estimates that our proposed amendments would reduce the time it takes money market funds to complete Form N–MFP by 0.5 hours. Because Form N–MFP is completed 12 times a year, the staff estimates that each respondent would save approximately 6 hours annually (at an internal cost of $301 per hour).[89] The staff therefore estimates that our proposed amendments to Form N–MFP would result in total incremental time savings of approximately 3912 hours (and $1,177,512) annually.[90]

- We request comment on these estimates. If commenters believe these estimates are not accurate, we request they provide specific data that would allow us to make more accurate estimates.

B. Rule 5b–3

Rule 5b–3 under the Investment Company Act allows funds to treat the acquisition of a repurchase agreement as an acquisition of securities collateralizing the repurchase agreement for purposes of sections 5(b)(1) and

[83] Proposed rule 2a–7(c)(10)(v)(A). *See supra* Section II.A.4. As a result of eliminating the term "designated NRSRO," the proposal would eliminate the requirement that boards of directors designate NRSROs and disclose such designated NRSROs in their SAIs. *See supra* note 25. We believe that the deletion of the disclosure requirement would not affect the collection of information requirements in the SAI, however, and therefore would not change current paperwork burden estimates. When we adopted the requirement to disclose designated NRSROs in the SAI, we stated that we anticipated that making this disclosure would not result in additional hourly burdens or printing costs beyond those currently approved in the existing collection of information for Form N–1A. *See* Money Market Fund Reform Adopting Release, *supra* note 8, at 106. The proposed amendments also would make conforming amendments to rule 2a–7's recordkeeping and reporting requirements. *See* proposed rule 2a–7(c)(11)(iii). These conforming changes would not result in changes in the estimated hourly burden associated with the recordkeeping and reporting requirements.

[84] *See* rules 2a–7(c)(3); 2a–7(c)(11)(ii); 2a–7(e); 38a–1.

[85] The current approved annual burden for rule 2a–7 under the PRA is 395,779 hours. The estimated number of respondents is 652 money market funds as of December 31, 2010. The estimated number of money market funds is based on the Investment Company Institute, Trends in Mutual Fund Investing, December 2010 (Jan. 27, 2011), *http://www.ici.org/research/stats/trends/trends_12_10.*

[86] These estimates are based on the following calculation: (652 money market funds × 1.5 hours = 978 hours); (978 hours × $232 per hour = $226,896). The staff estimates that the internal cost of a senior business analyst is $232 per hour. This estimate, as well as other internal time cost estimates made in this analysis, is derived from SIFMA's *Management and Professional Earnings in the Securities Industry* 2010, modified by Commission staff to account for an 1800-hour work week and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[87] For purposes of the PRA analysis, the current burden associated with the requirements of rule 30b1–7 is included in the collection of information requirements of Form N–MFP. The current approved annual burden for Form N–MFP under the PRA is 94,189 hours.

[88] *See supra* note 85.

[89] The staff estimates that the internal cost of a senior database administrator is $301 per hour.

[90] These estimates are based on the following calculation: (652 × 6 hours = 3912 hours); (3912 hours × $301 per hour = $1,177,512). We understand that some money market funds may outsource all or a portion of their responsibilities regarding Form N–MFP to a filing agent, software consultant, or other third-party service provider. We believe that a fund would engage third-party service providers at an external cost similar to or less than the estimated internal costs so the amount of the savings would be comparable.

12(d)(3) of the Act under certain conditions. We propose to amend rule 5b–3 to require that the securities collateralizing a repurchase agreement consist of securities that the fund's board of directors, or its delegate, determines are issued (or have unconditional guarantees that are issued) by an issuer that has the highest capacity to meet its financial obligations and are highly liquid.[91] To that end, the fund's board of directors, pursuant to rule 38a–1 under the Act, would have to develop procedures to ensure that at the time the repurchase agreement is entered into, the securities meet the requirements for collateral outlined in the proposed amendments to the rule.[92] As discussed above, these procedures are designed to limit collateral securities to those that are likely to retain a stable market value and that, in ordinary circumstances, the fund would be able to liquidate quickly in the event of a default. This collection of information would be mandatory for funds that rely on rule 5b–3. Records of information made in connection with this requirement would be required to be maintained for inspection by Commission staff, but the collection would not otherwise be submitted to the Commission. The information, when provided to the Commission in connection with staff examinations or investigations, would be kept confidential to the extent permitted by law.

We do not anticipate that the proposed amendments would significantly change collection of information burdens under rule 38a–1 because we believe funds would likely rely on their current policies and procedures to determine the credit quality of collateral securities to comply with rule 5b–3, as we propose to amend it. We understand that credit quality standards for securities collateralizing repurchase agreements are contained in the repurchase agreements between funds and counterparties. We expect that those standards currently include a rating and any additional criteria a fund manager considers necessary to ensure that the credit quality of the collateral securities meets the fund's requirements, or, for unrated securities, a comparable credit quality standard. Counterparties provide collateral securities to conform to these standards and funds confirm that the securities are conforming. As we have noted above, funds could continue to consider evaluations of outside sources, including credit ratings, that the board determines are credible and reliable in making their credit quality determinations under the proposed rule. We expect that funds would likely continue to rely on their current policies and procedures (*i.e.,* using credit quality standards that include ratings currently set forth in their repurchase agreements with counterparties). Thus, we do not expect that the proposed amendments would significantly change the current collection of information burden estimates for rule 38a–1.[93] Nevertheless, funds may review their repurchase agreements and policies and procedures that address rule 5b-3 compliance and make technical changes to those documents in response to the proposed amendments, if adopted. Staff estimates that it will take, on average, 1.5 hours of a senior business analyst's time to perform this review and make any technical changes for an individual fund portfolio, for an estimated burden of 12,690 hours for all fund portfolios (other than money market fund portfolios)[94] at a total cost of $2,944,080.[95] Amortized over three years, we estimate that the total burden would be 4230 hours at a cost of $981,360. We anticipate that the fund's board would review the fund manager's recommendation, but that the cost of this review would be incorporated in the fund's overall annual board costs and would not result in any particular additional cost.

- We request comment on these estimates. If commenters believe these estimates are not accurate, we request they provide specific data that would allow us to make more accurate estimates.
- Is our expectation that funds would continue to consider ratings in their credit quality standards to evaluate rated collateral securities for repurchase agreements correct? If funds choose not to continue this consideration of ratings, we request comment on how long it would take a fund to confirm that collateral securities satisfy the credit quality standards in a repurchase agreement under our proposed standard.

C. Rule 30e–1

The proposed amendments to Forms N–1A, N–2 and N–3 eliminate the required use of NRSRO credit ratings by funds that choose to use credit quality categorizations in the required table, chart, or graph of portfolio holdings. If a fund chooses to use NRSRO credit ratings to depict credit quality of portfolio holdings, the proposed amendments, like the current forms, generally would require the fund to use the credit ratings of a single NRSRO. The proposed amendments would clarify that, if credit ratings of the NRSRO selected by a fund are not available for certain holdings, the fund must briefly discuss the methodology for determining credit quality for those holdings, including, if applicable, the use of credit ratings assigned by another NRSRO.

The Commission believes that the proposed amendments to Forms N–1A, N–2 and N–3 would not affect the current PRA burden under rule 30e–1, because funds would remain obligated to provide a table, chart, or graph of portfolio holdings by reasonably identifiable categories. The proposed amendments only eliminate the required use of NRSRO credit ratings by funds that choose to use credit quality categorizations. The Commission further believes that the proposed clarification for cases when credit ratings of the NRSRO selected by a fund are not available for certain holdings would not impose any additional PRA burden because funds typically provide this disclosure in their shareholder reports today.[96]

- We request comment on this analysis. If commenters believe this analysis is not accurate, we request that they provide specific data that would allow us to make a more accurate analysis.

D. Request for Comments

We request comment on whether the estimates provided in this PRA analysis are accurate. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper

[91] Proposed rule 5b–3(c)(1)(iv)(C). *See supra* Section II.C.

[92] Under rule 38a–1, funds must have written policies and procedures reasonably designed to prevent violation of the Federal securities laws. Rule 38a–1(a)(1). Funds thus would have policies and procedures for complying with rule 5b–3, which would include policies and procedures relating to credit quality determinations of unrated collateral securities, if appropriate.

[93] The current approved annual burden for rule 38a–1 under the PRA is 254,703 hours.

[94] For purposes of this PRA analysis, we assume that all funds enter into repurchase agreements and rely on rule 5b–3. We have not included money market funds in our estimates, however, because they are subject to different requirements under rule 2a–7, as noted above. *See supra* note 49. The staff's estimate of the number of fund portfolios is based on staff examination of industry data as of December 31, 2010.

[95] These estimates are based on the following calculation: (8,460 fund portfolios × 1.5 hours = 12,690 hours); (12,690 hours $232 per hour = $2,944,080). The staff estimates that the internal cost for time spent by a senior business analyst is $232 per hour.

[96] This assessment is based on a staff review of a sample of fund shareholder reports filed with the Commission.

performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–7–11. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–7–11, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213.

V. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of the proposed rule and form amendments and proposed rule, and we request comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this analysis, and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular funds, including funds that are small entities, as well as any other costs or benefits that may result from the adoption of the proposed rule and rule and form amendments. Where possible, we request commenters provide empirical data to support any positions advanced.

As discussed above, to implement provisions of the Dodd-Frank Act, we propose to (i) remove the references to credit ratings in rules 2a–7 and 5b–3 and replace them with alternative standards of credit-worthiness that are designed to appropriately achieve the same purposes as the ratings, (ii) eliminate references to credit ratings in Form N–MFP, and (iii) remove from Forms N–1A, N–2 and N–3 the requirement that NRSRO credit ratings be used when portraying credit quality in shareholder reports. We are also proposing rule 6a–5 to replace a statutory reference to credit ratings that the Dodd-Frank Act removes from the Investment Company Act and for which the Dodd-Frank Act anticipates the Commission will adopt a replacement standard. Thus, the benefits and costs associated with the replacement of credit rating references with alternative standards of credit-worthiness are attributable to the Dodd-Frank Act. The Commission has discretion, however, in adopting the alternative standards of credit-worthiness, and we undertake below to discuss the costs and benefits of the rule and form amendments and new rule that we are proposing.

A. Money Market Funds

1. Rule 2a–7

As discussed above, we are proposing to remove references to credit ratings in rule 2a–7, which would affect five elements of the rule. First, we propose to eliminate the requirement that an eligible security be rated by an NRSRO or be of comparable quality, while maintaining the two-step analysis currently required by rule 2a–7. A security would be an eligible security only if the board of directors (or its delegate) determines that it presents minimal credit risks, which determination must be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations.[97] Second, we propose to define first tier security as a security whose issuer the fund's board (or its delegate) determines has the "highest capacity to meet its short-term financial obligations."[98] Third, we propose to require that with respect to a security (or its guarantee) subject to a conditional demand feature, in addition to other conditions, the underlying security (or its guarantee) must itself be of high quality and subject to very low credit risk as determined by the fund's board (or its delegate).[99] Fourth, we propose to remove the reference to credit ratings in the rule's downgrade and default provisions. The proposed amendment would require that, in the event the money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware of any credible information about a portfolio security or an issuer of a portfolio security that suggests that the security is no longer a first tier security or a second tier security, as the case may be, the money market fund's board of directors would have to reassess promptly whether the portfolio security continues to present minimal credit risks.[100] Finally, we propose to eliminate the reference to portfolio securities' downgrades in the stress testing provisions. Under the proposal, a money market fund's stress testing procedures would be required to include as a hypothetical event, "an adverse change in the ability of the issuer of a portfolio security to meet its short-term financial obligations."[101]

a. Benefits

We believe that the proposed amendments to rule 2a–7 may provide certain benefits to money market funds. As discussed above, in connection with the PRA analysis, money market funds have adopted policies and procedures that with respect to portfolio securities (including securities subject to a conditional demand feature) address credit quality, minimal credit risk determinations, monitoring for downgrades and defaults and stress testing. Under the proposed rules, money market funds could revise their policies and procedures with respect to each of these requirements to change or eliminate the consideration of credit ratings or consider other sources of credit quality evaluations as funds determine would be appropriate. Nevertheless, because the proposed amendments are designed to retain the same degree of credit risk limitation and similar standards for monitoring credit

[97] Proposed rule 2a–7(a)(11). *See supra* Section II.A.1.

[98] Proposed rule 2a–7(a)(13). *See supra* Section II.A.1.

[99] Proposed rule 2a–7(c)(3)(iv)(C). *See supra* Section II.A.2.

[100] Proposed rule 2a–7(c)(7)(i)(A). *See supra* Section II.A.3.

[101] Proposed rule 2a–7(c)(10)(v)(A). *See supra* Section II.A.4. As noted above, *see supra* note 20, the proposed amendments would make conforming changes to rule 2a–7's recordkeeping and reporting requirements. We do not believe that these amendments would affect costs.

events and stress testing as under current rule 2a–7, the proposed amendments would not prohibit a money market fund from using its current policies and procedures to comply with the proposed amendments. In particular, as discussed above, fund boards (or their delegates) could still consider credit quality evaluations prepared by outside sources, including NRSRO ratings, that they conclude are credible and reliable for purposes of making credit quality determinations with respect to portfolio securities (including securities subject to a conditional demand feature), monitoring minimal credit risks of the portfolio and stress testing. We expect that each money market fund would undertake its own analysis of the costs or benefits of revising policies and procedures and would only change them to the extent the fund believed the benefits justified the costs of doing so.

Although some money market funds may eliminate the specific use of ratings in their credit risk determinations, we anticipate that many of those funds are likely to consider some outside analyses in evaluating the credit quality of, and minimal credit risks presented by, portfolio securities (including securities subject to a conditional demand feature). Fund boards' (or their delegates') consideration of external analyses by third party sources determined to be credible and reliable to the extent the fund board (or its delegate) considers appropriate may contribute to the accuracy of funds' determinations and thus help money market funds arrive at consistent credit risk determinations.

b. Costs

We recognize that there may be minor costs associated with the proposed amendments to rule 2a–7. Money market funds may incur some costs internally or to consult outside legal counsel to evaluate any need to change their policies and procedures relating to determinations of credit quality, monitoring for credit events and stress testing if the proposed amendments were adopted. We do not believe, however, that these costs are attributable to the proposed rule and form amendments because the requirement in the Dodd-Frank Act that we replace the use of credit ratings in rules with alternative standards of credit-worthiness would result in similar costs of evaluating compliance with a new credit quality standard.

As discussed above, because the proposed amendments are designed to retain the same degree of credit risk limitation and similar standards for monitoring credit events and stress testing as under current rule 2a–7, a money market fund also could use its current policies and procedures to comply with the proposed amendments. In particular, as discussed above, a fund could still incorporate credit quality evaluations prepared by outside sources, including NRSRO ratings, that the fund's board or adviser concludes are credible and reliable for purposes of making credit quality determinations with respect to portfolio securities (including securities subject to a conditional demand feature), monitoring minimal credit risks of the portfolio, and stress testing. We expect that each money market fund would undertake its own analysis of the costs or benefits of revising policies and procedures and would only change its policies to the extent the fund believed the benefits justified the costs of doing so. Nevertheless, money market funds may make technical changes to their policies and procedures in response to the proposed amendments, if adopted. We estimate that money market funds would incur a one-time aggregate cost of $226,896 to make any technical changes.[102]

In addition to the costs that funds may incur, the removal of credit ratings pursuant to the Dodd-Frank Act may result in increased risks to money market funds and their shareholders. As discussed above, rule 2a–7 limits money market funds to investing in securities that, among other things, have received a rating in one of the highest two short-term rating categories from the requisite NRSROs or are unrated securities of comparable quality.[103] The rule further limits money market funds' investments in second tier securities to no more than three percent of the fund's portfolio.[104] The minimum credit rating requirement in the current rule provides the Commission with an objective standard to use in examining and enforcing money market fund compliance with rule 2a–7's credit quality conditions, including the limitation on investments in second tier securities. As discussed above, the proposed rule would eliminate the requirement that eligible securities meet minimum rating requirements, while maintaining the two-step analysis provided in the current rule and the limitation on investments in second tier securities.[105] Although we anticipate that funds would continue to manage risk in the same manner as under the current rule, under the proposed subjective standard, a money market fund board (or its delegate) could disregard a second tier rating in order to invest a larger portion of the fund's portfolio in lower quality securities that it classifies as first tier securities. In addition, it could be difficult for the Commission to challenge the determination of a money market fund board (or its delegate) in those circumstances.[106]

2. Form N–MFP

We propose to amend Form N–MFP to eliminate the items requiring disclosure for each portfolio security (and any guarantee, demand feature or enhancement associated with the portfolio security) of the designated NRSROs for the security and the rating assigned to the security. We also propose to eliminate the requirement that a money market fund disclose whether a security is a rated security or an unrated security.

a. Benefits

The proposed amendments to Form N–MFP would conform the disclosure in Form N–MFP to the proposed amendments to rule 2a–7. The proposed amendments to Form N–MFP should reduce costs for money market funds by eliminating from the form certain disclosure items relating to designated NRSROs and ratings, which would no longer be elements of rule 2a–7. For purposes of the PRA analysis, we estimate that money market funds would realize, in the aggregate, a cost savings of $1,177,512 in completing Form N–MFP as a result of the proposed amendments.[107]

b. Costs

We do not believe there would be any costs associated with the proposed amendments to Form N–MFP.

B. Rule 5b–3

We propose to amend rule 5b–3 to allow a fund to treat the acquisition of a repurchase agreement as an acquisition of securities collateralizing the repurchase agreement for purposes of sections 5(b)(1) and 12(d)(3) of the Investment Company Act if the

[102] *See supra* note 86 and accompanying text.

[103] *See* rule 2a–7(a)(12)(i)–(ii); *supra* notes 15–17 and accompanying text.

[104] Rule 2a–7(c)(3)(ii).

[105] *See supra* note 23, notes 24–25 and accompanying and preceding text.

[106] The increased risks to money market funds associated with investments in short-term securities rated second tier are discussed in detail in the Money Market Fund Reform Adopting Release, *supra* note 8, at Section II.A.1. and Money Market Fund Reform Proposing Release, *supra* note 8, at Section II.A.1.

[107] *See supra* note 90 and accompanying text. As noted above, however, money market funds have not had to make these disclosures so actual savings may be less.

collateral other than cash or government securities consists of securities that the fund's board of directors, or its delegate, determines at the time the repurchase agreement is entered into are: (i) Issued by an issuer that has the highest capacity to meet its financial obligations; and (ii) sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven days.

1. Benefits

We believe that the proposed amendments to rule 5b–3 may yield certain benefits. First, our proposed standard is designed to achieve the same purpose as the credit rating reference in the existing rule. *i.e.,* limit collateral securities to those that are likely to retain a stable market value and that, under ordinary circumstances, the fund would be able to liquidate quickly in the event of a counterparty default. Second, we believe that the proposed standards would not result in significant changes in fund evaluations of the quality of collateral securities. A fund's board of directors or its delegate is already required under the rule to assess the credit quality of unrated securities.[108] As noted above, funds typically establish standards for the credit quality of collateral securities (that include credit ratings and additional credit quality criteria required by the fund) in repurchase agreements with counterparties.[109] In addition, although the rule would no longer require the collateral to be rated by an NRSRO, the evaluation of credit risk could incorporate ratings, reports, analyses and other assessments issued by third parties, including NRSRO ratings, that the board concludes are credible and reliable for purposes of making the evaluation. We expect that the ability to consider outside assessments would help minimize any burdens on the fund's board or its delegate under the proposed amendments. In addition, the use of external analyses by third party sources that fund boards (or their delegates) believe are credible and reliable to the extent the fund board (or its delegate) considers appropriate may contribute to the accuracy of funds' determinations and thus help funds arrive at consistent minimal credit risk determinations.

2. Costs

The proposed credit quality standard for rule 5b–3 may impose costs on funds that rely on the rule. A fund's board of directors, or its delegate, pursuant to rule 38a–1 of the Act, would be required to develop written policies or procedures to ensure that at the time the repurchase agreement is entered into, the collateral meets the requirements outlined in the proposed amendments.[110] Consistent with the requirements of rule 38a–1 under the Act, we expect that boards of funds relying on rule 5b–3 have established procedures regarding compliance with the rule. We recognize that these funds may incur minor costs associated with the proposed amendments to rule 5b–3 including some internal costs or costs of consulting outside legal counsel to determine whether they must change their policies and procedures for evaluating collateral securities if the proposed amendments are adopted. We do not believe, however, that those costs are attributable to the proposed amendments because the requirement in the Dodd-Frank Act that we replace the use of credit ratings in rules with alternative standards of credit-worthiness would result in similar costs of evaluating compliance with a new standard of credit quality.

As noted above, funds typically set forth credit quality standards for securities collateralizing a repurchase agreement in the agreement with the counterparty. We expect that those standards include a rating and any additional criteria a fund manager considers necessary to ensure that the credit quality of the collateral meets the fund's requirements. As we have noted above, fund boards (or their delegates) could continue to consider evaluations of outside sources, including credit rating agencies, in making their credit quality determinations under rule 5b–3, as we propose to amend it. We anticipate that funds would likely continue to rely on the credit quality standards in their current repurchase agreements and their existing policies and procedures that address compliance with rule 5b–3 if the proposed amendments were adopted. We expect that each fund would undertake its own analysis of the costs or benefits of revising repurchase agreements and policies and procedures that address compliance with rule 5b–3 and would only change these documents to the extent the fund believed the benefits justified the costs of doing so. Nevertheless, funds may consider whether to amend their repurchase agreements and policies and procedures that address compliance with rule 5b–3, including making technical changes to these documents in response to the proposed amendments, if adopted. As noted above, we estimate that funds would incur a one-time aggregate cost of $2,944,080 to make any of these changes.[111]

- We request comment on these cost estimates. Do commenters foresee additional or alternative costs if the proposed amendments to rule 5b–3 are adopted? Have we accurately estimated costs of amending repurchase agreements and policies and procedures for the evaluation of the credit quality and liquidity of collateral securities?

C. Proposed Rule 6a–5

We are proposing new rule 6a–5, which would establish a credit-worthiness standard under section 6(a)(5)(A)(iv)(I) of the Investment Company Act. BIDCOs that seek to rely on the exemption in section 6(a)(5) of the Act would be limited to investing in debt securities issued by investment companies and private funds if, at the time of purchase, the board of directors or members of the BIDCO (or their delegate) determines that the debt security is (i) subject to no greater than moderate credit risk and (ii) sufficiently liquid that the security can be sold at or near its carrying value within a reasonably short period of time.

1. Benefits

We anticipate that proposed rule 6a–5 would result in certain benefits. Our proposed standard is intended to achieve the same purpose as the credit rating it would replace. In particular, the proposed standard is designed to limit BIDCOs to purchasing debt securities issued by investment companies or private funds of sufficiently high credit quality that they are likely to maintain a fairly stable market value and may be liquidated easily, as appropriate, for the BIDCO to support its investment and financing activities.

Furthermore, to comply with the proposed standard, we do not believe that BIDCOs would be required to change any policies and procedures they may have with respect to the evaluation of these debt securities. As noted above, under proposed rule 6a–5, in evaluating whether debt securities issued by investment companies and private funds present moderate credit risk, boards of directors and members of BIDCOs (or their delegates) would be able to consider credit quality determinations prepared by outside sources, including NRSRO ratings, that they conclude are credible and reliable for purposes of making these determinations. We expect that the

[108] Rule 5b–3(c)(1)(iv)(D).

[109] *See supra* text preceding note 93.

[110] Rule 38a–1(a).

[111] *See supra* note 95 and accompanying text.

ability to consider outside assessments in making these determinations would help minimize the burden on BIDCOs and contribute to a BIDCO's ability to make consistent credit quality determinations.

2. Costs

We recognize that BIDCOs may incur some costs if we adopted proposed rule 6a–5. These may be internal costs or costs to consult outside legal counsel to evaluate whether changes to any policies and procedures the BIDCOs may have currently for acquiring debt securities issued by investment companies or private funds may be appropriate in light of the proposed rule. We do not believe, however, that these costs are attributable to the proposed rule because the Dodd-Frank Act's replacement of the credit rating standard in the Investment Company Act with a standard to be adopted by the Commission would result in similar costs of evaluating compliance with a new credit quality standard.

We expect that, although not required by the Investment Company Act, as a matter of good business practice, directors or members of most BIDCOs that do not currently have them may prepare policies and procedures to make the credit quality and liquidity determinations required by the proposed rule. Commission staff estimates that the costs of preparing the procedures for making determinations of credit quality and liquidity under the rule would be borne upfront. Once generated, reviewed and implemented by directors or members of BIDCOs (or their delegates), directors and members (or their delegates) would be able to follow them for purposes of making future determinations under the rule. Our staff has estimated that each BIDCO would incur, on average, an initial one-time cost of $928 to prepare policies and procedures and an average of $928 in annual costs for making credit determinations with respect to the acquisition of debt securities.[112]

We anticipate that many BIDCOs that invest cash in these types of debt securities would continue to consider credit quality determinations prepared by outside sources, including NRSRO ratings, that they conclude are credible and reliable for purposes of making these determinations. Nevertheless, we recognize that some BIDCO boards or members may choose to hire consultants to assist in developing procedures and to make or oversee the proposed determinations.[113] Staff estimates that the cost to hire such consultants would be, on average, $8,000 for each BIDCO.[114]

- We request comment on these cost estimates. Are the costs estimates accurate regarding the proposed procedures for making credit quality determinations? Do commenters foresee additional or alternative costs if proposed rule 6a–5 were adopted?

D. Forms N–1A, N–2 and N–3

The proposed amendments to Forms N–1A, N–2 and N–3 would eliminate the required use of NRSRO credit ratings by funds that choose to use credit quality categorizations in the required table, chart, or graph of portfolio holdings. If a fund chooses to use NRSRO credit ratings to depict credit quality of portfolio holdings, the proposed amendments, like the current forms, generally would require the fund to use the credit ratings of a single NRSRO. The proposed amendments would clarify that, if credit ratings of the NRSRO selected by a fund are not available for certain holdings, the fund must briefly discuss the methodology for determining credit quality for those holdings, including, if applicable, the use of credit ratings assigned by another NRSRO.

1. Benefits

Under the proposed amendments, funds will have greater flexibility to depict credit quality in the most meaningful manner, which may lead to better information for investors. This largely results from the congressionally mandated removal of the required use of credit ratings under section 939A of the Dodd-Frank Act.

2. Costs

The Commission believes that because the proposed amendments only eliminate the required use of NRSRO credit ratings by funds that choose to use credit quality categorizations, any cost imposed on funds would not be material. Funds might incur costs to the extent that they choose to develop new methodologies for depicting credit quality. If a fund chooses to use NRSRO credit ratings to depict credit quality of portfolio holdings, the proposed amendments would clarify that, if credit ratings of the NRSRO selected by a fund are not available for certain holdings, the fund must briefly discuss the methodology for determining credit quality for those holdings. The Commission believes that the proposed clarification would not impose any additional cost because funds typically provide this disclosure in their shareholder reports today.[115]

E. Request for Comment

The Commission requests comments on all aspects of the cost-benefit analysis, including the accuracy of the potential costs and benefits identified and assessed in this Release, as well as any other costs or benefits that may result from the proposals. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[116] the Commission also requests information regarding the potential annual effect of the proposals on the U.S. economy. Commenters are requested to provide empirical data to support their views.

VI. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act and section 2(b) of the Securities Act each requires the Commission, when engaging in rulemaking under the respective Act that requires it to consider or determine whether an action is consistent with or necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the

[112] We estimate that each BIDCO would incur on average a one-time burden of 4 hours for a senior business analyst (under board or member delegation) to develop policies and procedures for evaluating credit and liquidity risk (4 hours × $232 per hour = $928). Commission staff believes that additional costs incurred by boards or members for review of procedures would be incorporated into BIDCOs' overall board or member costs and would not add any particular costs. In addition, Commission staff estimates that a BIDCO board or member is likely to delegate the credit risk determinations, and that such determinations would take on average 1 hour of a senior business analyst's time (at $232 per hour) to evaluate the credit quality for each of an average of 4 investment company or private fund debt securities that a BIDCO would purchase each year (4 hours × $232 per hour) for a total cost of $928 per year.

[113] We do not expect that money market funds would incur similar development assistance costs with respect to the proposed amendments to rule 2a–7 because rule 2a–7 currently requires these funds to perform credit quality determinations with respect to portfolio securities. Similarly, we expect that funds that rely on rule 5b–3 currently incorporate credit quality standards for collateral securities in addition to ratings in their repurchase agreements.

[114] Staff estimates that a BIDCO would need up to 16 hours of consulting advice to assist in developing procedures and to make or oversee the proposed determinations. Staff estimates that this advice would cost a BIDCO $500 per hour based on an understanding of the rates typically charged by outside consulting firms.

[115] This assessment is based on a staff review of a sample of fund shareholder reports filed with the Commission.

[116] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

action will promote efficiency, competition, and capital formation.[117]

Our proposed amendments to rules 2a–7 and 5b–3 and Forms N–MFP, N–1A, N–2 and N–3 implement provisions of the Dodd-Frank Act that call for the Commission to remove credit rating references in its regulations and to substitute other appropriate standards of credit-worthiness in place of the credit ratings. Thus, effects on efficiency, competition, and capital formation that arise from the removal of credit ratings are attributable to the congressionally mandated removal of the required use of credit ratings under section 939A of the Dodd-Frank Act. The Commission has discretion, however, to adopt rule and rule amendments that set forth the alternative standards of credit-worthiness, and we undertake below to discuss the effects on efficiency, competition and capital formation of the specific standards that we are proposing.

We do not believe that the proposed amendments to rules 2a–7 and 5b–3 and Forms N–MFP, N–1A, N–2 and N–3 would significantly affect competition or have an adverse effect on efficiency or capital formation.

Rule 2a–7. With respect to rule 2a–7, as we have discussed above, money market funds have procedures for making credit quality and credit risk determinations under current rule 2a–7. In addition, we have designed the proposed standard to retain a degree of risk limitation similar to that reflected by the credit ratings in the current rule. Because we do not anticipate that the proposed amendments are likely to change the types of investments that are made by money market funds, we do not believe that the proposed amendments would have a significant effect on competition or capital formation. As we have noted above, we believe that money market funds could change their policies and procedures to reflect changes in the proposed amendments or continue to rely on their current policies and procedures to comply with the proposed amendments. We expect that money market funds are likely to make changes only if the benefits of such changes would justify the costs, which would not be likely to have an adverse effect on efficiency.

Form N–MFP. The proposed amendments would conform the disclosures in Form N–MFP to the proposed amendments to rule 2a–7. We do not believe that our proposal to remove certain disclosures from the form would change the types of securities money market funds invest in and, therefore, would have no effect on competition or capital formation. To the extent that the proposed amendments reduce the time funds spend making the disclosures required in Form N–MFP, the proposed amendments may slightly increase efficiency.

Rule 5b–3. The proposed standard for determining the credit quality of collateral securities in rule 5b–3 is designed to achieve the same purpose as the credit rating reference in the existing rule, *i.e.,* to limit collateral securities to those that are likely to retain a stable market value and that, under ordinary circumstances, the fund could liquidate quickly in the event of a counterparty default. Because we do not anticipate that the proposed amendments would change the types of collateral securities that funds relying on 5b–3 would use, we do not believe that the proposed amendments would have a significant effect on competition or capital formation. Furthermore, funds typically establish credit quality standards for collateral securities that include credit ratings in repurchase agreements they enter into with counterparties. Funds could change their policies and procedures to reflect changes in the proposed amendments, but the rule would not prohibit funds from relying on the standards in current repurchase agreements and policies and procedures that address compliance with rule 5b–3. We anticipate that the consideration of outside sources in making credit quality determinations with respect to collateral securities may help funds arrive at consistent credit quality determinations. For these reasons, we do not believe that the proposed amendments to rule 5b–3 would have a significant effect on efficiency.

Forms N–1A, N–2 and N–3. The proposed amendments to Forms N–1A, N–2 and N–3 would eliminate the required use of NRSRO ratings by funds that choose to use credit quality categorizations in the required table, chart, or graph of portfolio holdings. If a fund chooses to use NRSRO credit ratings to depict credit quality of portfolio holdings, the proposed amendments would clarify that, if credit ratings of the NRSRO selected by a fund are not available for certain holdings, the fund must briefly discuss the methodology for determining credit quality for those holdings, including, if applicable, the use of credit ratings assigned by another NRSRO. We do not believe that the proposed clarification would affect efficiency, competition or capital formation because funds typically provide this disclosure in their shareholder reports today.[118] The effect, if any, on efficiency, competition and capital formation that would arise from the proposed amendments to Forms N–1A, N–2 and N–3 results from the congressionally mandated removal of the required use of credit ratings under section 939A of the Dodd-Frank Act.

Request for comment. We request comment whether the proposed rule and rule and form amendments would, if adopted, promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data to support their views.

VII. Regulatory Flexibility Act Certification

Pursuant to section 5(b) of the Regulatory Flexibility Act,[119] the Commission hereby certifies that the proposed amendments to rule 2a–7 and Form N–MFP under the Investment Company Act would not, if adopted, have a significant economic impact on a substantial number of small entities. For purposes of the RFA, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[120] Based on information in filings submitted to the Commission, we believe that there are no money market funds that are small entities. For this reason, the Commission believes that the amendments to rule 2a–7 and Form N–MFP under the Investment Company Act would not, if adopted, have a significant economic impact on a substantial number of small entities.

The Commission requests written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small businesses and provide empirical data to support the extent of the impact.

VIII. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA") in accordance with section 3(a) of the Regulatory Flexibility Act.[121] It relates to the Commission's proposed amendments to rule 5b–3 under the Investment Company Act and Forms N–1A, N–2 and N–3 under the Investment Company Act and Securities

[117] 15 U.S.C. 80a–2(c); 15 U.S.C. 77b(b).

[118] This assessment is based on a staff review of fund shareholder reports filed with the Commission.

[119] 5 U.S.C. 605(b).

[120] 17 CFR 270.0–10(a).

[121] 5 U.S.C. 603(a).

Act and proposed rule 6a–5 under the Investment Company Act.

A. Objectives and Legal Basis

As described more fully in Sections I and II of this Release, to implement section 939A of the Dodd-Frank Act, the Commission is proposing to amend (i) rule 5b–3 to eliminate references to the credit rating and replace it with an alternative standard of credit-worthiness that is designed to appropriately achieve the same purpose as the use of the credit rating and (ii) Forms N–1A, N–2 and N–3 to eliminate the required use of NRSRO credit ratings by funds that choose to use credit quality categorizations in the required table, chart, or graph of portfolio holdings in their shareholder reports. The Commission is also proposing new rule 6a–5 to set forth a standard of credit-worthiness for purposes of section 6(a)(5)(A)(iv) of the Act, as anticipated by the Dodd Frank Act, which eliminates the investment grade standard from section 6(a)(5) of the Investment Company Act.

The Commission is proposing amendments to rule 5b–3 pursuant to our authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)] and section 939A of the Dodd-Frank Act. The Commission is proposing rule 6a–5 pursuant to our authority set forth in section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)] and section 939 of the Dodd-Frank Act, codified at section 6(a)(5)(A)(iv)(I) of the Investment Company Act [15 U.S.C. 80a–6(a)(5)(A)(iv)(I)]. The Commission is proposing amendments to Forms N–1A, N–2 and N–3 pursuant to the authority set forth in sections 5, 6, 7, 10 and 19(a) of the Securities Act and sections 8, 24(a), 30 and 38 of the Investment Company Act.

B. Small Entities Subject to the Rule

The proposed amendments to rule 5b–3 and proposed rule 6a–5 under the Investment Company Act would affect funds and BIDCOs, respectively, including entities that are considered to be a small business or small organization (collectively, "small entity") for purposes of the Regulatory Flexibility Act.

Investment Companies. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[122] Based on a review of filings submitted to the Commission, we estimate that 181 investment companies may be considered small entities and that all of these investment companies may potentially rely on rule 5b–3.[123] We estimate that approximately 150 investment companies that meet the definition of small entity would be subject to the proposed amendments to Forms N–1A, N–2 and N–3.

BIDCOs. Under the standards adopted by the Small Business Administration, small entities in the financial investment industry include entities with $7 million or less in annual receipts.[124] We do not have any data and are not aware of any databases that compile information regarding how many BIDCOs would be small entities under this definition. We request comment on how many BIDCOs are small entities under this definition.

C. Reporting, Recordkeeping, and Other Compliance Requirements

Rule 5b–3. We propose to amend rule 5b–3 to allow a fund to treat the acquisition of a repurchase agreement as an acquisition of securities collateralizing the repurchase agreement for purposes of sections 5(b)(1) and 12(d)(3) of the Act if the collateral other than cash or government securities consists of securities that the fund's board of directors (or its delegate) determines at the time the repurchase agreement is entered into are: (i) Issued by an issuer that has the highest capacity to meet its financial obligations; and (ii) sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven days. A fund that acquires repurchase agreements and intends the acquisition to be treated as an acquisition of the collateral securities must adopt and implement written policies and procedures reasonably designed to comply with the conditions of rule 5b–3, including any credit quality or liquidity requirements that we adopt.[125]

We have estimated the costs of these amendments previously in the cost-benefit analysis in Section V above.[126]

Proposed rule 6a–5. Proposed rule 6a–5 would impose no reporting, recordkeeping or other compliance requirements.

Forms N–1A, N–2 and N–3. The proposed amendments to Forms N–1A, N–2 and N–3 would apply to open-end management investment companies, closed-end management investment companies and separate accounts organized as management investment companies that offer variable annuity contracts, including those that are small entities. We are proposing to amend the forms to eliminate the required use of NRSRO credit ratings by funds that choose to use credit quality categorizations in the required table, chart, or graph of portfolio holdings in their shareholder reports. If a fund chooses to use NRSRO credit ratings to depict credit quality of portfolio holdings, the proposed amendments, like the current forms, generally would require the fund to use the credit ratings of a single NRSRO. The proposed amendments would clarify that, if credit ratings of the NRSRO selected by a fund are not available for certain holdings, the fund must briefly discuss the methodology for determining credit quality for those holdings, including, if applicable, the use of credit ratings assigned by another NRSRO. For purposes of the cost-benefit analysis, we have estimated that any cost imposed on funds would not be material.

D. Duplicating, Overlapping, or Conflicting Federal Rules

Rule 31a–1 under the Act requires the retention of ledger accounts for each portfolio security and each person through which a portfolio transaction is effected, including certain records of collateral for monies borrowed and loaned.[127] Although some of the procedures under the proposed amendments to rule 5b–3 may overlap with information in the ledgers, we believe any overlap would be minimal and the rule 5b–3 procedures would contain additional information specifically related to the concerns underlying these rules. The Commission believes that there are no other rules that duplicate, overlap, or conflict with the proposed amendments to Forms N–1A, N–2 and N–3 and proposed new rule 6a–5.

E. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the proposed rule and rule and form amendments, the Commission considered the following alternatives: (i)

[122] 17 CFR 270.0–10(a).

[123] The 181 investment companies that meet the definition of small entity include business development companies, which are subject to sections 5 and 12 of the Investment Company Act. 15 U.S.C. 80a–58; 15 U.S.C. 80a–59.

[124] 13 CFR 121.201.

[125] 17 CFR 270.38a–1(a).

[126] *See supra* Section V.B.2.

[127] *See* rule 31a–1(b)(2)(i)(d).

Establishing different compliance standards or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (iii) use of performance rather than design standards; and (iv) exempting small entities from all or part of the requirements.

The Commission believes that, at the present time, special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed rule and amendments to rules and forms are intended to implement sections 939 and 939A of the Dodd-Frank Act. We believe that, with respect to rule 5b–3, different credit quality standards, special compliance requirements or timetables for small entities, or an exemption from coverage for small entities, may create a risk that those entities could acquire repurchase agreements with collateral that is less likely to retain its market value or liquidity in the event of a counterparty default. Similarly, with respect to proposed rule 6a–5, we believe that special compliance requirements or timetables for small entities, or an exemption from coverage for small entities, may create a risk that those BIDCOs could acquire debt securities that are not of sufficiently high credit quality that they would be likely to maintain a fairly stable market value or be liquidated easily, as we believe may have been intended for the BIDCO to support its long-term commitments. Further consolidation or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's goals of fostering investor protection.

The proposed form amendments, if adopted, would apply to all investment companies that use Forms N–1A, N–2 and N–3 to register under the Investment Company Act and to offer their securities under the Securities Act. If the Commission excluded small entities from the proposed form amendments, small entities would be required to use NRSRO credit ratings if they choose to depict credit quality, while other entities would not be subject to that requirement. We believe this outcome is inconsistent with section 939A of the Dodd-Frank Act. We believe that special compliance or reporting requirements, or an exemption, for small entities would not be appropriate because the proposed requirement—that if a fund chooses to use NRSRO credit ratings to depict credit quality of portfolio holdings, generally it must use the ratings of a single NRSRO—is intended to eliminate the possibility that a fund of any size could choose to use NRSRO credit ratings and then select the most favorable ratings among credit ratings assigned by multiple NRSROs.

We have endeavored through the proposed form amendments to minimize regulatory burden on investment companies, including small entities, while meeting our regulatory objectives. We have endeavored to clarify, consolidate, and simplify the requirements applicable to investment companies, including those that are small entities. Finally, the proposal would use performance rather than design standards for determining the credit quality of specific securities.

For these reasons, we have not proposed alternatives to the proposed rule and rule and form amendments.

F. Request for Comments

We encourage the submission of comments with respect to any aspect of the IRFA. In particular, the Commission seeks comment on the number of small entities that would be subject to the proposed rule and rule and form amendments and whether the effect of the proposed rule on small entities subject to it would be economically significant. Commenters are asked to describe the nature of any impact and provide empirical data supporting its extent. These comments will be considered in connection with any adoption of the proposed rule and rule and form amendments, and reflected in a Final Regulatory Flexibility Analysis.

Comments should be submitted in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Comments may also be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–7–11, and this file number should be included on the subject line if e-mail is used.[128] Comment letters will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520, on official business days between the hours of 10 a.m. and 3 p.m. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).

[128] Comments on the IRFA will be placed in the same public file that contains comments on the proposed rule and rule and form amendments.

Statutory Authority

The Commission is proposing amendments to rules 2a–7 and 5b–3 under the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)] and section 939A of the Dodd-Frank Act. The Commission is proposing new rule 6a–5 under the authority set forth in section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)] and section 939 of the Dodd-Frank Act, to be codified at section 6(a)(5)(A)(iv)(I) of the Investment Company Act [15 U.S.C. 80a–6(a)(5)(A)(iv)(I)]. The Commission is proposing amendments to Form N–1A, Form N–2 and Form N–3 under the authority set forth in sections 5, 6, 7, 10 and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and sections 8, 24(a), 30 and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29 and 80a–37]. The Commission is proposing amendments to Form N–MFP under the authority set forth in sections 8(b), 30(b), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(b), 80a–30(a) and 80a–37(a)] and section 939A of the Dodd-Frank Act.

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follow:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

2. The authority citation for part 270 is revised to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

Section 270.6a–5 is also issued under 15 U.S.C. 80a–6(a)(5)(A)(iv)(I).

* * * * *

3. Section 270.2a–7 is amended by:

a. In paragraph (a)(5), removing the words "and (D)";

b. Removing paragraph (a)(11);

c. Redesignating paragraphs (a)(12) through (a)(20) as (a)(11) through (a)(19);

d. Revising newly designated paragraph (a)(11);

e. Revising newly designated paragraph (a)(13);

f. Removing paragraph (a)(21);

g. Redesignating paragraph (a)(22) as paragraph (a)(20);

h. Removing paragraph (a)(23);

i. Redesignating paragraphs (a)(24) through (a)(29) as paragraphs (a)(21) through (a)(26);

j. Removing paragraph (a)(30);

k. Redesignating paragraphs (a)(31) and (a)(32) as paragraphs (a)(27) and (a)(28);

l. Revising paragraphs (c)(3)(i), (c)(3)(iii), and (c)(3)(iv)(C);

m. Adding paragraph (c)(3)(iv)(D);

n. In paragraph (c)(7):

i. Revising the paragraph heading;

ii. Revising paragraph (c)(7)(i);

iii. In the introductory text of paragraph (c)(7)(ii), removing the phrase "paragraphs (c)(7)(ii)(A) through (D)" and adding in its place "paragraphs (c)(7)(ii)(A) through (C)";

iv. Adding "or" at the end of paragraph (c)(7)(ii)(B);

v. Removing paragraph (c)(7)(ii)(C) and redesignating paragraph (c)(7)(ii)(D) as paragraph (c)(7)(ii)(C);

o. Revising paragraph (c)(10)(v)(A);

p. Revising paragraph (c)(11)(iii);

q. In paragraph (e):

i. Removing the words "(a)(11)(i) (designation of NRSROs);" from the introductory text of paragraph (e); and

ii. Revising paragraph (e)(1).

These additions and revisions read as follows:

§ 270.2a–7 Money market funds.

(a) * * *

(11) *Eligible Security* means a security with a remaining maturity of 397 calendar days or less that the fund's board of directors determines presents minimal credit risks (which determination must be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations).

* * * * *

(13) *First Tier Security* means any Eligible Security:

(i) The issuer of which the fund's board of directors has determined has the highest capacity to meet its short-term financial obligations;

(ii) That is a security issued by a registered investment company that is a money market fund; or

(iii) That is a Government Security.

* * * * *

(c) * * *

(3) * * *

(i) *General.* The money market fund shall limit its portfolio investments to those United States Dollar-Denominated securities that are at the time of Acquisition Eligible Securities.

* * * * *

(iii) *Securities Subject to Guarantees.* A security that is subject to a Guarantee may be determined to be an Eligible Security or a First Tier Security based solely on whether the Guarantee is an Eligible Security or First Tier Security, as the case may be, provided however, that the issuer of the Guarantee, or another institution, has undertaken to promptly notify the holder of the security in the event the Guarantee is substituted with another Guarantee (if such substitution is permissible under the terms of the Guarantee).

(iv) * * *

(C) The fund's board of directors determines that the Underlying Security or any Guarantee of such security is of high quality and subject to very low credit risk; and

(D) The issuer of the Conditional Demand Feature, or another institution, has undertaken to promptly notify the holder of the security in the event the Conditional Demand Feature is substituted with another Conditional Demand Feature (if such substitution is permissible under the terms of the Conditional Demand Feature).

* * * * *

(7) *Monitoring, Defaults and Other Events.*

(i)(A) *Monitoring.* In the event the money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware of any credible information about a portfolio security or an issuer of a portfolio security that may suggest that the security is no longer a First Tier Security or a Second Tier Security, as the case may be, the board of directors shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders. This reassessment shall not be required if the fund disposes of the security (or it matures) within five Business Days after the date the money market fund's adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware of the relevant information, and the board is subsequently notified of the adviser's actions.

(B) *Special Rule for Certain Securities Subject to Demand Features.* If, as a result of a portfolio security that ceases to be a First Tier Security, more than 2.5 percent of the fund's Total Assets are invested in securities issued by or subject to Demand Features from a single institution that are Second Tier Securities, the fund shall reduce its investment in securities issued by or subject to Demand Features from that institution to no more than 2.5 percent of its Total Assets by exercising the Demand Features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.

* * * * *

(10) * * *

(v) * * *

(A) The periodic testing, at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions, of the money market fund's ability to maintain a stable net asset value per share based upon specified hypothetical events that include, but are not limited to, a change in short-term interest rates, an increase in shareholder redemptions, an adverse change in the ability of the issuer of a portfolio security to meet its short-term financial obligations or a default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and commercial paper and other types of securities held by the fund.

* * * * *

(11) * * *

(iii) *Credit Risk Analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks used to determine the status of the security as an Eligible Security shall be maintained and preserved in an easily accessible place.

* * * * *

(e) * * *

(1) *Written Guidelines.* The Board shall establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (c)(3) of this section (by

reference to paragraph (a)(11)) and procedures under which the delegate makes such determinations.

* * * * *

4. Section 270.5b–3 is amended by:

a. Adding "or" at the end of paragraph (c)(1)(iv)(B);

b. Revising paragraph (c)(1)(iv)(C);

c. Removing paragraph (c)(1)(iv)(D);

d. Removing paragraphs (c)(5), (c)(6), and (c)(8);

e. Redesignating paragraph (c)(4) as (c)(5);

f. Adding new paragraph (c)(4); and

g. Redesignating paragraph (c)(7) as paragraph (c)(6).

The revisions read as follows:

§ 270.5b–3 Acquisition of repurchase agreement or refunded security treated as acquisition of underlying securities.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(C) Securities that the investment company's board of directors, or its delegate, determines at the time the repurchase agreement is entered into:

(*1*) Each issuer of which has the highest capacity to meet its financial obligations; and

(*2*) Are sufficiently liquid that they can be sold at approximately their carrying value in the ordinary course of business within seven calendar days; and

* * * * *

(4) *Issuer,* as used in paragraph (c)(1)(iv)(C) of this section, means the issuer of a collateral security or the issuer of an unconditional obligation of a person other than the issuer of the collateral security to undertake to pay, upon presentment by the holder of the obligation (if required), the principal amount of the underlying collateral security plus accrued interest when due or upon default.

* * * * *

5. Section 270.6a–5 is added to read as follows:

§ 270.6a–5 Purchase of certain debt securities by companies relying on section 6(a)(5) of the Act.

For purposes of reliance on the exemption for certain companies under section 6(a)(5)(A) of the Act (15 U.S.C. 80a–6(a)(5)(A)), a company shall be deemed to have met the requirement for credit-worthiness of certain debt securities under section 6(a)(5)(A)(iv)(I) of the Investment Company Act (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) if, at the time of purchase, the board of directors (or its delegate) determines or members of the company (or their delegate) determine that the debt security is:

(a) Subject to no greater than moderate credit risk; and

(b) Sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

6. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

7. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by revising Item 27(d)(2) to read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 27. Financial Statements

* * * * *

(d) *Annual and Semi-Annual Reports.* * * *

(2) *Graphical Representation of Holdings.* One or more tables, charts, or graphs depicting the portfolio holdings of the Fund by reasonably identifiable categories (*e.g.,* type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. The categories and the basis of presentation (*e.g.,* net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Fund, given its investment objectives. If the Fund uses the credit ratings, as defined in section 3(a)(60) of the Securities Exchange Act [15 U.S.C. 78(c)(a)(60)], assigned by a nationally recognized statistical rating organization ("NRSRO"), as defined in section 3(a)(62) of the Securities Exchange Act [15 U.S.C. 78(c)(a)(62)], to categorize the credit quality of portfolio holdings, it should use the credit ratings of only one NRSRO except in the case of portfolio holdings that are not rated by that NRSRO. If credit ratings of that NRSRO are not available for certain holdings, the Fund must briefly discuss the methodology for determining credit quality for such holdings, including, if applicable, the use of credit ratings assigned by another NRSRO.

* * * * *

8. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by revising Instruction 6(a) to Item 24 to read as follows:

Note: The text of Form N–2 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 24. Financial Statements

* * * * *

Instructions:

* * * * *

6. * * *

a. One or more tables, charts, or graphs depicting the portfolio holdings of the Registrant by reasonably identifiable categories (*e.g.,* type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. The categories and the basis of presentation (*e.g.,* net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Registrant, given its investment objectives. If the Registrant uses the credit ratings, as defined in Section 3(a)(60) of the Exchange Act [15 U.S.C. 78(c)(a)(60)], assigned by a nationally recognized statistical rating organization ("NRSRO"), as defined in Section 3(a)(62) of the Exchange Act [15 U.S.C. 78(c)(a)(62)], to categorize the credit quality of portfolio holdings, it should use the credit ratings of only one NRSRO except in the case of portfolio holdings that are not rated by that NRSRO. If credit ratings of that NRSRO are not available for certain holdings, the Registrant must briefly discuss the methodology for determining credit quality for such holdings, including, if applicable, the use of credit ratings assigned by another NRSRO.

* * * * *

9. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by revising Instruction 6(i) to Item 28(a) to read as follows:

Note: The text of Form N–3 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 28. Financial Statements

(a) * * *

Instructions:

* * * * *

6. * * *

(i) One or more tables, charts, or graphs depicting the portfolio holdings of the Registrant by reasonably identifiable categories (*e.g.,* type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value or total investments attributable to each. If the Registrant has sub-accounts, provide the information separately for each sub-account. The categories and the basis of presentation (*e.g.,* net asset value or total investments) should be selected, and the presentation should be formatted, in a manner reasonably designed to depict clearly the types of investments made by the Registrant, given its investment objectives. If the Registrant uses the credit ratings, as defined in Section 3(a)(60) [15 U.S.C. 78c(a)(60)] of the Exchange Act, assigned by a nationally recognized statistical rating organization ("NRSRO"), as defined in Section 3(a)(62) of the Exchange Act [15 U.S.C. 78c(a)(62)], to categorize the credit quality of portfolio holdings, it should use the credit ratings of only one NRSRO except in the case of portfolio holdings that are not rated by that NRSRO. If credit ratings of that NRSRO are not available for certain holdings, the Registrant must briefly discuss the methodology for determining credit quality for such holdings, including, if applicable, the use of credit ratings assigned by another NRSRO.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

10. Form N–MFP (referenced in § 274.201) is amended by:

a. Revising Item 33;

b. Removing Item 34;

c. Revising Item 37.b;

d. Removing Item 37.c;

e. Removing Items 38.b and 38.c;

f. Removing Items 39.c and 39.d;

g. Redesignating Items 35 through 46 as Items 34 through 45; and

h. In redesignated Item 38, replacing "Items 37 and 38" with "Items 36 and 37".

The revisions read as follows:

Note: The text of Form N–MFP does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–MFP

* * * * *

Item 33

Indicate whether the security is a First Tier Security, a Second Tier Security or no longer an Eligible Security.

* * * * *

Item 37

* * * * *

b. The period remaining until the principal amount of the security may be recovered through the Demand Feature.

Dated: March 3, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–5184 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. FDA–1981–N–0012] (Formerly Docket No. 1981N–0022)

RIN 0910–AF45

Benzocaine; Weight Control Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule to reclassify benzocaine from its previously proposed monograph status (category I) for over-the-counter (OTC) weight control use to nonmonograph status. Although, in the **Federal Register** of February 26, 1982, an advanced notice of proposed rulemaking (ANPR) included the recommendation of an Advisory Panel, consisting of health care providers from outside FDA, recommended that benzocaine should be generally recognized as safe and effective (GRASE) for weight control, this document includes our first evaluation of benzocaine for this use. Based on our evaluation of the available data and information, we have tentatively concluded that the data are not sufficient to support the safety and effectiveness of benzocaine for this use. This proposed rule, if finalized, would require an approved new drug application (NDA) or abbreviated new drug application (ANDA) for the marketing of OTC weight control products containing benzocaine.

DATES: Submit written or electronic comments on the proposed rule by June 7, 2011. See section IX of this document for information on the proposed effective date of this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–1981–N–0012 (formerly Docket No. 1981N–0022 and RIN No. 0910–AF45 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–1981–N–0012 (formerly Docket No. 1981N–0022) and RIN No. 0910–AF45 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michelle M. Jackson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, MS 5411, Silver Spring, MD 20993–0002, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Document

In the **Federal Register** of February 26, 1982, we (FDA) published an ANPR to establish a monograph for OTC weight control drug products. The ANPR included the recommendations of an Advisory Review Panel on the OTC Miscellaneous Internal Drug Products (the Panel) that evaluated all OTC weight control drug products on the market at the time the OTC drug review began in 1972. The Panel consisted of

scientists and health care providers from outside FDA. The Panel concluded that "benzocaine is safe for oral use as an OTC anorectic in a dose of 3 to 15 milligrams (mg) in gum, lozenges, or candy" and that "benzocaine in the form of gum, lozenges, or candy is an effective OTC drug product for weight control" (47 FR 8466 at 8474). The Panel believed that benzocaine numbed the oral cavity (including the taste buds), thereby discouraging food consumption and decreasing caloric intake.

We reviewed the information and data available to the Panel as well as information and data that has been developed since the Panel met to help us determine whether benzocaine is GRASE when used in OTC weight control drug products. Under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), all "new drugs" are required to obtain approval under section 505 of the FD&C Act (21 U.S.C. 355) prior to marketing. Most drugs are "new drugs" under the FD&C Act; however, a drug is excluded from being a "new drug" (and therefore is not required to obtain approval under section 505) if it is "generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof." (21 U.S.C. 321(p)(1)).[1]

As explained in this document, we tentatively conclude that the existing evidence is inadequate to establish that OTC weight control drug products containing benzocaine are GRASE. Accordingly, we are proposing to classify benzocaine as nonmonograph (i.e., not GRASE) for use in OTC weight control drug products. If this proposed rule becomes a final rule, OTC weight control drug products containing benzocaine will require an approved NDA or ANDA. Studies that may help demonstrate the safety and effectiveness of weight loss drug products are described in an FDA guidance entitled "Developing Products for Weight Management" (Ref. 1).

II. Rulemakings and Petitions for OTC Weight Control Drug Products

The Panel responsible for evaluating OTC weight control drug products recommended that benzocaine-containing drug products be deemed GRASE for use in OTC weight control drug products. The Panel's recommendations were published in the **Federal Register** as an ANPR for OTC weight control products in 1982 (47 FR 8466).

Following publication of the 1982 ANPR, Thompson Medical Co., a manufacturer of OTC weight control drug products, submitted two citizen petitions, one in 1990 and another in 1992, to support the effectiveness of benzocaine for use as an appetite suppressant (Refs. 2 and 3). The 1990 petition (Ref. 2) included a clinical study by Collipp (Refs. 4 and 5) and a summary of a clinical study by Piscano and Lichter (Ref. 6) as data supporting the effectiveness of benzocaine as an appetite suppressant. We responded to the manufacturer's 1990 petition (Ref. 7) reviewing the data submitted in the petition and explaining our finding that the data did not provide substantial evidence from adequate and well-controlled studies to support the effectiveness of benzocaine for weight control use.

The 1992 petition (Ref. 3) was submitted in response to our 1991 letter. The petition provided two unpublished statistical reevaluations of the Collipp study, arguing that this data supported finding benzocaine GRASE for use in OTC weight control drug products. We responded to the petition in 1993 (Ref. 8), stating that the reevaluations of the Collipp study did not substantiate the claim of effectiveness of benzocaine for use in weight control. The two reanalyses of the Collipp data include: (1) An analysis of covariance excluding subjects that failed to meet either the age or the degree of overweight inclusion criteria, and (2) a hierarchical regression model to determine the effect of benzocaine after attempting to control for any familial effects. Neither of these analyses adequately addressed the three main problems that were listed in the 1991 response: (1) Possible breaking of the blind; (2) imbalance in the sample for important variables (age by family status); and (3) lack of randomization within families, affecting the independence of observations. These problems potentially biased the data affecting the interpretability of the study results.

Subsequent to our letter, we received draft protocols for effectiveness studies (Ref. 9) from the same manufacturer, which were intended to generate support for a GRASE finding. We sent recommendations on the draft protocols in 1992 (Ref. 10), but have not yet received any study results.

III. Efficacy Evaluation

We are proposing that benzocaine be classified as nonmonograph at any concentration for use in OTC weight control drug products. This conclusion is based in part on our review of the effectiveness data that was submitted to the Panel (Refs. 11 through 17) and additional data submitted to us after publication of the 1982 ANPR, including the two petitions and draft protocols described previously (Refs. 2, 3, and 9). In our responses to the petitions, we explained in detail why we did not find the available data adequate to support a determination that benzocaine is generally recognized as effective (GRAE) for this use (Refs. 7, 8, and 10). In this document, we summarize the available data and limitations that prevent us from finding benzocaine GRAE for use in OTC weight control drug products. We have not received any additional data from any company or citizen since our 1992 response letter (Ref. 10) discussed previously; and we are not aware of any safety or effectiveness studies for benzocaine in OTC weight control drug products conducted since 1992.

In the following sections, we will first describe the studies reviewed by the Panel. After reviewing the data and findings from these studies, we will explain why the Agency has concluded that these studies do not support a finding that benzocaine is GRAE for use in OTC weight control drug products.

A. Non-Clinical Studies

1. Review of Studies

In the ANPR, we reported that the Panel considered a few nonclinical studies (Refs. 11, 12, and 13) on benzocaine for weight control. One of the factors involved in overeating and resulting obesity is the need to satisfy the sense of taste. Horowitze (Ref. 11) and Rosner (Ref. 12) showed that there appears to be a decreased ability to detect degrees of sweetness by taste perception after chewing gum containing benzocaine. Coons (Ref. 13) demonstrated the effects of a local anesthetic on hunger reduction in rats. The Panel considered this study to be an objective demonstration of the effectiveness of a local anesthetic on hunger reduction.

2. Analysis of Studies

We do not believe these studies support a GRAE determination because they do not demonstrate that decreased taste perception or decreased hunger results in weight loss. To find benzocaine GRAE based in part on these types of studies, we would also need data demonstrating what level of decrease in taste perception or hunger actually resulted in a "clinically

[1] Consistent with the principles explained previously, the OTC drug review regulations in 21 CFR 330.10 specify the considerations and evidence required to establish both safety and effectiveness.

significant benefit of the type claimed" (*i.e.,* weight loss) as required under § 330.10(a)(4)(ii) (21 CFR 330.10(a)(4)(ii)).

B. Clinical Studies

1. Review of Studies

The Panel also considered clinical studies that included weight loss as an endpoint. Gould (Refs. 14 and 15) assessed various case reports citing 1.5 to 2.0 pounds (lbs) per week weight loss using lozenges containing benzocaine and essential oils in conjunction with dietary restrictions. Plotz (Ref. 16) conducted an uncontrolled, non-randomized 10-week study of 50 overweight adults (12 to 102 lbs overweight). The subjects were instructed to chew one or two pieces of gum for 5 or 10 minutes followed by a glass of water, just before meals. If subjects became hungry between meals, they could chew gum every few hours. The study results showed weight loss (2 pounds per week) in 45 of 50 patients using the benzocaine gum in conjunction with dietary restrictions.

McClure and Brush (Ref. 17) conducted a placebo-controlled, randomized, double-blinded 21-week study of 308 overweight adults (255 females and 53 males). The subjects were divided into five paired treatment groups:

- Group 1: Dextroamphetamine sulfate (10 mg, daily)
- Group 2: OTC proprietary appetite suppressant (AYDS)
- Group 3: Dietary restriction (800 to 1,200 calories daily)
- Group 4: Glucose hard candy containing benzocaine, caffeine, and vitamins (benzocaine group)
- Group 5: Glucose candy only (control group)

Over the course of 4 weeks, 170 participants dropped out of the study (37 participants from the dextroamphetamine group, 43 participants from the AYDS group, 51 participants from the dietary restriction group, 9 participants from the benzocaine group, and 30 participants from the control group). The investigators reported an average weight loss during the first 4 weeks of 4.6 lbs for the glucose (control) group and 12.1 lbs for the benzocaine group. After 21 weeks, the control group lost a weekly average of 0.60 lbs as compared to 2.20 lbs for the benzocaine group.

In addition to these studies reviewed by the Panel, as described previously, we also reviewed clinical studies submitted by a manufacturer of OTC weight control drug products in two petitions. The studies provided in the petitions included weight loss as an endpoint. Reports purporting to be two studies by Collipp (one published and one unpublished) were submitted. These reports appear to be the same study (Refs. 4 and 5). The Collipp study was designed to be a 6-week, double-blind, placebo-controlled, randomized trial comparing benzocaine (5 mg) lozenges with placebo lozenges that were identical in appearance (Ref. 4). Male or female subjects who weighed 15 to 30 percent more than the ideal weight for their body frame as determined from Metropolitan Life Insurance Co. weight tables and were between 14 and 55 years of age were eligible for enrollment. Subjects were recruited from the same families. Subjects were instructed to follow a 1,250 calorie diet and to take 1 to 2 lozenges 10 minutes before meals, 1 lozenge instead of dessert, and 1 or 2 lozenges between meals. Subjects were also instructed to drink a glass of water, tea, coffee, or other non-caloric beverage with each lozenge ingestion. Body weight was measured at week 0 and biweekly for the next 6 weeks. Subjects were also asked to rate the average quality of between-meal appetite suppression as mild, moderate, or complete.

The study results showed that the mean body weight decreased from week 0 in both the active treatment and placebo groups. Subjects treated with benzocaine had a mean weight loss that was statistically significant ($p \leq: 0.001$) at all time points. The mean weight loss during the study was approximately twice as great for subjects treated with benzocaine (-3.5, -4.9, and -6.0 at 2, 4, and 6 weeks, respectively) compared to placebo (-2.1, -2.9, and -2.7 at 2, 4, and 6 weeks, respectively). The manufacturer also submitted a study by Piscano and Lichter (Ref. 6) which consisted of a 1-page summary describing an 8-week uncontrolled trial involving 26 children. The summary listed the baseline weight, final weight, and weight loss of each subject. The summary results showed that the subjects lost approximately 0.5 lbs/week. There was no protocol description and no statistical analysis.

2. Analysis of Studies

We found a lack of substantial evidence consisting of adequate and well-controlled studies, as required in § 330.10(a)(4)(ii), on which to base a determination of the effectiveness of benzocaine in OTC weight control drug products. In general, the clinical studies reviewed by the Panel (Refs. 14 through 17) are inadequately controlled, and study results were not clinically and statistically significant. For example, among other limitations, the Gould studies (Refs. 14 and 15) were not well-controlled, as these studies consisted of case reports. Similarly, the Plotz study (Ref. 16) was not well controlled, being both uncontrolled and non-randomized. Finally, as detailed in our 1993 response (Ref. 8), the McClure and Brusch study (Ref. 17) had significant methodological flaws including potential issues with subject recruitment, inconsistent follow up of subjects and inadequate assessment of baseline characteristics.

The materials submitted in the petition were also insufficient to establish the effectiveness of benzocaine in OTC weight control products. For example, the Pisano and Lichter (Ref. 6) study was not adequate and well-controlled as it consisted of case reports, did not include a protocol description and did not provide a statistical analysis. Similarly, the Collipp study and the reevaluations of the study submitted in the petitions do not provide detail regarding study design and outcomes sufficient to show benzocaine is GRASE for use in weight control. Specifically, the Collipp study had a significant number of limitations that prevent us from concluding that benzocaine is GRAE for weight control:

- Non-random selection of subjects
- Possible breaking of blinding
- Analysis did not account for a lack of independence among subjects within the same family, potentially affecting the study's findings

It is important to note that after providing the petitioning manufacturer with a response describing these limitations, we received a protocol for a further study from the manufacturer (Ref. 9). We provided feedback on the protocol in 1992 (Ref. 10), but we have not yet received the study results from the manufacturer. In order to establish effectiveness, additional data are still needed to show that benzocaine causes a clinically and statistically significant weight loss when compared with placebo. The industry is advised to consult a recently published FDA guidance on the development of products for weight management about the requirement of clinical data (Ref. 1).

IV. Safety Evaluation

We are not aware of adequate data to demonstrate that OTC weight control drug products containing benzocaine are generally recognized as safe (GRAS) as defined under § 330.10(a)(4)(ii). Under this regulatory provision, support for a GRAS showing "shall consist of adequate tests by methods reasonably applicable to show the drug is safe under the prescribed, recommended, or suggested conditions of use." We believe

that the safety of the Panel's proposed benzocaine dosing for OTC weight control use (multiple 3 to 15 mg doses for up to 3 months) has not been adequately established. Additional safety data is needed to establish dosage limitations or other aspects of the labeling. Our current recommendation as to what would constitute adequate testing for a weight control drug product is described in our guidance on weight control drug products (Ref. 1).

V. Analysis of Impacts

We have examined the impacts of this proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because few products will likely be affected and those effects would probably be small, we do not believe that this proposed rule would have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. We do not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

If this proposed rule is finalized, OTC marketing of weight control drug products containing benzocaine for this use will cease, unless a product is approved under an NDA or ANDA. In this proposed rule, we tentatively conclude that OTC weight control drug products containing benzocaine lack sufficient evidence to support a finding that such products are GRASE, and that finalization of the regulatory status of this ingredient will benefit consumers by removing from the marketplace products that have not been shown to be safe and effective. We do not expect this rule to have a significant effect on industry as a whole, as we have only been able to identify one company that manufactures a benzocaine-containing OTC weight control drug product.

We have few alternatives available to us when we determine there are no data available to demonstrate that an active ingredient is GRASE. Even without evidence of harm caused by the use of these products, they cannot remain on the market because there is no evidence that they are safe and effective. Accordingly, we have proposed a 30-day period within which companies may remove benzocaine-containing weight control drug products from the market. We believe the only alternative to this approach is a longer implementation period.[2] We could allow a longer implementation period so manufacturers would have time to submit additional effectiveness and safety data, but if we took this approach, consumers would be unnecessarily exposed to products that have not been shown to be effective or safe.

VI. Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Environmental Impact

We have determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." The sole statutory provision giving preemptive effect to the proposed rule is section 751 of the act (21 U.S.C. 379r).

We believe that the preemptive effect of this proposed rule, if finalized, would be consistent with Executive Order 13132. Through the publication of this proposed rule, we are providing notice and an opportunity for State and local officials to comment on this rulemaking.

IX. Proposed Effective Date

Due to effectiveness concerns discussed in this document, any final rule based on this proposal would become effective 30 days after the date of its publication. Manufacturers are urged to comply voluntarily with this proposed rule and to cease OTC marketing at the earliest possible date.

X. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) under Docket No. FDA–1981–N–0012 (formerly 1981N–0022) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register.**)

1. FDA, "Draft Guidance for Industry—Developing Products for Weight Management," February 2007, *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm071612.pdf*, accessed on August 27, 2010.
2. Comment No. CP12, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management System.
3. Comment No. CP15, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management System.
4. Collipp, P. J., "The Treatment of Exogenous Obesity by Medicated Benzocaine Candy: A Double-Blind Placebo-Controlled Study," in OTC Vol. 170010, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management.
5. Collipp, P. J., "The Treatment of Exogenous Obesity by Medicated Benzocaine Candy: A Double Blind Placebo Study," *Obesity/Bariatric Medicine,* 10:123–125, 1981.
6. Piscano, J. and H. Lichter, "A Matter of Taste," Fredrick Fell Publishers, Inc., New York, New York, pp. 42–64, 1979.
7. Comment No. LET82, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management System.
8. Comment No. LET87, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management System.
9. Comment No. PR9, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management System.
10. Comment No. LET84, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management System.

[2] *See* 5 U.S.C. 553(d).

11. Horowitz, S. and R. P. Scalici, "Results of Sensory Panel Tests on Slim-Mint Chewing Gum," in OTC Vol. 170010, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management.
12. Rosner, L., "To Determine the Effect of Chewing Slim-Mint Gum Upon Taste Perception, Particularly Toward Sweetness," in OTC Vol. 170010, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management.
13. Summary Minutes of the 11th meeting of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products held on May 9–10, 1976 in OTC Vol. 170010, Docket No. FDA–1981–N–0012 (formerly 1981N–0022), Division of Dockets Management.
14. Gould, W. L., "On the Use of a Medicament to Reduce the Appetite in the Treatment of Obesity and Other Conditions," *New York State Journal of Medicine,* 47:981–983, 1947.
15. Gould, W. L., "Obesity and Hypertension: The Importance of a Safe Compound to Control Appetite," *North Carolina Medical Journal,* 11:327–334, 1950.
16. Plotz, M., "Obesity," *Medical Times,* 86:860–863, 1958.
17. McClure, C. W. and C. A. Brusch, "Treatment of Oral Syndrome Obesity with Non traditional Appetite Control Plan," *Journal of the American Women's Medical Association,* 28:239–248, 1973.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 310 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by adding paragraphs (a)(20)(i), (a)(20)(ii), and (a)(20)(iii); by revising paragraph (d) introductory text; and by adding paragraph (d)(40) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(20) * * *

(i) [Reserved]

(ii) [Reserved]

(iii) Approved as of [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

Benzocaine

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(40) of this section.

* * * * *

(40) [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], for products subject to paragraph (a)(20)(iii) of this section.

Dated: March 2, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5145 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–157–FOR; OSM 2010–0011]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on removal of required amendment.

SUMMARY: We are announcing receipt of a request to remove a required amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In response to a required program amendment codified in the Federal regulations, Pennsylvania has submitted rationale that it believes supports its position that current program provisions are sufficient to render its program no less effective than the Federal requirements and, therefore, no amendment is necessary. The required amendment pertains to regulatory exemptions for coal extraction incidental to the extraction of other minerals.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time April 8, 2011. If requested, we will hold a public hearing on April 4, 2011. We will accept requests to speak until 4 p.m., local time on March 24, 2011.

ADDRESSES: You may submit comments, identified by "PA–157–FOR; Docket ID: OSM–2010–0011" by either of the following two methods:

Federal eRulemaking Portal: http://www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2010–0011. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, PA 17101.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at *http://www.regulations.gov,* information may also be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Pittsburgh Field Division Office.

George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101, *Telephone:* (717) 782–4036, *E-mail: grieger@osmre.gov.*

Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, *Telephone:* (717) 787–5103, *E-mail: tcallaghan@state.pa.us.*

FOR FURTHER INFORMATION CONTACT: George Rieger, *Telephone:* (717) 782–4036. *E-mail: grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Description of the Request
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the

regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Request

By letter dated August 6, 2010 (Administrative Record Number PA 892.12), Pennsylvania sent us a response to a program amendment that was required by OSMRE in a final rule notice published in the **Federal Register** on November 7, 1997, (62 FR 60177) and codified in the Federal Regulations at 30 CFR 938.16(uuu). This required amendment provided that Pennsylvania submit an amendment to provide counterparts to the Federal regulations at 30 CFR 702.15(d), (e), (f), and 702.17(c)(2), and (c)(3). The Federal regulations pertain to (1) conditions of exemption and right of inspection and entry; and (2) revocation and enforcement. Pennsylvania submits that its regulatory program already contains counterparts to the Federal regulations and, therefore, is no less effective than the Federal regulations pertaining to incidental coal extraction. Pennsylvania requests that we remove the condition found at 30 CFR 938.16(uuu) on this basis.

Pennsylvania is submitting the request that includes three parts: (1) Environmental Hearing Board Act (35 P.S. Sections 7511–7516); (2) 25 Pa Code Chapter 1021; and (3) 25 Pa Code 77.352. In summary, the Federal regulations and PADEP rationale are provided as follows:

Federal Regulations: 30 CFR 702.15, Conditions of Exemption and Right of Inspection and Entry, provides with regard to exemptions for coal extraction incidental to the extraction of other minerals, authorized representatives of the regulatory authority and Secretary the right to conduct inspections of operations claiming exemption. The representatives have the right of entry to any mining and reclamation operations without advance notice or search warrants, access to and copies of any relevant records, and to gather physical and photographic evidence. A search warrant may be required for entry into a building.

PADEP Response: OSM's review of 25 Pennsylvania Code (Pa Code) Section 86.5 in the 1997 rulemaking did not include a discussion of the need for 25 Pa Code Section 86.5 to be revised to add counterparts to the Federal regulations at 30 CFR 702.15(d), (e), and (f). Thus, it is not clear why OSM considered 25 Pa Code Section 86.5 to be less effective than the Federal regulations with respect to the right to conduct inspections and right of entry for operations extracting coal incidental to surface mining.

Pennsylvania submits that its regulatory program, upon approval of the program amendment incorporating 25 Pa Code Section 77.352, will contain counterparts to 30 CFR 702.15(d), (e), and (f), and, therefore, is no less effective than the Federal regulations pertaining to incidental coal extraction.

Section 86.5(a) requires that a person who intends to extract coal incidental to the extraction of other minerals "shall do so under the provisions of a noncoal surface mining permit issued under Chapter 77 (relating to noncoal mining) and subject to the conditions described in this section." A person who seeks to engage in incidental coal extraction is required to obtain a noncoal surface mining permit pursuant to Pennsylvania's Noncoal Surface Mining Conservation and Reclamation Act, 52 P.S. Section 3301 *et seq.* (NSMCRA) and the regulations in 25 Pa Code Chapter 77 which implement NSMCRA. Thus, all persons conducting incidental coal extraction under Chapter 86.5 must comply with, and are subject to, the provision of NSMCRA and 25 Pa Code Chapter 77. Section 3314 of NSMCRA provides: "The department shall have the right to enter and inspect all surface mining operations for the purpose of determining conditions of health or safety and for compliance with the provisions of this act and all rules and regulations promulgated pursuant thereto." 52 P.S. Section 3314. According to Pennsylvania, this statutory provision and the implementing regulations in Chapter 77.352, clearly constitute a counterpart to 30 CFR 702.15(d) that is at least no less effective than the Federal regulation.

Sections 702.15(e) and (f) elaborate on the right of authorized representatives of the regulatory authority to conduct inspections of sites conducting incidental coal extraction. Pennsylvania's noncoal mining regulations in 25 Pa Code Chapter 77, (which persons claiming exemption under 25 Pa Code Section 86.5 are subject to pursuant to 25 Pa Code Section 86.5(a)), provide counterparts to the Federal regulations at 30 CFR 702.15(d), (e), and (f). Section 77.352(a)(1) states that the Department and its agents and employees "will have access to, and require the production of, books and papers, documents, and physical evidence pertinent to a matter under investigation." Further 77.352(a)(2) states that Department representatives have the right to "enter a building, property, premises, or place where noncoal mining activities are conducted for the purpose of making an investigation or inspection as may be necessary to ascertain the compliance or noncompliance by a person with the environmental acts and the act and regulations thereunder." These provisions in 25 Pa Code Chapter 77 provide counterparts to 30 CFR 702.15(d), (e), and (f), and, according to Pennsylvania, provide broader authority to Pennsylvania's authorized representatives given that they may enter a building at a surface mine site for the purposes of inspection or investigation without being required to obtain a search warrant. These requirements extend to OSM in their role as oversight agent for the primacy coal mining program. Pennsylvania therefore submits that its regulatory program, upon approval of the program amendment incorporating 25 Pa Code 77.352, will contain counterparts to 30 CFR 702.15(d), (e), and (f) which are no less effective than the Federal regulations.

Federal Regulations: 30 CFR 702.17, Revocation and Enforcement, provides that the regulatory authority may revoke the exemption, if the operator has not established that the activities conducted in the mining area qualify for an exemption. An administrative review of a decision whether to revoke an exemption may be requested by any adversely affected person within 30 days of notification. Lastly, the petition for administrative review will not suspend the effect of the decision of whether to revoke an exemption.

PADEP's Response: OSM's required amendment at 30 CFR 938.16(uuu) with respect to Pennsylvania counterparts for 30 CFR 702.17(c)(2) and (c)(3) also was not discussed in the 1997 rulemaking. More importantly, this part of the

required amendment actually conflicts with OSM's own findings in the 1997 rulemaking.

In the 1997 rulemaking, OSM determined that 25 Pa Code Section 86.5(o) is identical in meaning to 30 CFR 702.17(c)(2); and that 25 Pa Code Section 86.5(n) is identical in meaning to 30 CFR 702.17(c)(3). *See* **Federal Register** (62 FR 60169–70 and Table A). OSM then concluded: "Because the above proposed revisions (listed in Table A) are identical in meaning to the corresponding Federal regulations, the Director finds that Pennsylvania's proposed rules are no less effective than the Federal rules." Thus, the portion of 30 CFR 938.16(uuu) pertaining to counterparts to 30 CFR 702.17(c)(2) and (c)(3) appears to be an error and should be rescinded by OSM on that basis alone.

In any event, Pennsylvania submits that its regulatory program already contains counterparts to 30 CFR 702.17(c)(2) and (c)(3). As previously recognized by OSM in the 1997 Rulemaking, Pennsylvania has regulations which provide for administrative review of Department determinations concerning exemption for incidental coal extraction. *See* **Federal Register** (62 FR 60170). A Department determination to revoke an exemption for incidental coal extraction under Chapter 86.5 would constitute a final action of the Department, which would be appealable to the Environmental Hearing Board. *See* 35 P.S. 7511–7516 (Environmental Hearing Board Act); 35 P.S. 7514 ("no action of the department adversely affecting a person shall be final as to that person until the person has had the opportunity to appeal the action to the board"); 25 Pa. Code Chapter 1021 (Environmental Hearing Board procedural rules); 25 Pa. Code Chapter 1021.2 (defining "action" of the department), Chapter 1021.51 (commencement of an appeal). These statutory and regulatory sections regarding the right of appeal to the Pennsylvania Environmental Hearing Board provide counterparts to 30 CFR 702.17(c)(2).

Pennsylvania also has counterparts to 30 CFR 702.17(c)(3). The Environmental Hearing Board Act states: "No appeal shall act as an automatic supersedeas." 35 P.S. 7514(d). *See* also 25 Pa. Code Chapter 1021.61. In the 1997 Rulemaking, OSM stated as follows with respect to Chapter 86.5(l)(3): In its letter dated March 28, 1997, Pennsylvania stated that appeals to the Environmental Hearing Board (EHB) under the provisions of Chapter 21 [now Chapter 1021] do not stay the effect of the Department of Environmental Protection's (Department) actions. If an appellant wishes to stay the effect of such an action, the appellant must petition the EHB which, in turn, must issue a supersedeas. The Director finds the proposed Pennsylvania regulation no less effective than the Federal regulations, since Pennsylvania law provides, generally, that an appeal does not, by itself, suspend the effect of the decision appealed from. *See* **Federal Register** (62 FR 60170). Pennsylvania contends that this same rationale applies to the required counterpart to 30 CFR 702.17(c)(3). Pennsylvania law provides, generally, that an appeal does not, by itself, suspend the effect of the decision appealed from. Therefore, Pennsylvania submits that its regulatory program, upon approval of the program amendment incorporating, will contain counterparts to 30 CFR 702.17(c)(2) and (c)(3), which are no less effective than the Federal regulations.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Pennsylvania program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

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 your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time March 24, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether

the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 2010.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2011–5404 Filed 3–8–11; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0708, FRL–9277–4]

RIN 2060–AQ78

National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: EPA is taking action to propose amendments to a final rule that provided national emission standards for hazardous air pollutants for existing stationary spark ignition reciprocating internal combustion engines. The final rule was published on August 20, 2010. This action proposes to amend certain regulatory text to clarify compliance requirements related to continuous parameter monitoring systems. EPA is also proposing to correct minor typographical errors in the regulatory text to the August 20, 2010, action.

DATES: *Comments.* Comments must be received on or before April 8, 2011, or 30 days after date of public meeting if one is requested.

Public Meeting. If anyone contacts us requesting to speak at a public meeting by March 16, 2011, a public meeting will be held on March 24, 2011. If you are interested in attending the public meeting, contact Ms. Pamela Garrett at (919) 541–7966 to verify that a meeting will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0708, 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) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below (*see* **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0708. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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.

Public Meeting: If a public meeting is held, it will be held at EPA's campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC or an alternate site nearby.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. EPA also relies on documents in Docket ID Nos. EPA–HQ–OAR–2002–0059, EPA–HQ–OAR–2005–0029, and EPA–HQ–OAR–2005–0030, and incorporated those dockets into the record for this action. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2469; facsimile number (919) 541–5450; e-mail address *king.melanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. General Information
  A. What entities are potentially affected by this action?
  B. What should I consider as I prepare my comments for EPA?
II. Direct Final Rule
III. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act of 1995
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. What entities are potentially affected by this action?

Categories and entities potentially regulated by this action include:

Category	NAICS [1]	Examples of regulated entities
Any industry using a stationary reciprocating internal combustion engine.	2211	Electric power generation, transmission, or distribution.
	622110	Medical and surgical hospitals.
	48621	Natural gas transmission.
	211111	Crude petroleum and natural gas production.
	211112	Natural gas liquids producers.
	92811	National security.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your engine is regulated by this action, you should examine the applicability criteria in 40 CFR 63.6585. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI to only the following address: Ms. Melanie King, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2008–0708.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

(a) Identify the action by docket number and other identifying information (subject heading, **Federal Register** date and page number).

(b) Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations part or section number.

(c) Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

(d) Describe any assumptions and provide any technical information and/or data that you used.

(e) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

(f) Provide specific examples to illustrate your concerns, and suggest alternatives.

(g) Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

(h) Make sure to submit your comments by the comment period deadline identified.

Docket. The docket number for this action is Docket ID No. EPA–HQ–OAR–2008–0708.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action will be posted on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA will post a copy of this action on the TTN's policy and guidance page at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Direct Final Rule

A direct final rule that would make the same changes as those proposed in this notice is published in the Rules and Regulations section of this **Federal Register**. EPA is taking direct final action on the proposed amendments because we view the amendments as noncontroversial and anticipate no significant adverse comments. EPA has explained our reasons for the amendments in the direct final rule. If no significant adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action.

If EPA receives significant adverse comments, we will withdraw only those provisions on which we received those comments. EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or the entire direct final rule in the Rules and Regulations section of this **Federal Register** is withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final rule based on the proposed amendments. EPA will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

The changes to the regulatory text proposed in this notice are identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, *see* the direct final rule published in a separate part of this **Federal Register.**

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget (OMB). This action is a proposed clarification of and correction to certain text in the final rule and is not a "major rule" as defined by 5 U.S.C. 804(2).

However, the final rule promulgated on August 20, 2010, was reviewed by OMB.

B. Paperwork Reduction Act

This action would not impose any new information collection burden. This action proposes to add clarifications and corrections to the final standards. However, OMB has previously approved the information collection requirements contained in the existing regulation under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0548. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this rule on small entities, small entity is defined as: (1) A small business as defined by Small Business Administration (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities because it does not add any additional regulatory requirements because this action only clarifies the existing compliance requirements and corrects typographical errors. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the UMRA.

This proposed action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed action contains no requirements that apply to such governments, imposes no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to these final rules.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the regulation and develops a Tribal summary impact statement.

This proposed rule does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. The proposed rule imposes no new requirements on the one Tribally owned facility. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations

when the Agency decides not to use available and applicable VCS.

This action does not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

This proposed rule does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), because it does not change any regulatory requirements. This action merely corrects and clarifies existing requirements.

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: March 1, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–5195 Filed 3–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R08–OAR–2011–0015; FRL–9277–9]

Clean Air Act Proposed Interim Approval of Title V Operating Permits Program; Southern Ute Indian Tribe

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Title V Operating Permits Program submitted by the Southern Ute Indian Tribe (Tribe). The Tribe's Title V Operating Permit Program (Title V Program) was submitted for the purpose of administering a tribal program for issuing operating permits to all major stationary sources, and certain other sources on the Southern Ute Indian Reservation (Reservation).

DATES: Comments on this proposed action must be received on or before April 8, 2011. Comments should be addressed to the contact indicated below.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0015, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: lebow-aal.deborah@epa.gov* and *north.alexis@epa.gov.*
- *Mail:* Deborah Lebow Aal, Acting Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Deborah Lebow Aal, Acting Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0015. 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 Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, 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: Alexis North, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7005, or *north.alexis@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word *Act* or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The word *Commission* means the joint Southern Ute Indian Tribe/State of Colorado Environmental Commission.

(iii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iv) The word *Title V Program* means the Tribe's *Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated

January 14, 2009 and the subsequent *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010.

(v) The word *Tribe* means the Southern Ute Indian Tribe, unless the context indicates otherwise.

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I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What is being addressed in this document?

Under Title V of the Clean Air Act (the Act or CAA) as amended (1990), EPA has promulgated rules that define the minimum elements of an interim approval of a Title V operating permits program for state and tribal permitting authorities. The corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state and tribal Title V operating permits programs can be found at 57 FR 32250 (July 21, 1992) and 63 FR 1322 (January 10, 2000) and codified at 40 CFR part 70.

In addition, as part of the 1990 Amendments to the CAA, Congress enacted Section 301(d) authorizing EPA to "treat Indian tribes as states" under the Act so that tribes may develop and implement CAA programs in a similar manner as states within tribal reservations or in other areas subject to tribal jurisdiction. Section 301(d)(2) of the Act authorizes EPA to promulgate regulations specifying those provisions of the CAA "for which it is appropriate to treat Indian tribes as States." 42 U.S.C. 7601(d)(2).

On February 12, 1998, EPA issued a final rule specifying those provisions of the CAA for which it is appropriate to treat eligible Indian tribes in a similar manner as states, known as the Tribal Authority Rule (TAR). 63 FR 7254, codified at 40 CFR part 49. As a general matter, EPA determined in the TAR that it is not appropriate to treat Indian tribes in a similar manner as states for purposes of specific CAA program submittal and implementation deadlines. This is because, among other reasons (discussed at 59 FR at 43,964–65), although the CAA contains many provisions mandating the submittal of state plans, programs, or other requirements by certain dates, the Act does not similarly require Indian tribes to develop and seek approval of CAA programs.

Thus, Indian tribes are generally not subject to CAA provisions that specify a deadline by which something must be accomplished, e.g., provisions mandating the submission of state Title V operating permits programs under sections 502(d)(1), 502(d)(2)(B), and 502(d)(3)of the Act. 40 CFR 49.4.

A tribe that meets the eligibility criteria for treatment in a similar manner as a state (TAS) may, however, choose to implement a CAA program. A tribe may also submit reasonably severable portions of a CAA program, if it can demonstrate that its proposed air program is not integrally related to program elements not included in the plan submittal and is consistent with applicable statutory and regulatory requirements. 40 CFR 49.7(c); see also CAA section 110(o). This modular approach is intended to give Indian tribes the flexibility to address their most pressing air quality issues and acknowledges that Indian tribes often have limited resources with which to address their environmental concerns. Consistent with the exceptions listed in 40 CFR 49.4, once submitted, an Indian tribe's proposed air program will be evaluated in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a similar state submittal. 40 CFR 49.9(h).

EPA expects Indian tribes to fully implement and enforce their approved CAA programs and, as with states, EPA retains its authority to impose sanctions for failure to implement an approved air program. *See* 59 FR 43,956 at 43,965 (Aug. 25, 1994) (explaining EPA's rationale for treating Indian tribes in a similar fashion as states for purposes of mandatory sanctions for failure to adequately implement an approved part D program (CAA 179(a)(4)) and with respect to EPA's discretionary authority to impose sanctions (CAA 110(m)); 40 CFR 49.3.

The CAA allows Indian tribes to develop and submit Title V operating permit programs to EPA at their own discretion. The EPA's Title V operating permit program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for interim approval, full approval or disapproval. The Tribe has requested such approval and this action is in response to that request.

III. Evaluation of the Tribe's Authorities

The EPA completed a review of the Tribe's current and pending authority to regulate air pollution sources located within the exterior boundaries of the Reservation. Under section 301(d) of the CAA and the TAR, EPA may treat a tribe in a similar manner as a state for purposes of administering certain CAA programs or grants if the tribe demonstrates that: (1) It is a federally-recognized tribe; (2) it has a governing body carrying out substantial governmental duties and powers; (3) the functions to be exercised by the tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation (or in other areas under the tribe's jurisdiction); and (4) it can reasonably be expected to be capable, in EPA's judgment, of carrying out the functions for which it seeks approval, consistent with the CAA and applicable regulations. The sections below outline the details of EPA's review of the Tribe's authorities.

A. Current Tribal Authority

In July 1998 the Southern Ute Indian Tribe applied for TAS seeking approval to administer a CAA Title V air quality operating permit program throughout the Reservation. The State of Colorado challenged the Tribe's CAA TAS application, asserting that the Act of May 21, 1984, Public Law 98–290, 25 U.S.C. 668, which defined the boundaries of the Reservation, established the State's jurisdiction to regulate non-Indian-owned air pollution sources located on fee lands within the Reservation. The Tribe and the State, while continuing to disagree over who has jurisdiction over these sources, formed the Southern Ute Indian Tribe/State of Colorado Environmental Commission (Commission), and executed an intergovernmental agreement (IGA) on December 13, 1999, to establish a single air quality program applicable to all lands within the exterior boundaries of the Reservation.

In general, the IGA allows for the Tribe to implement and administer CAA programs, on a Reservation-wide basis, through the joint Commission. It also provides that the State will support the Tribe's CAA TAS application as long as it is consistent with the IGA. Congress then passed the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004, Pub. L. No. 108–336 on October 18, 2004, which codifies the basic framework of the IGA, and authorizes EPA to grant TAS authority to the Tribe for air programs submitted under CAA section 301(d). The Tribe has previously received TAS approval on April 26, 2000, for the purposes of grant funding under CAA Section 105.

On January 20, 2009, the Tribe submitted its CAA program TAS Application together with the Tribe's initial Title V Program. On July 14, 2009, EPA found the Tribe's CAA program TAS application to be administratively complete. This finding means the Tribe's CAA program TAS application satisfied the four necessary elements outlined above that the Tribe must demonstrate as part of the TAR. EPA will continue to review the Tribe's TAS application per 40 CFR 49.9(b). At the conclusion of this comment period, the Region will make a determination on the Tribe's CAA program TAS application prior to the final rulemaking for the Tribe's Title V Program.

B. Reasonably Severable Title V Program Elements

As previously discussed in Section II above, the TAR allows for Indian tribes to seek approval of partial elements of CAA programs as long as those portions are determined to be reasonably severable elements. 40 CFR 49.7(c). For the purposes of the Tribe's Title V Program it has been determined that the Acid Rain Program at Title IV of the CAA is severable. At this time, there are no Acid Rain emission sources located within the exterior boundaries of the Reservation, nor are there any pending applications for sources. In addition, it has been determined that underlying federal regulations at CAA sections 111 (Standards of Performance for New Stationary Sources) and 112 (National Emissions Standards for Hazardous Air Pollutants) are also reasonably severable. However, the Tribe has committed in a letter to EPA to incorporate by reference these standards and requirements into the Reservations Air Code and pursue authorization from EPA for those CAA programs. These delegations are not part of this action and will occur at a later date.

C. Criminal Enforcement Memorandum of Understanding

The TAR provides for a federal role in criminal enforcement of a tribal program when the CAA or its implementing regulations mandate criminal enforcement authority and the applicant tribe is precluded from exercising such authority. 40 CFR 49.7(a)(6) and 49.8. In these circumstances, the TAR allows EPA to approve a tribal application if the tribe enters into a Memorandum of Agreement with EPA that provides for the Federal government to exercise primary criminal enforcement responsibility. *Id.* These provisions of the TAR recognize that federal law places certain limitations on tribal criminal jurisdiction and sanctions. The IGA reached between the Tribe and the State of Colorado contemplates that EPA will exercise criminal enforcement within the Reservation boundary for air pollution violations.

On February 10, 2009, the Tribe and EPA entered into a Memorandum of Agreement (MOA) which provides a procedure by which the Tribe will supply potential investigative leads to the federal government in an appropriate and timely manner when the Tribe is precluded from asserting criminal enforcement authority.

IV. Evaluation of the Tribe's Title V Program Elements

EPA conducted a thorough review of the Tribe's Title V Program according to 40 CFR 70.4(b) *Elements of the initial program submission.* It was critical that the Tribe's Title V Program address each of the 16 elements outlined in 40 CFR 70.4(b). Upon review, EPA concluded that the 16 elements found at 40 CFR 70.4(b) were addressed by the Tribe's Title V Program.

A. Analysis of the Tribe's Title V Program Submission per 40 CFR 70.4(b)

1. Complete Title V Program Description

The Southern Ute Indian Tribe submitted an initial and a supplemental Title V Program to EPA on January 20, 2009 and September 28, 2010 respectively. The Title V Program submittals include a legal opinion from the Tribe's legal counsel stating that the laws of the Tribe and Southern Ute Indian Tribe/State of Colorado Environmental Commission provide adequate legal authority to carry out all aspects of the Title V Program, and a description of how the Tribe intends to implement the Title V Program.

EPA comments noting deficiencies in the Tribe's initial January 20, 2009 Title V Program submittal were sent to the Tribe in a letter dated December 23,

2009. The deficiencies were segregated into those that require corrective action prior to Title V Program approval, and those that, if addressed, would serve to strengthen the Title V Program, but were not necessary for approval.

In the September 28, 2010 supplemental Title V Program application, the Tribe addressed the deficiencies that required corrective action prior to Title V Program approval as well as those that served to strengthen the Title V Program. EPA has reviewed these changes and has determined that they are adequate to allow for Title V Program interim approval pursuant to 40 CFR 70.4(a). Upon review of the *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, a few minor errors were discovered that do not impact the Tribe's ability to implement the Title V Program but must be addressed. The Title V Program meets the minimum requirements of 40 CFR 70.4(d).

2. Regulations Comprising the Title V Program

The Tribe's Title V Program, including the operating permit regulations (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code, Articles I and II), meets the requirements of 40 CFR 70.4(b)(2) including evidence of procedurally correct adoption of the Tribe's Reservation Air Code as well as public notice and comments on its adoption. Additionally, the Tribe's Title V Program satisfies the requirements outlined in 40 CFR 70.2 and 70.3 with respect to applicability; 40 CFR 70.4, 70.5, and 70.6 with respect to permit content including operational flexibility; 40 CFR 70.5 with respect to complete application forms and criteria which define insignificant activities; 40 CFR 70.7 with respect to public participation and minor permit modifications; 40 CFR 70.8 with respect to permit review by EPA and affected states; 40 CFR 70.9 with respect to demonstrating adequate fees will be collected to cover the Title V Program costs; 40 CFR 70.10 with respect to federal oversight and sanctions; and 40 CFR 70.11 with respect to requirements for enforcement authority.

3. Legal Opinion

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(3). The Tribe's Independent Legal Counsel, Maynes, Bradford, Shipps & Sheftel, LLP Attorneys at Law, submitted an initial and a supplemental legal opinion in both the initial and supplemental Title V Program applications (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009 and *Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010). The signature of the Tribe's legal counsel, Sam Maynes of Maynes, Bradford, Shipps & Sheftel, LLP Attorneys at Law, has full authority to independently represent the Tribe in court on all matters pertaining to the Tribe's Title V Program. The legal opinion includes a demonstration of adequate legal authority to carry out the requirements of this part, including authority to carry out those activities listed at 40 CFR 70.4(b)(3)(i) through (xiii).

4. Relevant Title V Program Documentation

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(4). The Tribe submitted extensive application forms (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 4, Program Forms) for review as well as comprehensive instructions for each form.

5. Compliance Tracking

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(5). The Tribe submitted multiple compliance assurance procedures and guidelines (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 5, Compliance Tracking).

6. Application Completeness Determination

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(6). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Sections 2–106(3) and 2–107(1)(a) demonstrates adequate authority and procedures to determine within 60 days of receipt whether applications (including renewal applications) are complete, to request such other information as needed to process the application, and to take final action on complete applications within 18 months of the date of its submittal, except for initial permit applications, for which the part 70 permitting authority may take up to 3 years from the effective date of the Title V Program to take final action on the application, as provided for in 40 CFR 70.4(b)(11)(ii).

7. Fee Demonstration

The Tribe's Title V Program included a fee accounting including projected fee collection and programmatic costs (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 11, Revised Fee Demonstration, Figure 1 page 8 and Table 2 page 9) that set fees above the presumptive minimum set forth in 40 CFR 70.9. Specific fee provisions included $50.00 + CPI (Consumer Price Index) for all fee pollutants released in a calendar year pursuant to the Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code), Article II, Section 2–119. The Tribe's Title V Program clearly demonstrates a fee schedule that results in the collection and retention of revenues sufficient to cover the Title V Program costs. In addition, the fee schedule contains an initial accounting of how required fee revenues are sufficient to cover Title V Program costs.

8. Statement of Adequate Personnel

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(8). The Tribe submitted a statement that adequate personnel and funding have been made available to develop, administer, and enforce the Title V Program (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 10, 40 CFR 70.4(b)(8)). In addition, the Tribe has provided a supplemental staffing plan (January 4, 2011 email from Brenda Jarrell) that outlines a staff of six individuals including a senior level engineering position.

9. Submission Commitment

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(9). The Tribe submitted a commitment (*Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated January 14, 2009, Tab 9, 40 CFR 70.4(b)(9)) to submit, at least annually to the Administrator, information regarding the Tribe's enforcement activities including, but not limited to, the number of civil, judicial and administrative enforcement actions either commenced or concluded; the

penalties, fines, and sentences obtained in those actions; and the number of administrative orders issued.

10. Failure To Issue Permit in a Timely Manner

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(10). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Sections 2–106 and 2–107 are consistent with requirements outlined in 40 CFR 70.5(a)(2) and 70.6(f).

11. Transition Plan

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(11). The Tribe submitted a comprehensive Revised Transition Plan (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 12, Revised Transition Plan) which outlines a plan and schedule for submittal and final action on initial permit applications for all part 70 sources within the exterior boundaries of the Reservation.

12. Off Permit Changes

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(12). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Sections 2–110, 2–111 and 2–116 are provisions allowing for changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the Part 70 permit, provided the facility provides written notification as required in 40 CFR 70.4(b)(12).

13. Expeditious Permit Revisions and/or Modifications Review

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(13). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Section 2–111 provides for adequate, streamlined and reasonable procedures for expedited review of permit revisions or modifications.

14. Tribe Only Revisions

The Tribe's Title V Program does not allow changes that are not addressed or prohibited as described in 40 CFR 70.4(b)(14). Thus, this section does not apply to the Tribe's Title V Program.

15. Permit Changes Subject to Title I and IV of the Act

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(15). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Section 2–116(2) prohibits sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are modifications under any provision of title I of the Act.

16. Permit Content and Permit Issuance, Renewal, Re-Openings and Revisions

The Tribe's Title V Program meets the requirements of 40 CFR 70.4(b)(16). The Tribe's Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) Article II, Sections 2–107, 2–110 and 2–112 requires the Tribe's Title V Program to implement the requirements of 40 CFR 70.6 and 70.7.

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the Tribe's Title V Program. The Tribe must make the following changes to the Reservation Air Code (*Supplement to Application for Approval of the Southern Ute Indian Tribe's 40 CFR Part 70 Operating Permit Program* dated September 28, 2010, Tab 5, Reservation Air Code) in order to receive full Title V Program approval.

(1) Modify the "Emission unit" definition to include pollutants listed under 112(b) of the Act; and

(2) Modify the "Major source" definition to include the updated definition for purposes of regulating greenhouses gasses as part of the Prevention of Significant Deterioration/ Title V Greenhouse Gas Tailoring Rule (GHG Tailoring Rule). *See* 75 FR 106 at 31514–31608 (June 3, 2010); and

The correction to the "Emission unit" definition is intended to clarify and make the Tribe's program consistent. The Tribe has the authority to regulate pollutants listed under 112(b) of the Act through their "Major source" and "Regulated air pollutant" definitions. Accordingly, the "Emission Unit" definition should include 112(b) pollutants to have consistent definitions in the Title V Program.

The correction to the "Major source" definition is intended to narrow the sources that will require Title V review for greenhouse gasses (GHGs) after July 1, 2011. With this modification, the Tribe is afforded flexibility to issue Title V operating permits to sources with GHG emissions in a manner consistent with the Federal regulations as set out in the GHG Tailoring Rule.

This proposed interim approval, which may not be renewed, would extend for a period of up to two years. Permits issued under a Title V operating permits program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The Tribe shall submit to EPA changes to the Title V Program addressing the deficiencies specified in the interim approval no later than 8 months prior to the expiration of the interim approval. 40 CFR 70.4(f)(2). The EPA can disapprove the Tribe's Title V Program if the specified changes are not made within the specified timeframe.

V. What action is EPA taking?

EPA is providing an opportunity for public comment on our intent to grant interim approval to the Southern Ute Indian Tribe's Title V Program.

VI. Statutory and Executive Order Reviews

Today's action merely proposes EPA's intent to grant interim approval to the Tribe's Title V Program and does not impose additional requirements beyond those imposed by tribal law. For that reason, this action:

- Does ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications" as required in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000).
- 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).

Dated: March 2, 2011.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2011–5342 Filed 3–8–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 76, No. 46

Wednesday, March 9, 2011

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0011]

Availability of an Environmental Assessment for Field Testing Fowl Laryngotracheitis-Marek's Disease Vaccine, Serotype 3, Live Marek's Disease Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Fowl Laryngotracheitis-Marek's Disease Vaccine, Serotype 3, Live Marek's Disease Vector. The environmental assessment, which is based on a risk analysis prepared for the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before April 8, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2011–0011* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0011, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0011.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Section Leader, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, a risk analysis has been prepared to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Biomune Company.

Product: Fowl Laryngotracheitis-Marek's Disease Vaccine, Serotype 3, Live Marek's Disease Vector.

Field Test Locations: Alabama, Delaware, Pennsylvania, and Texas.

The above-mentioned product consists of a live recombinant Marek's disease virus vector expressing certain fowl laryngotracheitis virus proteins. The vaccine is for in ovo vaccination of 18-day-old chick embryos or for the subcutaneous vaccination of healthy day-of-age chicks as an aid in the prevention of Marek's Disease and infectious laryngotracheitis.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provision of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are

identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 4th day of March 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–5341 Filed 3–8–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince of Wales Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince of Wales Resource Advisory Committee will meet in Thorne Bay, Alaska, March 28, 2011. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held March 28, 2011 from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Thorne Bay Ranger District 1312 Federal Way Thorne Bay, Alaska. Send written comments to Prince of Wales Resource Advisory Committee, c/o District Ranger, USDA Forest Service, P.O. Box 500, Craig, AK 99921, or electronically to Rebecca Sakraida, RAC Coordinator at *rsakraida@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Rebecca Sakraida, RAC Coordinator Craig Ranger District, Tongass National Forest, (907) 826–1601.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Francisco B. Sanchez,

District Ranger.

[FR Doc. 2011–5295 Filed 3–8–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Dixie Resource Advisory Committee will meet in Cedar City, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of this meeting is to make recommendations for Title II projects. The March 16, 2011 meeting has been cancelled.

DATES: Wednesday, March 30, 2011.

ADDRESSES: The meeting will be held at Paiute Tribe of Utah Headquarters, 440 North Paiute Drive (200 East), Cedar City, Utah. The public is invited to attend the meetings.

FOR FURTHER INFORMATION CONTACT: Kenton Call, RAC Coordinator, Dixie National Forest, (435) 865–3730; e-mail: *ckcall@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Welcome and committee introductions; (2) review of category voting from previous meeting; (3) discussion of RAC project recommendations; and (4) public comment on any proposals. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input will be accepted by the RAC during the meetings.

Dated: March 3, 2011.

Robert G. MacWhorter,

Forest Supervisor.

[FR Doc. 2011–5297 Filed 3–8–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The North Central Idaho RAC will meet in Grangeville, Idaho. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to select projects for 2011 and hear presentations on 2012 projects. The February 23–24 RAC meeting was cancelled due to inclement weather.

DATES: The meeting will be held on March 24th and 25th 2011, at 10 a.m. (PST).

ADDRESSES: The meeting will be held at the Nez Perce National Forest Supervisors Office, 104 Airport Road, Grangeville, Idaho. Written comments should be sent to Laura Smith at 104 Airport Road in Grangeville, Idaho 83530. Comments may also be sent via e-mail to *lasmith@fs.fed.us* or via facsimile to Laura at 208–983–4099.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Designated Forest Official at 208–983–5143.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. A public forum will begin at 3:15 p.m. (PST) on the first meeting day. The following business will be conducted: Comments and questions from the public to the committee. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: March 1, 2011.

Rick Brazell,

Forest Supervisor.

[FR Doc. 2011–5106 Filed 3–8–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security.

Title: Five-Year Records Retention Requirement for Export Transactions and Boycott Actions.

OMB Control Number: 0694–0096.

Form Number(s): N/A.

Type of Request: Regular submission.

Burden Hours: 248.

Number of Respondents: 84,000,892.

Average Hours per Response: 1 second to 1 minute.

Needs and Uses: All parties involved in export transactions and the U.S. party involved in a boycott action are required to maintain records of these activities for a period of five years. These records can include memoranda, correspondence, contracts, invitations to bid, books of account, financial records, restrictive trade practice or boycott documents and reports. The five-year record retention period corresponds with the five-year statute of limitations for criminal actions brought under the Export Administration Act of 1979 and predecessor acts, and the five-year statute for administrative compliance proceedings. Without this authority, potential violators could discard records demonstrating violations of the Export Administration Regulations prior to the expiration of the five-year statute of limitations.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov,* or by fax to (202) 395–5167.

Dated: March 3, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5276 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2012 Economic Census Classification Report for the Construction, Manufacturing, and Mining Sectors and Selected Wholesale Industries.

OMB Control Number: 0607–0925.

Form Number(s): NC–99026.

Type of Request: Reinstatement, with change of an expired collection.

Burden Hours: 6,250.

Number of Respondents: 75,000.

Average Hours Per Response: 5 minutes.

Needs and Uses: The Economic Census and current business surveys represent the primary source of facts about the structure and function of the U.S. economy, providing essential information to government and the business community in making sound decisions. This information helps build the foundation for the calculation of Gross Domestic Product (GDP) and other economic indicators. Crucial to its success is the accuracy and reliability of the Business Register data, which provides the Economic Census and current business surveys with their establishment lists.

Critical to the quality of data in the Business Register is that establishments are assigned an accurate economic classification, based on the North American Industry Classification System (NAICS). The primary purpose of the "2012 Economic Census Classification Report for the Construction, Manufacturing, and Mining Sectors and Selected Wholesale Industries" or NC–99026, is to meet this need.

New businesses are assigned NAICS codes by the Social Security Administration (SSA); however, many of these businesses cannot be assigned detailed NAICS codes, because insufficient data are provided by respondents on the Internal Revenue Service (IRS) Form SS–4. This report, conducted in fiscal years 2012 and 2013, will mail approximately 75,000 businesses per year that have been partially classified in the Construction, Manufacturing, or Mining sectors. Additionally, Wholesale establishments currently classified in select industries will be sampled in order to verify correct classification due to 2012 NAICS changes. Businesses selected for the sample will be asked to provide data on primary business activity in order to assign proper industry classification, thus maintaining proper coverage of the business universe.

No wording or ordering changes have been made to the NC–99026 form since the last request was submitted for an OMB clearance in 2006. However, for the first time, respondents will have the option to report electronically via the Internet.

The NC–99026 form will be used to update the classification codes contained in the Business Register, ensuring establishments will be tabulated in the correct detailed industry for the 2012 Economic Census and in succeeding economic surveys. Information obtained from these establishments will also be included in the Census Bureau's County Business Patterns (CBP) publications. CBP publications provide annual data on establishment counts, employment, and payroll for all sectors of the economy at national, state, and county levels. The failure to collect this information will have an adverse effect on the quality and usefulness of economic statistics provided by the Census Bureau.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 & 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 4, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5305 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, Basic Demographic Items.

OMB Control Number: 0607–0049.

Form Number(s): CPS–263, CPS–263(SP), CPS–264, CPS–264(SP), CPS–266, BC–1428, BC–1428(SP), BC–1433, BC–1433(SP), CPS–692, CPS–504.

Type of Request: Revision of a currently approved collection.

Burden Hours: 18,013.

Number of Respondents: 59,000.

Average Hours Per Response: 1.5 minutes.

Needs and Uses: The purpose of this request for review is for the U.S. Census Bureau to obtain clearance from the Office of Management and Budget (OMB) for the collection of basic demographic information on the Current Population Survey (CPS).

The CPS has been the source of official government statistics on employment and unemployment for over 50 years. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey, and the Census Bureau prepares and conducts all the field work. The Census Bureau provides the BLS with data files and tables. The BLS seasonally adjusts, analyzes, and publishes the results for the labor force data in conjunction with the demographic characteristics. In accordance with the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program. Title 29, United States Code, Sections 1–9, authorizes the collection of labor force data in the CPS.

The demographic information provides a unique set of data on selected characteristics for the civilian noninstitutional population. Some of the demographic information we collect is age, marital status, gender, Armed Forces status, education, race, origin, and family income. We use these data in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We also use these data independently for internal analytic research and for evaluation of other surveys. In addition, we need these data to correctly control estimates of other characteristics to the proper proportions of age, gender, race, and origin.

The demographic questions relating to origin and race within the CPS will undergo minor wording changes beginning in January 2012. These wording changes are being done to bring the CPS origin and race questions more in alignment with those in the American Community Survey. These changes were not mentioned in the **Federal Register** Notice published December 16, 2010, which requested public comment on the information collection. However, since the changes do not affect the meaning or purpose of the questions, nor will they affect the resulting information provided to data users, their absence from the **Federal Register** should not disrupt the clearance process.

We use the data from the CPS on household size and composition, age, education, ethnicity, and marital status to compile monthly averages or other aggregates for national and sub-national estimates. We use these data in four principal ways: in association with other data, such as monthly labor force or periodic supplement publications; for internal analytic research; for evaluation of other surveys and survey results; and as a general purpose sample and survey.

The demographic data are central to the publication of all labor force data in the BLS' monthly report *Employment and Earnings.* The data set that results from combining the monthly labor force data with the demographic data provides analysts with the ability to understand labor force patterns of many subpopulation groups. This is particularly important since the federal government often directs initiatives at special groups that historically have not conformed to general labor force participation patterns.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 141, 181, and 182 and Title 29, United States Code, Sections 1–9.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: March 4, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5302 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; The American Community Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before May 9, 2011.

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(s) and instructions should be directed to James Treat, U.S. Census Bureau, American Community Survey Office, Washington, DC 20233, by FAX to (301) 763–8070 or via the Internet at *james.b.treat@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Given the rapid demographic changes experienced in recent years and the strong expectation that such changes will continue and accelerate, the once-a-decade detailed data collection as part of a decennial census is no longer acceptable for producing much of the data required by the Federal government, states, municipalities, and tribal governments. To meet the needs and expectations of the country, the Census Bureau developed the American Community Survey (ACS). This survey collects detailed population and housing data every month and provides tabulations of these data on a yearly

basis. In the past, the long-form data were collected only at the time of each decennial census. After years of development and testing, the ACS began full implementation in households in January 2005 and in group quarters (GQs) in January 2006.

Collecting long-form data during the decade through the ACS has had a profound effect on the census design plan. The collection of long-form data had added substantial burden and complexity to past decennial censuses. Implementing the ACS means that the Decennial Census can focus on its constitutional mandate to accurately count the population to apportion the House of Representatives. The ACS—supported by a complete and accurate address system—has simplified the census design, resulting in improvements in both coverage and data quality, while providing current data on detailed population, social, economic, and housing characteristics.

The ACS provides more timely information for critical economic planning by governments and the private sector. In the current information-based economy, federal, state, tribal, and local decision makers, as well as private business and non-governmental organizations, need current, reliable, and comparable socioeconomic data to chart the future. In 2006, the ACS began publishing up-to-date profiles of American communities every year, providing policymakers, planners, and service providers in the public and private sectors this information every year—not just every ten years.

The ACS released estimates of population and housing characteristics for geographic areas of all sizes in December 2010. These data products, used by federal agencies and others, are similar in scope to the Summary File 3 tables from Census 2000. The 2010 Census did not include these detailed characteristics, leaving the ACS as the source of data for uses previously associated with the decennial census long form.

The Census Bureau presently plans to resubmit the ACS to the Office of Management and Budget (OMB) for extended clearance. The current ACS content has been reviewed by the Census Bureau, in conjunction with Federal agency stakeholders, to determine potential areas for improved item response and/or data quality.

II. Method of Collection

The Census Bureau will mail questionnaires to households selected for the ACS. For households that do not return a questionnaire, Census Bureau staff will attempt to conduct interviews via Computer-assisted Telephone Interviews (CATI). We will also conduct Computer-assisted Personal Interviews (CAPI) for a sub sample of nonrespondents. A content reinterview will be conducted from a small sample of respondents.

For most types of GQs, Census Bureau field representatives (FRs) will conduct personal interviews with respondents to complete questionnaires or, if necessary, leave questionnaires and ask respondents to complete. Information from GQ contacts will be collected via CAPI. A GQ contact reinterview will be conducted from a sample of GQs primarily through CATI. A very small percentage of the GQ reinterviews will be conducted via CAPI.

The Census Bureau staff will provide Telephone Questionnaire Assistance (TQA) and if the respondent indicates a desire to complete the survey by telephone, the TQA interviewer conducts the interview.

III. Data

OMB Control Number: 0607–0810.

Form Number: ACS–1, ACS–1(SP), ACS–1(PR), ACS–1(PR)SP, ACS–1(GQ), ACS–1(PR)(GQ), GQFQ, ACS CATI (HU), ACS CAPI (HU), ACS RI (HU), and AGQ QI, AGQ RI.

Type of Review: Regular submission.

Affected Public: Individuals, households, and businesses.

Estimated Number of Respondents: Pending receipt of requested funds to increase the ACS sample, we plan to contact the following number of respondents each year: 3,540,000 households; 200,000 persons in group quarters; 20,000 contacts in group quarters; 43,000 households for reinterview; and 1,500 group quarters contacts for reinterview.

Estimated Time per Response: Estimates are 38 minutes per household, 15 minutes per group quarters contact, 25 minutes per resident in group quarters, and 10 minutes per household or GQ contact in the reinterview samples.

Estimated Total Annual Burden Hours: 2,337,900.

Estimated Total Annual Cost: Except for their time, there is no cost to respondents.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Section 182.

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: March 3, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5269 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1747]

Reorganization of Foreign-Trade Zone 72 Under Alternative Site Framework; Indianapolis, IN

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) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, submitted an application to the Board (FTZ Docket 50–2010, filed 8/17/2010) for authority to reorganize under the ASF with a service area of Bartholomew, Benton, Boone, Carroll, Cass, Clay, Clinton, Decatur, Delaware, Fayette, Fountain, Franklin, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Howard, Jennings, Johnson, Lawrence, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Owen, Parke, Putnam, Rush, Shelby, Tippecanoe, Tipton, Vigo, Warren, Wayne and White Counties, Indiana, adjacent to the Indianapolis Customs and Border Protection port of entry, FTZ 72's existing Sites 1–3 and 12–13 would be categorized as magnet sites, existing Sites 9–11 would be categorized as usage-driven sites and the grantee

proposes three additional magnet sites (Sites 6–8);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 51752–51753, 8/23/2010) 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 72 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 2–3, 6–8 and 12–13 if not activated by March 31, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 9–11 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by March 31, 2014.

Signed at Washington, DC, this 3rd day of March, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2011–5389 Filed 3–8–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1746]

Reorganization of Foreign-Trade Zone 46 Under Alternative Site Framework; Cincinnati, OH

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) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Greater Cincinnati Foreign-Trade Zone Inc., grantee of Foreign-Trade Zone 46, submitted an application to the Board (FTZ Docket 41–2010, filed 5/21/2010) for authority to reorganize under the ASF with a service area of Hamilton, Butler, Warren, Brown and Clermont Counties, Ohio, in and adjacent to the Cincinnati Customs and Border Protection port of entry, FTZ 46's existing Sites 3, 4 and 5 would be categorized as magnet sites, and the grantee proposes an initial usage-driven site (Site 6);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 30774–30775, 6/2/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations 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 46 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 3 and 5 if not activated by March 31, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 6 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by March 31, 2014.

Signed at Washington, DC, this 3rd day of March 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2011–5391 Filed 3–8–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet and Strip From India: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, 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) 482–0197 or (202) 482–1398, respectively.

Background

On December 21, 2010, the Department of Commerce (the Department) issued the preliminary results of the new shipper review under the antidumping duty order on polyethylene terephthalate film, sheet and strip from India for SRF Limited (SRF) covering the period July 1, 2009, through December 31, 2009. *See Polyethylene Terephthalate Film, Sheet and Strip from India: Preliminary Results of Antidumping Duty New Shipper Review,* 75 FR 81570 (December 28, 2010) (*Preliminary Results*). The final results of review are currently due March 21, 2011.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1), provide that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that a new shipper review is extraordinarily complicated, the Department may extend the 180-day period to 300 days, and the 90-day period to 150 days. *See* 19 CFR 351.214(i)(2).

Extension of Time Limit for Final Results

The Department determines that this new shipper review is extraordinarily complicated because of questions that arose after the *Preliminary Results* concerning the *bona fides* of the new

shipper sale. Due to this issue, the Department had to issue another supplemental questionnaire to SRF, provide SRF with time to respond, and now must analyze SRF's response. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the final results from 90 days to 150 days. Thus, the final results will now be due no later than May 20, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i)(I) of the Act.

Dated: March 3, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–5378 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet and Strip From India: Extension of Time Limit for Final Results of Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Toni Page, 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) 482–0197 or (202) 482–1398, respectively.

Background

On December 21, 2010, the Department of Commerce (the Department) issued the preliminary results of the new shipper review under the countervailing duty order on polyethylene terephthalate film, sheet and strip from India for SRF Limited (SRF), covering the period January 1, 2009, through December 31, 2009. *See Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results of Countervailing Duty New Shipper Review,* 75 FR 81574 (December 28, 2010) (*Preliminary Results*). The final results of review are currently due March 21, 2011.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1), provide that the Department will issue the preliminary results of a new shipper review within 180 days after the day on which the review was initiated, and the final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that a new shipper review is extraordinarily complicated, the Department may extend the 180-day period to 300 days, and the 90-day period to 150 days. *See* section 751(a)(2)(B)(iv) of the Act; 19 CFR 351.214(i)(2).

Extension of Time Limit for Final Results

The Department determines that this new shipper review is extraordinarily complicated because of questions that arose after the *Preliminary Results* concerning the *bona fides* of the new shipper's sale. Due to this issue, the Department had to issue another supplemental questionnaire to SRF, provide SRF with time to respond, and now must analyze SRF's response. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the final results from 90 days to 150 days. Thus, the final results will now be due no later than May 20, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: March 3, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–5383 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal From the Russian Federation: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3477.

Background

On May 28, 2010, the Department of Commerce (the Department) published a notice of initiation of an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period April 1, 2009, through March 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 29976 (May 28, 2010). On December 17, 2010, the Department extended by 75 days the preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. *See Magnesium Metal From the Russian Federation: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 78968 (December 17, 2010). The preliminary results of this administrative review are currently due no later than March 16, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published in the **Federal Register**. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of March 16, 2011, because we require additional time to analyze a number of complex corporate-affiliation issues relating to this administrative review. In addition, the numerous extensions we have granted for filing various responses has contributed to us requiring additional time to complete the preliminary results.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review by 45 days to April 30, 2011. Because April 30, 2011, falls on a Saturday, it is the Department's practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of*

Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary results is now May 2, 2011.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 3, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–5374 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Alan Ray, 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) 482–5403.

Background

On January 25, 2011, the Department of Commerce ("Department") published in the **Federal Register** the *Preliminary Results* of the seventh new shipper reviews of certain frozen fish fillets from the Socialist Republic of Vietnam covering the period August 1, 2009, through February 15, 2010.[1] Subsequent to the publication of the *Preliminary Results*, the Department extended the deadlines for submission of surrogate values, case briefs, and rebuttal comments.[2] The final results are currently due no later than April 14, 2011.

Extension of Time Limit for the Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(i)(1) require the Department to issue the final results in a new shipper review of an antidumping duty order 90 days after the date on which the preliminary results are issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department finds this case to be extraordinarily complicated because there is voluminous new material on the record regarding the surrogate value of whole fish that has not yet been considered in a completed review. The Department will need more time to analyze the data. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act, we are extending the time for the completion of the final results of this review by 60 days to June 13, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 3, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–5385 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy: Final Results of Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 9, 2011.

SUMMARY: On November 1, 2010, the Department of Commerce ("Department") initiated the third sunset review of the antidumping duty order on granular polytetrafluoroethylene resin ("PTFE resin") from Italy. The Department has conducted an expedited sunset review of this order. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the margins identified in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1293 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2010, the Department published the notice of initiation of the third sunset review of the antidumping duty order on PTFE resin from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 67082 (November 1, 2010) ("*Initiation Notice*"). On January 12, 2011, the **Federal Register** published a correction to that notice, indicating that an incorrect product name for this case was listed in the *Initiation Notice. See Initiation of Five-Year ("Sunset") Review: Correction,* 76 FR 2083 (January 12, 2011) ("*Correction Notice*"). We allowed interested parties an extension of time in which to file a notice of intent to participate and substantive responses. On January 13, 2011, we also notified the International Trade Commission ("ITC") of these new deadlines. On January 12, 2011, the Department received a notice of intent to participate from a domestic interested party, E.I. DuPont de Nemours & Co. ("DuPont" or "domestic interested party"). Submission of the notice of intent to participate was filed by DuPont within the deadline specified in 19 CFR 351.218(d)(1)(i), as extended due to the *Correction Notice.* DuPont claimed interested party status under section 771(9)(C) of the Act, as a producer of PTFE resin in the United States. On February 11, 2011, the Department received a substantive response from the domestic interested party within the deadline specified in 19 CFR 351.218(d)(3)(i), as extended due to the *Correction Notice.* We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting an expedited sunset review of the antidumping duty order.

Scope of the Order

The product covered by the order is PTFE resin, filled or unfilled. The order also covers PTFE wet raw polymer exported from Italy to the United States. *See Granular Polytetrafluoroethylene Resin From Italy; Final Affirmative Determination of Circumvention of*

[1] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Reviews,* 76 FR 4292 (January 25, 2011) ("*Preliminary Results*").

[2] *See* Letter from Alex Villanueva, Program Manager, Office 9, to Interested Parties: Extending Surrogate Value Submission & Briefing Schedule for New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (February 10, 2011).

Antidumping Duty Order, 58 FR 26100 (April 30, 1993). The order excludes PTFE dispersions in water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). We are providing this HTSUS number for convenience and customs purposes only. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated March 1, 2011, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on PTFE resin from Italy would be likely to lead to continuation or recurrence of dumping at the following percentage margins:

Manufacturer/exporter	Weighted-average margin (percent)
Montefluos S.p.A./Ausimont U.S.A.[1]	46.46
All Others	46.46

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 1, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–5373 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] Solvay Solexis S.p.A. and Solvay Solexis, Inc. are successors-in-interest to Ausimont S.p.A. and Ausimont U.S.A. Inc. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Changed Circumstances Review,* 68 FR 25327 (May 12, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, 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) 482–3207.

Background

On January 28, 2011, the Department of Commerce ("Department") published a notice of initiation of an administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC") covering the period December 1, 2009, through November 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011).

On February 24, 2011, the American Honey Producers Association and Sioux Honey Association (collectively "Petitioners") withdrew their request for an administrative review for the following companies: Ahcof Industrial Development Corp., Ltd.; Alfred L. Wolff (Beijing) Co., Ltd.; Anhui Honghui Foodstuff (Group) Co., Ltd.; Anhui Honghui Import & Export Trade Co., Ltd.; Anhui Cereals Oils and Foodstuffs I/E (Group) Corporation; Anhui Hundred Health Foods Co., Ltd.; Anhui Native Produce Imp & Exp Corp.; APM Global Logistics (Shanghai) Co.; Baiste Trading Co., Ltd.; Cheng Du Wai Yuan Bee Products Co., Ltd.; Chengdu Stone Dynasty Art Stone; Damco China Limited Qingdao Branch; Eurasia Bee's Products Co., Ltd.; Feidong Foreign Trade Co., Ltd.; Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen); Golden Tadco Int'l; Hangzhou Golden Harvest Health Industry Co., Ltd.; Haoliluck Co., Ltd.; Hengjide Healthy Products Co. Ltd.; Hubei Yusun Co., Ltd.; Inner Mongolia Altin Bee-Keeping; Inner Mongolia Youth Trade Development Co., Ltd.; Jiangsu Cereals, Oils Foodstuffs Import Export (Group) Corp.; Jiangsu Kanghong Natural Healthfoods Co., Ltd.; Jiangsu Light Industry Products Imp & Exp (Group) Corp.; Jilin Province Juhui Import; Maersk Logistics (China) Company Ltd.; Nefelon Limited Company; Ningbo Shengye Electric Appliance; Ningbo Shunkang Health Food Co., Ltd.; Ningxia Yuehai Trading Co., Ltd.; Product Source Marketing Ltd.; Qingdao Aolan Trade Co., Ltd.; QHD Sanhai Honey Co., Ltd.; Qinhuangdao Municipal Dafeng Industrial Co., Ltd.; Renaissance India Mannite; Shaanxi Youthsun Co., Ltd.; Shanghai Bloom International Trading Co., Ltd.; Shanghai Foreign Trade Co., Ltd.; Shanghai Hui Ai Mal Tose Co., Ltd.; Shanghai Taiside Trading Co., Ltd.; Shine Bal Co., Ltd.; Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.; Silverstream International Co., Ltd.; Sunnice Honey; Suzhou Aiyi IE Trading Co., Ltd.; Suzhou Shanding Honey Product Co., Ltd.; Tianjin Eulia Honey Co., Ltd.; Tianjin Weigeda Trading Co., Ltd.; Wanxi Haohua Food Co., Ltd.; Wuhan Bee Healthy Co., Ltd.; Wuhan Shino-Food Trade Co., Ltd.; Wuhu Anjie Food Co., Ltd.; Wuhu Deli Foods Co. Ltd.; Wuhu Fenglian Co., Ltd.; Wuhu Qinshi Tangye; Xinjiang Jinhui Food Co., Ltd.; Youngster International Trading Co., Ltd.; and, Zhejiang Willing Foreign Trading Co.

Petitioners were the only party to request a review of these companies.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Petitioners' request was submitted within the 90-day period and, thus, is timely. Because Petitioners' withdrawal of requests for review is timely and because no other party requested a review of the

aforementioned companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to the above listed companies.

Assessment Rates

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice for those companies with a separate rate.

For the above companies that are part of the PRC-wide entity, Department cannot order liquidation at this time because although they are no longer under review as a separate entity, they may still be under review as part of the PRC-wide entity. Therefore, the Department cannot order liquidation instructions at this time because their respective entries may be under review in the ongoing administrative review. The Department intends to issue assessment instructions for the PRC-wide entity 15 days after publication of the final results of the ongoing administrative review.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 3, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–5393 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Virginia Modified Pound Net Leader Inspection Program

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 May 9, 2011.

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 Carrie Upite, (978) 282–8475 or *carrie.upite@noaa.gov/.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This action would continue an inspection program for modified pound net leaders in the Virginia waters of the mainstem Chesapeake Bay. Pound net fishermen must call the National Marine Fisheries Service (NMFS) to arrange for a meeting. At the meeting, they must allow for the inspection of gear to ensure the modified leader meets the definition of a modified pound net leader, as described in the regulations (§ 222.102). This inspection program is necessary to provide fishermen with the insurance that their leaders meet the regulatory definition of a modified pound net leader before setting their gear, provide managers with the knowledge that the offshore leaders in a portion of the Virginia Chesapeake Bay are configured in a sea turtle-safe manner, and aid in enforcement efforts.

II. Method of Collection

Reports may be made by telephone and in-person meetings.

III. Data

OMB Control Number: 0648–0559.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 19.

Estimated Time per Response: 70 minutes.

Estimated Total Annual Burden Hours: 70 hours.

Estimated Total Annual Cost to Public: $102.50.

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: March 3, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5261 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Defining Target Levels for Ecosystem Components: A Socio-Ecological Approach

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 May 9, 2011.

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 Karma Norman, (206) 302–2418 or *Karma.Norman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice is for the request of a new information collection.

The creation of the Puget Sound Partnership (PSP) allowed for a group of private and public entities, local citizens, tribes and businesses to begin to collectively work toward restoring the ecological health of the Puget Sound. With the PSP's inception, the Puget Sound ecosystem has become a national example of ecosystem-based management (EBM) implementation. The Partnership Action Agenda indentified 80 near-term actions that are required for ecosystem recovery. These actions, however, will require specific performance measures.

Ecosystems can contain numerous species, and a mean level of species placement within a predator/prey chain or food web can serve as an ecological indicator. Similarly, measures of relative biodiversity may provide indications of ecological health and therefore function as ecological indicators. Such indicators can facilitate Ecosystem-based Management, when target levels for indicators exist. Because targets are an expression of the desired state of the ecosystem, establishing targets must include both ecological understanding and societal values. This project will develop a unique approach for identifying scientifically rigorous ecosystem targets that explicitly considers social perspectives. For this reason, the Northwest Fisheries Science Center seeks to conduct social norm analyses which involve a survey of Puget Sound community stakeholders. Stakeholders will be asked, via telephone survey, a series of general questions regarding their views on the Puget Sound environment and the desirability of a range of potential ecosystem conditions for the Puget Sound.

A random digit dial phone survey will be conducted. The survey will be voluntary, and contacted individuals may decline to participate. Respondents will be asked to respond to statements regarding their perceptions of the health of the Puget Sound. Demographic and employment information will be collected so that responses can be organized based on a stakeholder typology. This survey is essential because data on social norms, values and beliefs in the Puget Sound region are sparse; yet, they are critical to the development of sound ecosystem health targets.

II. Method of Collection

Respondents will be contacted via telephone for administration of the survey.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 15 minutes per response.

Estimated Total Annual Burden Hours: 250.

Estimated Total Annual 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: March 4, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–5358 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA222

Gulf Spill Restoration Planning; Meeting Location Correction for Public Scoping Meetings for the Programmatic Environmental Impact Statement for the Deepwater Horizon Oil Spill; Correction

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

ACTION: Notice of public scoping meetings; correction.

SUMMARY: In a March 2, 2011, **Federal Register** notice, the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) announced the public scoping meeting dates, times, and locations for the Programmatic Environmental Impact Statement for the Deepwater Horizon Oil Spill. There have been location changes for the meeting in Pensacola, FL, Spanish Fort, AL, Houma, LA, and Morgan City, LA. No other information in the notice published on March 2, 2011 has changed.

DATES: The public scoping meetings in Pensacola, FL and Mobile, AL will begin at 7:30 p.m. (local time) and doors will open at 6:30 p.m. The public meetings in Houma, LA and Morgan City, LA will start at 6:30 p.m. (local time) and open doors at 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: NOAA—Brian Hostetter at 888.547.0174 or by e-mail at *gulfspillcomments@noaa.gov;*

DOI—Robin Renn by e-mail at *Robin_Renn@fws.gov;*

AL— Will Gunter by e-mail at *William.Gunter@dcnr.alabama.gov;*

FL—Lee Edminston or Gil McRae by e-mail at *Lee.Edmiston@dep.state.fl.us* or *Gil.McRae@myfwc.com;*

LA—Karolien Debusschere by e-mail at *karolien.debusschere@la.gov;*

MS—Richard Harrell by e-mail at *Richard_Harrell@deq.state.ms.us;*

TX—Don Pitts by e-mail at *Don.Pitts@tpwd.state.tx.us.*

To be added to the Oil Spill PEIS mailing list, please visit: *http://www.gulfspillrestoration.noaa.gov.*

Correction

The information in **Federal Register** notice 2011–4540, on page 11427, in the first column, under the heading Scoping Meetings, for meetings scheduled in 1. Pensacola, FL; 5. Spanish Fort, AL; 6. Houma, LA; and 8. Morgan City, LA is corrected to read as follows:

1. Wednesday, March 16, 2011: Bayview Community Center, 2001 Lloyd Street, Pensacola, FL.

5. Wednesday, March 23, 2011: The Battle House Renaissance Mobile Hotel and Spa, 26 North Royal Street, Mobile, AL.

6. Thursday, March 24, 2011: The Holiday Inn Houma, 1800 Martin Luther King Blvd., Houma, LA.

8. Tuesday, March 29, 2011: Bayou Vista Community Center, 1333 Belleview Street, Morgan City, LA.

Dated: March 4, 2011.

Patricia A. Montanio,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2011–5370 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA273

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Visioning Project Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, March 30, 2011, from 9:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at SRA Touchstone Consulting, 1920 N St., NW., Suite 600; Washington, DC 20036; telephone: (888) 999–4377.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this Visioning Project Committee meeting is to develop a roadmap for the implementation of the Visioning and Strategic Planning Project. The roadmap will detail how the Council solicits stakeholder input and then incorporates that input into a vision and strategic plan that will guide Council Actions in the future. Any briefing materials will be posted to the Council's Visioning and Strategic Planning Project Web site: *http://www.mafmc.org/Visioning/Visioning.htm.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: March 3, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–5247 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA274

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on March 29–30, 2011. The Council will convene on Tuesday, March 29, 2011, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6 p.m. They will reconvene on Wednesday, March 30, 2011, from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Frenchman's Reef and Morning Star Marriott Beach Resort, 5 Estate Bakkeroe, St. Thomas, VI.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 137th regular Council Meeting to discuss the items contained in the following agenda:

March 29, 2011—9 a.m. to 5 p.m.

- Call to Order.
- Adoption of Agenda.
- Consideration of the 136th Council Meeting Verbatim Transcription.
- Executive Director's Report.
- Presidents Ocean Policy and Coastal and Marine Spatial Planning.
- Presentation—Sam Rauch.
- Fish Traps.
  - —Lost Traps Study.
  - —Trap Reduction Program Update.
- ACL Amendment(s).
  - —Presentation on Biological Opinion Addressing the Continued Operation of the Reef Fish Fishery as Authorized by the 2010 ACL Amendment.
  - —Consider Modifications to the 2010 ACL Amendment.
  - —Review 2011 ACL Amendment and Approve DEIS for Publication.
  - —Report of scoping Meetings—February 2011.

PUBLIC COMMENT PERIOD (5-minutes presentations).

March 29, 2011—5:15 p.m. to 6 p.m.

- Administrative Committee Meeting.
  - —AP/SSC Membership.
  - —Budget.
  - —FY 2009 Update, FY 2010, and FY 2011.
  - —SOPPs Update.
  - —Other Business.

March 30, 2011—9 a.m.–5 p.m.

- Continuation Report of Scoping Meetings—February 2011 (if needed).
- Highlights Data Poor Workshop—Kim Gordon.
- Mesophotic Coral Ecosystems and Associated Fish Distributions—Richard Appeldoorn.
- Caribbean Marine Etiquette Video Project—Lisamarie Carrubba.
- Enforcement Reports.
  - —Puerto Rico –DNER.
  - —U.S. Virgin Islands—DPNR.

—NOAA/NMFS.

—U.S. Coast Guard.

• Administrative Committee Recommendations.

• Meetings Attended by Council Members and Staff.

PUBLIC COMMENT PERIOD (5-minute presentations).

• Other Business.

—Bajo de Sico and Abril la Sierra.

• Next Council Meeting.

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meetings are open to the public, and will be conducted in English. However, simultaneous translation (English/Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: March 4, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–5289 Filed 3–8–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0080]

Children's Products Containing Lead; Technological Feasibility of 100 ppm for Lead Content; Notice, Reopening of the Hearing Record

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice, reopening of the hearing record.

SUMMARY: Section 101(a) of the Consumer Product Safety Improvement Act ("CPSIA") provides that, as of August 14, 2011, children's products may not contain more than 100 parts per million ("ppm") of lead unless the U.S. Consumer Product Safety Commission ("CPSC," "Commission," or "we") determines that such a limit is not technologically feasible. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. On February 16, 2011, the Commission conducted a public hearing to receive views from all interested parties about the technological feasibility of meeting the 100 ppm lead content limit for children's products and associated public health considerations. Individual Commissioners requested at the hearing that certain participants respond to additional questions in writing, as well as submit relevant studies and additional data referenced in oral presentations. Accordingly, through this notice, the Commission is reopening the hearing record until March 24, 2011.

ADDRESSES: Supplemental Materials identified by Docket No. CPSC–2010–0080 may be submitted by any of the following methods:

Electronic Submissions

Supplemental Materials may be submitted to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All materials received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning submission of materials: Rockelle Hammond, U.S. Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504–6833; e-mail: *cpscos@cpsc.gov.* For all other matters: Dominique Williams, U.S. Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504–7597; e-mail: *dwilliams@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 101(a)(2)(C) of the CPSIA (15 U.S.C. 1278a(a)(2)(C)) provides that, as of August 14, 2011, children's products may not contain more than 100 parts per million (ppm) of lead unless the Commission determines that such a limit is not technologically feasible. The Commission may make this determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. Section 101(d) of the CPSIA (15 U.S.C. 1278a(d)) provides that a lead limit shall be deemed technologically feasible with regard to a product or product category if:

(1) A product that complies with the limit is commercially available in the product category;

(2) Technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;

(3) Industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or

(4) Alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

In the **Federal Register** of January 26, 2011 (76 FR 4641), we published a notice ("hearing notice") announcing that the Commission would hold a public hearing pursuant to section 101(a) of the CPSIA. The hearing notice stated that the Commission was seeking information on specific issues, such as whether any product or product

category already complies with the 100 ppm limit and what factors or considerations we should evaluate in deciding whether a technology is "commercially available."

We held the hearing on February 16, 2011. We heard presentations by and received comments from consumer groups, manufacturers, associations, and laboratories regarding the technological feasibility of meeting the 100 ppm lead content limit. At the hearing, individual Commissioners requested that certain participants respond to additional questions in writing and submit relevant studies and additional data. Through this notice, we are announcing that we have placed individual Commissioner's additional questions into the docket and will place any responses into the docket. The questions submitted and responses that are received will be made available on *http://www.regulations.gov* under Docket No. CPSC–2010–0080, Supporting and Related Material. The Commission will consider any additional material received during the reopening of the hearing record, in addition to information collected at the hearing, in the course of evaluating its response. The Commission is reopening the hearing record to add individual Commissioner's questions to the docket and allow for responses to those questions, and so the hearing record will remain open until March 24, 2011.

Dated: March 3, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–5231 Filed 3–8–11; 8:45 am]

BILLING CODE 6355–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Instructions for Implementing Climate Change Adaptation Planning in Accordance With Executive Order 13514

AGENCY: Council on Environmental Quality.

ACTION: Notice of Availability of Climate Change Adaptation Planning Implementing Instructions.

SUMMARY: The Chair of the Council on Environmental Quality (CEQ) is issuing instructions to Federal agencies for integrating climate change adaptation into agency policies and practices, as required under Executive Order 13514 ("Executive Order" or "E.O. 13514"), "Federal Leadership in Environmental, Energy, and Economic Performance," signed by President Obama on October 5, 2009. 74 FR 52117, Oct. 8, 2009. The purpose of the Executive Order is to establish an integrated strategy toward sustainability in the Federal Government and to make reduction of greenhouse gas emissions a priority for Federal agencies. Section 5(b) of E.O. 13514 directs the Chair of CEQ to issue instructions to implement the Executive Order. The Instructions for Implementing Climate Change Adaptation Planning are now available at: *http://www.whitehouse.gov/administration/eop/ceq/initiatives/adaptation.*

DATES: The Instructions for Implementing Climate Change Adaptation Planning are available as of March 4, 2011.

ADDRESSES: The Instructions for Implementing Climate Change Adaptation Planning are available at: *http://www.whitehouse.gov/administration/eop/ceq/initiatives/adaptation.*

FOR FURTHER INFORMATION CONTACT: Michelle Moore, Federal Environmental Executive, Office of the Federal Environmental Executive, 202–395–5750.

SUPPLEMENTARY INFORMATION: Federal agencies are required, under Section 16 of E.O. 13514, to integrate climate change adaptation into agency policies and practices. Section 5(b) of E.O. 13514 authorizes the Chair of the Council on Environmental Quality (CEQ) to issue instructions to implement the Executive Order. The "Instructions for Implementing Climate Change Adaptation Planning" provide formal direction from the Chair of CEQ to Federal agencies on how to integrate climate change adaption into Federal agency planning, operations, policies, and programs.

These risk management instructions provide Federal agencies and programs with practical direction on how to assess risks and identify opportunities to improve performance and resource efficiency posed by the changing climate. With this gained knowledge, Federal agencies can ensure that Federal resources are invested wisely and that Federal services and operations remain effective as the century progresses. The instructions are written to allow adaptation planning to occur within existing agency management frameworks and budgets. The instructions apply only to Federal agencies, operations, and programs. The instructions should be considered mandatory, and agencies are expected to implement them as part of their compliance with E.O. 13514.

Authority: E.O. 13514, 74 FR 52117.

Dated: March 4, 2011.

Nancy H. Sutley,

Chair.

[FR Doc. 2011–5405 Filed 3–8–11; 8:45 am]

BILLING CODE 3125–W0–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

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 April 8, 2011.

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*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: March 3, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: U.S. Department of Education, Institute of Education Sciences, Research Performance Progress Report (RPPR).

OMB Control Number: Pending.

Agency Form Number(s): Department of Education (ED) Form 524B.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies, Local Educational Agencies.

Total Estimated Number of Annual Responses: 766.

Total Estimated Annual Burden Hours: 9,958.

Abstract: The Research Performance Progress Report (RPPR) format and instructions with the exception of the "Impact" category are used in order for Institute of Education Sciences' (IES') grantees to meet the established due dates for submission of performance reports for IES discretionary grant programs. Recipients of multi-year discretionary grants must submit an annual performance report for each year funding has been approved in order to receive a continuation award. The annual performance report should demonstrate whether substantial progress has been made toward meeting the approved goals and objectives of the project. The Institute also requires recipients of "forward funded" grants that are awarded funds for their entire multi-year project up-front in a single grant award to submit the RPPR on an annual basis. In addition, the Institute will require recipients to use the ED 524B to submit their final performance reports to demonstrate project success, impact and outcomes. In both the annual and final performance reports, grantees are required to provide data on established performance measures for the grant program (e.g., Government Performance and Results Act measures) and on project performance measures that were included in the grantee's approved grant application. The RPPR will contain research and related (total federal and non-federal) budgetary forms that will be used to collect budgetary data from the recipient organization. The information submitted will be used to conduct periodic administrative/budgetary reviews. Performance reporting requirements are found in 34 CFR 74.51, 75.118, 75.253, 75.590 and 80.40 of the Education Department General Administrative Regulations.

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 4534. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–5333 Filed 3–8–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street, NW., Room 8060, Washington, DC 20006.

ACTION: Notice of June 8–10, 2011, open meeting of the National Advisory Committee on Institutional Quality and Integrity and procedures for making third-party written comments concerning agencies scheduled for review.

SUMMARY: This notice sets forth the schedule and agenda of the upcoming June 8–10, 2011, open meeting of the NACIQI. It also informs members of the public how to submit third-party written comments concerning agencies scheduled for review. The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act of 1965, as amended (HEA).

SUPPLEMENTARY INFORMATION: Meeting Date and Place—The NACIQI meeting will be held on June 8–10, 2011, from 8:30 a.m. to approximately 5:30 p.m., at the Holiday Inn and Suites, Commonwealth Ballroom, 625 First Street, Alexandria, VA 22314.

NACIQI's Statutory Authority and Functions: The NACIQI is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, HEA, as amended.
- The recognition of specific accrediting agencies or associations, or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

Agenda: The agenda for the meeting on June 8, 2011, will include presentations to further inform the NACIQI generally regarding the reauthorization of the Higher Education Act (HEA), which may include the areas of accreditation of institutions of higher education, the certification and eligibility of such institutions for purposes of the Federal student aid programs authorized under Title IV of the HEA, the relationship between the two, and regarding State licensing responsibilities with respect to such institutions.

The June 9–10, 2011 portion of the meeting will be similar to a traditional NACIQI meeting where the review of specific accrediting agencies, State approval agencies, or Federal degree-granting agencies takes place. The agenda for the June 9–10, 2011 portion of the meeting will include the review of agencies that have submitted petitions for the renewal of recognition.

The following 12 agencies/institutions are tentatively scheduled for review during the June 9–10, 2011 portion of the June 2011 NACIQI meeting:

Nationally Recognized Accrediting Agencies

Petitions for Renewal of Recognition

1. Accreditation Commission for Acupuncture and Oriental Medicine.
2. Accrediting Bureau of Health Education Schools.
3. Accrediting Commission of Career Schools and Colleges.
4. Accrediting Council for Independent Colleges and Schools.
5. American Bar Association, Council of the Section of Legal Education and Admission to the Bar.
6. American Osteopathic Association, Commission on Osteopathic College Accreditation.
7. American Psychological Association, Committee on Accreditation.
8. Commission on Accrediting of the Association of Theological Schools.
9. Council on Occupational Education.
10. Teacher Education Accreditation Council, Accreditation Committee.
11. Transnational Association of Christian Colleges and Schools, Accreditation Commission.

Federal Agency Seeking Degree-Granting Authority

1. Air University, Maxwell Air Force Base, Montgomery, Alabama (request to award a Doctor of Philosophy degree in Military Strategy).

Under 10 U.S.C., Section 9134, in order for the U.S. Air Force's Air University to offer a new degree program, the Secretary of the U.S. Department of Education must have approved the degree in accordance with the Federal Policy Governing the Granting of Academic Degrees by Federal Agencies and Institutions (approved by a letter, dated December 23, 1954, from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare). Under the policy, the Secretary is required to establish a review committee to advise the Secretary concerning any proposal to authorize the granting of degrees by a Federal agency. After considering the criteria established by the policy, the review committee forwards its report concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's report and the Secretary's recommendation to the Office of Management and Budget and the Department of Defense. The Secretary uses the NACIQI as the review committee required for this purpose.

Submission of Written Comments Concerning Agencies Scheduled for Review: Submit your written comments by e-mail no later than ten days after the date of publication, to the Accreditation and State Liaison (ASL) Records Manager at *aslrecordsmanager@ed.gov* with the subject line "Written Comments re: (agency name)." Do not send material directly to NACIQI members.

In all instances, your comments about agencies seeking continued recognition must relate to whether the agency meets the Criteria for Recognition. Third parties having concerns about agencies regarding matters outside the scope of the petition should report those concerns to Department staff.

Comments concerning the Air University's degree-granting authority request must relate to the criteria used to evaluate the institution. Those criteria may be obtained by submitting a request to *aslrecordsmanager@ed.gov* with the subject line "Request for Degree-Granting Authority Criteria."

Only materials submitted by the deadline to the e-mail address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and the NACIQI in their deliberations.

This notice announces the only opportunity you will have to submit written comments on the agencies scheduled for this meeting.

Requests to Make Oral Comments: There will be another notice that will invite the public to submit requests to make oral presentations before the NACIQI on the agencies scheduled for review. That notice will explain the two methods the public may use to request to make oral presentations and provide the instructions for each method. Plus, a separate, subsequent **Federal Register** notice will invite the public to submit written comments and/or requests to make oral presentations before the NACIQI on the reauthorization of the Higher Education Act. Again, neither subsequent notice will offer a second opportunity to submit written comments on the agencies/institutions scheduled for review.

Access to Records of the Meeting: The Department will record the meeting and post the official report of the meeting on the NACIQI Web site shortly after the meeting. Pursuant to the FACA, the public may also inspect the materials at 1990 K Street, NW., Washington, DC, by e-mailing *aslrecordsmanager@ed.gov* or by calling (202) 219–7067 to schedule an appointment.

Electronic Access to this Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/legislation/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–866–512–1830; or, in the Washington, DC area at (202) 512–0000.

Reasonable Accommodations: Individuals who will need accommodations for a disability in order to attend the June 8–10, 2011 meeting (*i.e.,* interpreter services, assistive listening devices, and/or materials in alternative format) should contact Department staff by telephone: (202) 219–7011; or, e-mail: *aslrecordsmanager@ed.gov*, no later than May 2, 2011. We will attempt to meet requests after this date, but we cannot guarantee the availability of the requested accommodation. The meeting site is accessible.

FOR FURTHER INFORMATION CONTACT: Melissa Lewis, Executive Director, NACIQI, U.S. Department of Education, Room 8060, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7009; e-mail: *Melissa.Lewis@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–5390 Filed 3–8–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. DI11–3–000]

Bear Creek Hydro Associates, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI11–3–000.

c. *Date Filed:* February 14, 2011.

d. *Applicant:* Bear Creek Hydro Associates, LLC.

e. *Name of Project:* Bear Creek Hydro Project.

f. *Location:* The Bear Creek Hydro Project will be located on Bear Creek, near the town of Concrete, Skagit County, Washington, affecting T. 35 N., R. 8 E., sec. 11, SE ¼, and T. 36 N., R. 8 E., Sec. 14, NE ¼.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Thomas M. McMaster, 358 Shallow Shore Road, Bellingham, WA 98229; Telephone: (360) 647–2196; e-mail: *http://* www.mcmastert@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and motions:* April 13, 2011.

All documents should be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* Please include the docket number (DI11–3–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The run-of-river Bear Creek Hydro Project will consist of: (1) An existing pond with a surface area of 1.7 acres; (2) an existing 235-foot-long, 24-foot-high concrete diversion structure, with an ungated 82-foot-long overflow spillway; (3) a proposed 2,800-foot-long, 36-inch-diameter above-ground steel penstock, routed along the existing penstock alignment to the powerhouse; (4) an existing 28-foot-long, 82-foot wide powerhouse, containing two new 1,400-kW Pelton turbines, switchgear, and auxiliary equipment, with a computerized supervisory control system to control plant operations; (5) two existing tailraces, returning flows to Bear Creek; (6) a proposed 3.5-mile-long, 12.5 kV, 3-phase transmission line, interconnecting to the Puget Sound Energy transmission lines at Lake Tyee; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, and/or Motions To* Intervene—Anyone may submit comments, a protest, and 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, and/or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5318 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13946–000]

Tarrant Regional Water District; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 13946–000.

c. *Date filed:* December 16, 2010, and supplemented on February 22, 2011.

d. *Applicant:* Tarrant Regional Water District.

e. *Name of Project:* Arlington Outlet Hydroelectric Project.

f. *Location:* The proposed Arlington Outlet Hydroelectric Project would be located at the Arlington Outlet Discharge Facility, a flow control facility in Tarrant Regional Water District's water distribution system located in Tarrant County, Texas. The land on which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. David Marshall, P.E., Engineering Services Director, 800 East North Side Drive, Fort Worth, Texas 76102; telephone (817) 720–4250.

i. *FERC Contact:* Christopher Chaney, telephone (202) 502–6778, and e-mail address *christopher.chaney@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for

environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* In light of the resource agencies' comments filed with the application, the 60-day timeframe specified in 18 CFR 4.43(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions 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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in 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.

l. *Description of Project:* The proposed Arlington Outlet Hydroelectric Project would consist of: (1) an existing flow control building containing one turbine generating unit having an installed capacity of 1300 kilowatts; and (2) appurtenant facilities. The project would have an estimated annual generation of 6,365,000 kilowatt-hours. The applicant plans to use the generated energy.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, here P–13946, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions To Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "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. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. 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.

r. *Waiver of Pre-filing Consultation:* On July 2, 2010, the applicant requested the agencies to support the waiver of the Commission's consultation requirements under 18 CFR 4.38(c). On July 23, 2010, the Trinity River Authority concurred with this request. Several State and Federal resource agencies commented on the application but no other comments regarding the request for waiver were received. Therefore, we intend to accept the consultation that has occurred on this project during the pre-filing period and we intend to waive pre-filing consultation under section 4.38(c), which requires, among other things, conducting studies requested by resource agencies, and distributing and consulting on a draft exemption application.

Dated: March 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5322 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–97–000]

Stingray Pipeline Company, L.L.C.; Notice of Application

On February 22, 2011, Stingray Pipeline Company, L.L.C. (Stingray) filed with the Federal Energy Regulatory Commission (Commission) an application under Section 7(b) of the Natural Gas Act (NGA), as amended, requesting authorization to abandon offshore Station 702's compressor Unit T–2. Stringray also requests that its certificated system capacity be reduced to 560 MMcf per day.

Questions regarding the application may be directed to Cynthia Hornstein Roney, Manager—Regulatory Affairs, Stingray Pipeline Company, L.L.C., 1100 Louisiana, Suite 3300, Houston, Texas 77002, by calling (832) 214–9334 or by e-mailing *cynthia.roney@enbridge.com.*

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 seven 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.

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 cementers 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 cementers will not be required to serve copies of filed documents on all other parties. However, the nonparty commeners 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.

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.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.fere.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov.using* the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free) or TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 23, 2011.

Dated: March 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5317 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1845–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits tariff filing per 154.403(d)(2): Fuel Filing 2011 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5102.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1846–000.
Applicants: Cimarron River Pipeline, LLC.
Description: Cimarron River Pipeline, LLC submits tariff filing per 154.403(d)(2): Fuel Tracker 2011 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5129.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1847–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: Compliance with CP09–17–000 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5135.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1848–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.204: Non-Conforming Agreement Filing—Stand Energy Corporation to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5138.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1849–000.
Applicants: Empire Pipeline, Inc.
Description: Empire Pipeline, Inc. submits tariff filing per 154.203: Annual Report of Compressor Fuel Factor (GT&C 23.5) to be effective N/A.
Filed Date: 03/01/2011.
Accession Number: 20110301–5142.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1850–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Sea Robin Pipeline Company, LLC submits tariff filing per 154.204: Hurricane Surcharge Filing 3–1–11 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5157.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1851–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Millennium Pipeline Company's Annual Report of Operational Transactions for Calendar Year 2010.
Filed Date: 03/01/2011.
Accession Number: 20110301–5173.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1852–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: Annual Fuel Gas Reimbursement Percentage Report of TransColorado Gas Transmission Company LLC.
Filed Date: 03/01/2011.
Accession Number: 20110301–5199.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1853–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Service Agreement—Kinzer to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5208.

Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1854–000.
Applicants: Colorado Interstate Gas Company.
Description: Quarterly Lost Unaccounted for and Other Fuel—FL&U of Colorado Interstate Gas Company.
Filed Date: 03/01/2011.
Accession Number: 20110301–5210.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1855–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.203: Baseline Filing Volume No. 1–A to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5212.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1856–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: EnCana Marketing Negotiated Rate Agreement Amendment to be effective 2/24/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5231.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1857–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.204: Housekeeping Filing 3–1–11 to be effective 4/1/2011.
Filed Date: 03/01/2011
Accession Number: 20110301–5236.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1858–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: Florida Gas Transmission Company, LLC submits tariff filing per 154.204: Fuel Filing 3–1–11 to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5274.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1859–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.204: Pipeline Safety Cost Tracker Annual Filing to be effective 4/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5280.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1860–000.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits tariff filing per 154.403: Storm Surcharge 2011 to be effective 4/1/2011.
Filed Date: 03/02/2011.
Accession Number: 20110302–5000.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1861–000.
Applicants: Energy West Development, Inc.
Description: Energy West Development, Inc., Docket No. L&U Rate Filing.
Filed Date: 03/01/2011.
Accession Number: 20110301–5290.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1862–000.
Applicants: Hardy Storage Company LLC.
Description: Hardy Storage Company, LLC submits for filing its annual report of its operational transactions (purchases, sales, borrows or tenders of natural gas) for the twelve months ended December 31, 2010.
Filed Date: 03/01/2011.
Accession Number: 20110301–5292.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1863–000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Report of Stingray Pipeline Company, L.L.C.
Filed Date: 03/01/2011.
Accession Number: 20110301–5293.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1864–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits its annual report of its operational purchases and sales of natural gas for the twelve months ended December 31, 2010.
Filed Date: 03/01/2011.
Accession Number: 20110301–5295.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

Docket Numbers: RP11–1865–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits its annual report of its operational transactions (purchases, sales, borrows or tenders of natural gas) for the twelve months ended December 31, 2010.
Filed Date: 03/01/2011.
Accession Number: 20110301–5296.
Comment Date: 5 p.m. Eastern Time on Monday, March 14, 2011.

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.

Dated: March 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5248 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2614–003.
Applicants: ENMAX Energy Marketing, Inc.
Description: ENMAX Energy Marketing, Inc. submits tariff filing per 35: FERC_Electric_Tariff to be effective 8/26/2004.
Filed Date: 03/01/2011.
Accession Number: 20110301–5096.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2501–002.
Applicants: Rolling Thunder I Power Partners, LLC.
Description: Rolling Thunder I Power Partners, LLC submits tariff filing per 35.17(b): MBR Tariff Filing of Rolling Thunder I Power Partners, LLC to be effective 3/13/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5214.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2935–000.
Applicants: Paulding Wind Farm II LLC.
Description: Paulding Wind Farm II LLC submits tariff filing per 35.12: Paulding Wind Farm II LLC MBR Tariff to be effective 4/8/2011.
Filed Date: 02/22/2011.
Accession Number: 20110222–5186.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 15, 2011.

Docket Numbers: ER11–2978–000.
Applicants: Lower Mount Bethel Energy, LLC.
Description: Lower Mount Bethel Energy, LLC submits tariff filing per 35: Lower Mount Bethel Energy, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5227.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2979–000.
Applicants: PPL Brunner Island, LLC.
Description: PPL Brunner Island, LLC submits tariff filing per 35: PPL Brunner Island, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5229.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2980–000.
Applicants: PPL Colstrip I, LLC.
Description: PPL Colstrip I, LLC submits tariff filing per 35: PPL Colstrip I, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5234.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2981–000.
Applicants: PPL Colstrip II, LLC.
Description: PPL Colstrip II, LLC submits tariff filing per 35: PPL Colstrip II, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5235.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2982–000.
Applicants: PPL Electric Utilities Corporation.
Description: PPL Electric Utilities Corporation submits tariff filing per 35: PPL Electric Utilities Corporation's Appliction to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5237.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2983–000.
Applicants: PPL EnergyPlus, LLC.
Description: PPL EnergyPlus, LLC submits tariff filing per 35: PPL EnergyPlus, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5238.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2984–000.
Applicants: PPL Great Works, LLC.
Description: PPL Great Works, LLC submits tariff filing per 35: PPL Great Works, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5239.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2985–000.
Applicants: PPL Holtwood, LLC.
Description: PPL Holtwood, LLC submits tariff filing per 35: PPL Holtwood, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5240.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2986–000.
Applicants: PPL Maine, LLC.
Description: PPL Maine, LLC submits tariff filing per 35: PPL Maine, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5243.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2987–000.
Applicants: PPL Martins Creek, LLC.
Description: PPL Martins Creek, LLC submits tariff filing per 35: PPL Martin's Creek, LLC Application to remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5244.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2988–000.
Applicants: PPL Montana, LLC.
Description: PPL Montana, LLC submits tariff filing per 35: PPL Montana, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5252.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2989–000.
Applicants: PPL Montour, LLC.
Description: PPL Montour, LLC submits tariff filing per 35: PPL Montour, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5258.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2990–000.
Applicants: PPL New Jersey Biogas, LLC.
Description: PPL New Jersey Biogas, LLC submits tariff filing per 35: PPL New Jersey Biogas, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5265.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2991–000.
Applicants: PPL New Jersey Solar, LLC.
Description: PPL New Jersey Solar, LLC submits tariff filing per 35: PPL New Jersey Solar, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.
Filed Date: 03/01/2011.
Accession Number: 20110301–5268.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2992–000.

Applicants: PPL Renewable Energy, LLC.

Description: PPL Renewable Energy, LLC submits tariff filing per 35: PPL Renewable Energy, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5269.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2993–000.

Applicants: PPL Susquehanna, LLC.

Description: PPL Susquehanna, LLC submits tariff filing per 35: PPL Susquehanna, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5270.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2994–000.

Applicants: PPL University Park, LLC.

Description: PPL University Park, LLC submits tariff filing per 35: PPL University Park, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5272.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2995–000.

Applicants: PPL Wallingford Energy LLC.

Description: PPL Wallingford Energy LLC submits tariff filing per 35: PPL Wallingford, LLC's Application to Remove Certain MBR Conditions to be effective 5/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5273.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2996–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011–03–01 CAISO's Default Allocation Compliance Filing One Day Out of Time to be effective 6/28/2010.

Filed Date: 03/01/2011.

Accession Number: 20110301–5276.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

Docket Numbers: ER11–2997–000.

Applicants: Vectren Retail, LLC.

Description: Vectren Retail, LLC submits tariff filing per 35.12: Vectren Retail (d/b/a Vectren Source) MBR Application and Initial MBR Tariff to be effective 3/1/2011.

Filed Date: 03/01/2011.

Accession Number: 20110301–5281.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

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.

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 dockets(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.

Dated: March 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5290 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–329–011; *ER07–597–006.*

Applicants: Montana Generation, LLC, NorthWestern Corporation

Description: Non-Material Change-in-Status Report of NorthWestern Corporation, *et al.*

Filed Date: 03/02/2011.

Accession Number: 20110302–5079.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–2276–001.

Applicants: Duke Energy Indiana, Inc., Midwest Independent Transmission System Operator, Inc.

Description: Duke Energy Indiana, Inc. submits tariff filing per 35: DEI–DEI Compliance Filing to be effective 12/1/2010.

Filed Date: 03/02/2011.

Accession Number: 20110302–5025.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–2998–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 03–02–11 ATC Att O revisions to be effective 7/28/2010.

Filed Date: 03/02/2011.

Accession Number: 20110302–5035.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–2999–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35: Compliance Filing for Order No. 676–E to be effective 4/1/2011.

Filed Date: 03/02/2011.
Accession Number: 20110302–5056.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–3000–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Correction to Tariff Record of Section I Exhibit 1A to Conform Versions to be effective 2/18/2011.
Filed Date: 03/02/2011.
Accession Number: 20110302–5057.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–3001–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Original Service Agreement Nos. 2780 and 2781 to be effective 2/1/2011.
Filed Date: 03/02/2011.
Accession Number: 20110302–5074.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–3002–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Revisions to update the PJM Operating Agreement Schedule 12 ? Membership List to be effective 2/14/2011.
Filed Date: 03/02/2011.
Accession Number: 20110302–5078.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Docket Numbers: ER11–3003–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): Moon Lake Wheeling Agreement to be effective 5/2/2011.
Filed Date: 03/02/2011.
Accession Number: 20110302–5088.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 23, 2011.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES11–21–000.
Applicants: Old Dominion Electric Cooperative, Inc.
Description: Application of Old Dominion Electric Cooperative for Authorization to Issue Short-term Debt and to Guaranty Obligations, and for Waivers in ES11–21.
Filed Date: 03/01/2011.
Accession Number: 20110301–5303.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 22, 2011.

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.

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 dockets(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.

Dated: March 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–5291 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–25–000]

PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on March 2, 2011, PPL EnergyPlus, LLC (PPL EnergyPlus or Complainants), pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2010) and section 206 of the Federal Power Act, 16 U.S.C. 824e and 825e (2006), filed a formal complaint against PJM Interconnection, L.L.C. (PJM or Respondent), alleging that PJM failed to conduct its annual financial transmission rights auction and the associated annual auction revenue rights allocations for the 2010/2011 planning period in accordance with the requirements of the PJM Open Access Transmission Tariff and that PJM plans to conduct the annual financial transmission rights auction and the associated auction revenue rights allocations for the 2011/2012 planning period in violation of the PJM Open Access Transmission Tariff.

PPL EnergyPlus certifies that copies of the complaint were served on the contacts for PJM 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 March 16, 2011.

Dated: March 3, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5319 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–78–000]

CenterPoint Energy Gas Transmission Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line AM–46 Replacement Project, Request for Comments on Environmental Issues, and Notice of Onsite Environmental Review

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 Line AM–46 Replacement Project involving construction, operation, and abandonment of facilities by CenterPoint Energy Gas Transmission Company, LLC (CEGT) in Howard, Hempstead, Sevier, and Little River Counties, Arkansas. 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 April 1, 2011.

The Office of Energy Projects staff will conduct on onsite environmental review of the project area on March 29, 2011 to gather data for its environmental assessment. Staff will examine the proposed pipeline route, facilities, and alternative routes filed by CEGT. Viewing of this area is anticipated to be from public access points. All interested parties are invited to attend but must provide their own transportation. Those attending should meet at the following location and time: Line AM–46 Replacement Project, FERC Environmental Site Review, March 29, 2011 at 9 a.m. Central Time, U.S. Army Corps of Engineers Millwood Lake Project Office, 1528 Hwy 32 East Ashdown, AR.

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 proposed 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?" was attached to the project notice CEGT provided to landowners. 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. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

The Line AM–46 Replacement Project would involve abandonment and replacement of natural gas facilities to ensure continued supply of about 50 million standard cubic feet of natural gas per day to the Ashdown, Arkansas area. CEGT proposes to abandon in place related pipeline segments in Howard, Sevier, and Little River County, Arkansas. These segments cross Millwood Lake or associated waterbodies and were constructed between 1929 and 1965. Frequent repairs on these lines necessitate their replacement. CEGT proposes to replace these segments with a new pipeline which would bypass Millwood Lake and be located in Howard, Hempstead, and Little River Counties, Arkansas.

The Line AM–46 Replacement Project would consist of the following facilities:

- Construction of 16.7 miles of 10-inch-diameter pipeline,
- Construction of a pig launcher and receiver,[1] and
- Abandonment of a total of 16.2 miles of 8- and 10-inch-diameter pipeline.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 196 acres of land for the aboveground facilities and the pipeline. Following construction, about 81 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. About 83 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

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 us[3] 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

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[1] 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.

[2] 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.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

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 proposed project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Land use;
- Cultural resources;
- Air quality and noise; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

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 below.

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 Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CEGT. This preliminary list of issues may be changed based on your comments and our analysis.

- Crossing of wetlands enlisted under the Wetland Reserve Program for the protection, restoration and enhancement of wetlands.
- Potential impacts on federally listed threatened and endangered species occurring within the project area.

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 April 1, 2011.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–78–000) 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 *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http:www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*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, 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 proposed project. If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors 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.

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 at *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.,* CP11–78). 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 now 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.

Dated: March 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5316 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF11–4–001]

Western Area Power Administration; Notice of Filing

Take notice that on March 3, 2011, the Western Area Power Administration, submitted its Open Access Transmission Tariff Compliance Filing, to be effective March 2, 2011.

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. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 March 24, 2011.

Dated: March 3, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5323 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–24–000]

SunZia Transmission, LLC; Notice of Petition for Declaratory Order

Take notice that on February 23, 2011, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207(a)(2) (2010), SunZia Transmission, LLC (SunZia) filed a revised petition for declaratory order requesting that the Commission find that: (i) Tucson Electric Power Company (TEP), SouthWestern Power Group (SWPG), ECP SunZia, LLC (ECP SunZia), and Shell WindEnergy Inc. (SWE) (collectively SunZia Owners) each owns that portion of the SunZia Southwest Transmission Project (Project) equal to its *pro rata* share of investment in the Project,[1] (ii) SWPG, ECP SunZia, and SWE may allocate up to 50 percent of their *pro rata* shares of the Project to anchor customers through long-term firm negotiated rate contracts,[2] and (iii) electrical interconnection or transmission requests with respect to the Project are premature prior to the Project attaining sufficient maturity as to its permitting, licensing, determination of the final alignment, and determination of the resulting estimated costs.

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. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 Thursday, March 17, 2011.

Dated: March 3, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5324 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

[1] In addition to the SunZia Owners, Salt River Project Agricultural Improvement and Power District (SRP) and Tri-State Generation and Transmission Association, Inc. (TSGT) are sponsors of the Project. Neither SRP nor TSGT is a "public utility" within the meaning of section 201(e) of the Federal Power Act.

[2] The remaining sponsors of the Project, SRP, TSGT, and TEP—all existing load-serving entities with existing transmission systems—plan to incorporate their *pro rata* shares of the Project into their transmission systems and provide service pursuant to their respective open access transmission tariffs (OATTs). As non-public utilities, SRP and TSGT are not required to file their OATTs with the Commission.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13885–000]

City of Tacoma, Washington; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions to Intervene

On November 22, 2010, the City of Tacoma, Washington (Tacoma), filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Tacoma Water Supply Hydroelectric Project (Tacoma Project or project) to be located on the existing Tacoma Water Transmission System, in Pierce County, Washington.[1] The sole

[1] Tacoma filed a competing preliminary permit application in response to the notice for a preliminary permit application for the same site from Energy Exchange, Inc. for Project No. 13729.

Continued

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 has four sites that are being evaluated for potential hydropower installations, and would consist of the following:

Site #1—Pipeline 1 into McMillin Reservoir Alternative

(1) A new powerhouse, located at McMillan Reservoir, containing two turbine/generating units with a total installed capacity of 500 kilowatts (kW); and (2) a station transformer at the powerhouse to connect the turbine output to a 13.8-kilovolt (kV) distribution line owned by Tacoma Power. Water would enter the powerhouse from the existing Pipeline 1, and exit the powerhouse directly into McMillan Reservoir. The project would produce an estimated average annual generation of about 2,400 megawatt-hours (MWh).

Site #2—Second Supply Pipeline into P4

(1) A new powerhouse, located at the Portland Avenue Reservoir, containing two turbine/generating units with a total installed capacity of 500 kW; and (2) a station transformer at the powerhouse to connect the turbine output to a 13.8-kV distribution line owned by Tacoma Power. Water would enter the powerhouse from the second supply pipeline and exit the powerhouse into either Pipeline 4 or into the Portland Avenue Reservoir. The project would produce an estimated average annual generation of about 2,400 MWh.

Site #3—Second Supply Pipeline at the Flow Control Facility

(1) A new powerhouse, located at the 112th Street Flow Control Facility site, containing two turbine/generating units with a total installed capacity of 1,200 kW; and (2) a station transformer at the powerhouse to connect the turbine output to a 13.8-kV distribution line owned by Tacoma Power. Water would enter the powerhouse from the second supply pipeline, and exit the powerhouse back into the second supply pipeline. The project would produce an estimated average annual generation of about 5,100 MWh.

Site #4—North Fork Well Field

(1) A new powerhouse, located at the Green River headworks at the lower end of the Green River Watershed, containing two turbine/generating units with a total installed capacity of 800 kW; and (2) a station transformer at the powerhouse to connect the turbine output to a 13.8-kV distribution line owned by Tacoma Power. Water would enter the powerhouse from the existing pipeline that brings water to the headworks from the North Field wells, and exit the powerhouse back into the existing Headworks Reservoir. The project would produce an estimated average annual generation of about 3,300 MWh.

The combined generating capacity of all four sites would be 3,000 kW and the total estimated average annual generation would be 13,200 MWh.

Applicant Contact: Mr. Glen George, Water Supply Manager, Tacoma Water, 3628 South 35th Street, Tacoma, Washington 98409–3192; phone: (253) 502–8737.

FERC Contact: Kelly Wolcott; phone: (202) 502–6408.

Deadline for filing comments and motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13885–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5321 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

Energy Exchange, Inc. withdrew its application on January 6, 2011, which became effective January 21, 2011.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13834–000]

Amnor Hydro West Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 23, 2010, and supplemented on November 3, 2010, Amnor Hydro West, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Unity Dam Hydropower Project (project) to be located at the Unity reservoir and dam in Hereford, Baker County, Oregon. Unity reservoir and dam are owned and operated by the U.S. Bureau of Reclamation (Reclamation) and are currently used for irrigation. 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 utilize flows from the Unity reservoir and would consist of the following: (1) A new 110-foot-long open channel beginning near the left abutment of the dam and connecting with three 63-inch-diameter butterfly valves; (2) three new 656-foot-long, 63-inch-diameter steel penstocks that connect to a new powerhouse; (3) a new 30-foot-long, 30-foot-wide, 30-foot-high powerhouse with three Francis turbine/generating units for an installed capacity of 4 megawatts; (4) a new 98-foot-long tailrace; (5) a new 1,000-foot-long, 14.7-kilovolt transmission line extending from the powerhouse to a proposed substation; and (6) appurtenant facilities. The estimated annual generation of the project would be 17.5 gigawatt-hours.

Applicant Contact: Mr. Adam Supronik, 42 Pearsall Street, Staten Island, NY 10305, phone: (347) 415–9600.

FERC Contact: Patrick Murphy; phone: (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13834–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–5320 Filed 3–8–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0136; FRL–8865–7]

Promoting Community Integrated Pest Management To Prevent Tick-Borne Diseases; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will host a National Community Integrated Pest Management (IPM) for Preventing Tick-Borne Diseases Conference on March 30 and 31, 2011, under the auspices of EPA's Pesticide Program Dialog Committee (Public Health Work Group). The objectives of the conference are to identify knowledge gaps and barriers to effective community-wide tick control; propose the next steps in addressing knowledge gaps and eliminating barriers; and develop a framework for addressing the highest priority needs. The agenda for this conference will be posted at *http://www.epa.gov/pestwise/* and placed in the docket in advance of the meeting.

DATES: The meeting will be held on March 30 and 31, 2011, from 8 a.m. to 5 p.m. Requests to participate in the meeting must be received on or before March 18, 2011. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held in Arlington, VA 22202 at at location to be determined. For additional information on the location, please see the following Web page: *http://www.epa.gov/pesticides.*

FOR FURTHER INFORMATION CONTACT: Raderrio Wilkins, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–1259; e-mail address: *wilkins.raderrio@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. The announcement may be of interest to Federal, State, and local municipal officials involved in tick management, prevention and outreach; practitioners involved in managing tick populations in parks, residential areas and military installations; academic and research institutions examining the effectiveness of prevention strategies; school officials, teachers, outdoor educators, nurses and anyone involved in educating children; non-government organizations (NGO); civic and community organizations; Integrated Pest Management implementers; pesticide registrants for insect repellents and area wide control; regional landscape planners concerned with biodiversity and fragmented habitat; and health economists concerned with infectious disease.

Since other entities may also be interested, the Agency has not described all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2011–0136. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

Tick-borne diseases, including Lyme, Rocky Mountain spotted fever, and anaplasmosis, are an increasing problem in the United States, both in terms of frequency of occurrence and range. Increases in the ranges of disease hosts and carriers, possibly due to changes in populations and climatic conditions mean that tick bite protection and disease prevention have become critical needs. Adolescents and children are especially at risk because of the time they spend outdoors.

It is important that the Federal government assist in exploring means of effectively identifying challenges and ways to remedy this growing problem of tick management through Integrated Pest Management (IPM). This conference will identify knowledge gaps and barriers to effective community-wide tick IPM programs; propose the next steps in addressing knowledge gaps and eliminating barriers; and develop a framework for addressing the highest priority needs.

The conference will focus on six topic areas that will contribute to the development of an IPM-based prevention strategy and action plan:

1. Protecting children in school and outdoor environments.

2. Creating institutional structures for community level IPM.

3. Examining the role of landscape planning in tick management.

4. Public outreach strategies to reach targeted populations.

5. Protecting outdoor worker exposure.

6. Measuring the impact of prevention strategy in the United States.

III. How can I request to participate in this meeting?

The conference is open to the public. Visit *http://www.eventbrite.com/event/1154843167* to register to attend in person. You may submit a request to provide formal comments (up to three minutes) in this meeting to *info@epa.gov.* Requests to participate in the meeting should include name, affiliation, address, telephone number, and e-mail address. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2011–0136, must be received on or before March 17, 2011.

List of Subjects

Environmental protection, Community IPM, Insect Repellents, Integrated Pest Management, Lyme Disease, IPM, Tick, Tick-borne Disease.

Dated: February 24, 2011.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2011–5068 Filed 3–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0001; FRL–8866–3]

SFIREG Environmental Quality Issues Working Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG), Environmental Quality Issues (EQI) Working Committee will hold a 2-day meeting, beginning on April 18, 2011 and ending April 19, 2011. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, April 18, 2011 from 8:30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on Tuesday April 19, 2011.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA. One Potomac Yard (South Bldg.), 2777 Crystal Dr., Arlington, VA. 1st Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division, (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number*: (703) 305–5561; *e-mail address: kendall.ron@epa.gov* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; telephone number (302) 422–8152; fax (302) 422–2435; *e-mail address*: Grier Stayton at *aapco-sfireg@comcast.net*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

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

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2011–0001. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Tentative Agenda Topics

Topics to be discussed may include, but are not limited to the following:

1. Bed Bugs: Issue Paper; Remediation Overview;
2. Update: Aquatic Life Benchmarks;
3. Common Aquatic Life Affects Assessment;
4. USDA Drinking Water Monitoring;
5. National Pollution Discharge Elimination System permit: Update, feedback;
6. Washington State White Paper on Endangered Species;
7. Update: Endangered Species, Litigation, Biological Opinions;
8. Chemigation: Recommendations, Follow-up;
9. Driftwatch;
10. National Water Quality Assessment (NAWQA) Briefing.

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection.

Dated: February 24, 2011.

Robert C. McNally,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2011–5069 Filed 3–8–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2011–0030]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

Form Title: Generic Information Collection Requests.

SUMMARY: As part of the Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Export-Import Bank of the United States (Ex-Im Bank), has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on

Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*)

DATES: Comments must be submitted by April 8, 2011 to be considered.

ADDRESSES: Comments may be submitted through *www.Regulations.Gov* or mailed to Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038 *attn:* OMB 3048-xxxx.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Sharon A. Whitt, *sharon.whitt@exim.gov*.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mane information that provides useful insights on perceptions and options, but are not statistical surveys that yield qualitative results that can be generalized to the population of the study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collection under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data used require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** on December 22, 2010 (75 FR 80542).

A variety of instruments and platforms will be used to collect information from the respondents see below:

Survey Type.
Web based/e-mail based survey.
Feedback/Comment Evaluation Form.
Detailed Mail Evaluation Form.
Telephone.
Focus Group.

Current Actions: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 10.

Respondents: 15,100.

Annual Responses: 4,700.

Frequency of Response: Once per request.

Average minutes per response: 15.

Burden hours: 6,700.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. Findings will be used for general service improvement, but are not for publication or other public release.

Although the Agency does not intend to publish its findings, the Agency may receive requests to release the information (*e.g.,* congressional inquiry, Freedom of Information Act requests). The Agency will disseminate the findings when appropriate, strictly following the Agency's "Guidelines for Ensuring the Quality of Information Disseminated to the Public.", and will include specific discussion of the limitation of the qualitative results discussed above.

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 Office of Management and Budget control number.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–5306 Filed 3–8–11; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Items; Open Commission Meeting; Thursday, March 3, 2011

March 2, 2011.

The following items have been deleted from the list of Agenda items scheduled for consideration at the Thursday, March 3, 2011, Open Meeting and previously listed in the Commission's Notice of February 24, 2011. The items have been adopted by the Commission.

Item No.	Bureau	Subject
6	Wireless Telecommunications and Consumer & Governmental Affairs.	*Title:* Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CG Docket No. 10–213); Amendments to the Commission's rules implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996 (WT Docket No. 96–198) and Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision (CG Docket No. 10–145). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that seeks comment on rules implementing provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). The NPRM proposes rules requiring providers of advanced communications services and manufacturers of equipment used for those services to make their products accessible to people with disabilities.
7	Media	*Title:* Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010.

Item No.	Bureau	Subject
		Summary: The Commission will consider a Notice of Proposed Rulemaking to reinstate the video description rules adopted by the Commission in 2000, as directed in the CVAA.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–5527 Filed 3–7–11; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011885–002.

Title: CMA CGM/MSC Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM S.A. and Mediterranean Shipping Company S.A.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment increases both the number of vessels and vessel capacity under the Agreement, and provides that the parties will no longer operate a joint vessel in the Agreement trade.

Agreement No.: 012032–007.

Title: CMA CGM/MSC/Maersk Line North and Central China-US Pacific Coast Two-Loop Space Charter, Sailing and Cooperative Working Agreement.

Parties: A.P. Moller-Maersk A/S, CMA CGM S.A., and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add a third vessel loop to the Agreement, revise the vessel provisions and allocations on the two existing loops, add provisions on the schedule reliability, and revise the duration of the Agreement. It also restates the Agreement.

By Order of the Federal Maritime Commission.

Dated: March 4, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–5368 Filed 3–8–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov*.

A & A Shipping & Logistics Inc. (NVO), 2 Reiter Avenue, Hicksville, NY 11801. Officer: Daulat R. Tannan, President/Secretary (Qualifying Individual), Application Type: New NVO License.

Reina Grace Louden and Bradley Daniel Louden, dba BDL Logistics(NVO & OFF), 2387 Indigo Harbour Lane, League City, TX 77573. Officers: Reina G. Louden, Partner (Qualifying Individual), Bradley D. Louden, Partner, Application Type: New NVO & OFF License.

Bridgeline Logistics Incorporated (OFF), 700 Berron Lane, Barrington, IL 60010. Officer: Machiko K. Hamada, President/CEO (Qualifying Individual), Application Type: New OFF License.

Cargo Solution International, Inc. (NVO & OFF), 17910 Ajax Circle, City of Industry, CA 91748. Officers: Jacky C. Chen, President (Qualifying Individual), Jimmy Chi, Vice President, Application Type: New NVO & OFF License.

Champ International Shipping Limited Liability Company (NVO), 900 Kaighns Avenue, Camden, NJ 08103. Officers: Lamar Hibbert, Member (Qualifying Individual), Roy Hibbert, Member. Application Type: New NVO License.

CTC Logistics (L.A.) Inc. (NVO), 5250 W. Century Blvd., Suite 660, Los Angeles, CA 90045. Officers: Ann L. Shang, CFO (Qualifying Individual), Yon L. Li, President, Application Type: QI Change.

EP–Team, Inc. dba EP–Team (NVO & OFF), 3700 Forums Drive, #201, Flower Mound, TX 75028. Officers: Adam M. Burns, General Manager (Qualifying Individual), David R. Pulk, President/Director, Application Type: New NVO & OFF License.

ICT International Cargo Transport (USA) Inc. (NVO & OFF), 28922 Lorain Road, #102, North Olmsted, OH 44070. Officers: Leianne Malachin, Vice President Imports (Qualifying Individual), Janko Willie, President, Application Type: QI Change.

J.A. Logistics, Inc. (NVO & OFF), 3905 West Albany Street, McHenry, IL 60050. Officers: Joseph M. Alger, President/Secretary (Qualifying Individual), Richard D. Jennings, CEO, Application Type: New NVO & OFF License.

Mitsui-Soko (U.S.A.) Incorporated (NVO & OFF), 1651 Glen Curtiss Street, Carson, CA 90746. Officers: Ryuji Ikeda, President (Qualifying Individual), Hiroyuki Hamano, Chairman/Director, Application Type: QI Change.

Oceane Marine Shipping, Inc. (NVO & OFF), 407 East Maple Street, Suite 301, Cumming, GA 30040. Officers: Kristiaan M. Luykx, President (Qualifying Individual), Heather M. House, Secretary, Application Type: Add OFF Service.

OOCL Logistics Line Limited (NVO), 33/F Harbour Centre, 25 Harbour Road, Wanchai, Hong Kong. Officers: Tsang M. Tak, Director/CEO (Qualifying Individual), Joseph P. Hogan, Director, Application Type: QI Change.

Quick Freight Group, Inc. dba Accufreight Group, dba KAS America (NVO), 175–01 Rockaway Blvd., #301, Jamaica, NY 11434. Officers: Sam S. Kim, Secretary (Qualifying Individual), Sang M. Han, President,

Application Type: QI Change and Trade Name Change.

Sola Transport Agency, Inc. (NVO), 4880 Granada Blvd., Coral Gables, FL 33146. Officer: Manuel M. Sola, Jr., President/Secretary (Qualifying Individual), Application Type: New NVO License.

TBS Shipping Houston, Inc. dba Magnum Lines (NVO & OFF), 11731 Jones Road, Suite 200, Houston, TX 77070. Officers: George E. Cody, President/Managing Director (Qualifying Individual), Joseph E. Royce, Director, Application Type: Name Change and QI Change.

Unifreight Logistics, Inc. (NVO & OFF), 9133 S. La Cienega Blvd., Suite 245, Inglewood, FL 90301. Officers: John C. Chang, President/Chairman (Qualifying Individual), Gary A. Dorian, Secretary, Application Type: New NVO & OFF License.

United World Line, Inc. dba WSI Forwarding Services (NVO & OFF), 1340 Depot Street, Suite 200, Cleveland, OH 44116. Officers: Jane A. Colazzo, Vice President (Qualifying Individual), Frederick M. Hunger, President, Application Type: Name Change and QI Change.

Victory Maritime Services USA (NVO), 425 West Main Street, Alhambra, CA 91801. Officers: Hans P. Hofmann, Assistant Secretary/VP (Qualifying Individual), Xu Chen, President/Secretary, Application Type: New OFF License.

Dated: March 4, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–5367 Filed 3–8–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Community State Bank Employee Stock Ownership Plan and Trust, Union Grove, Wisconsin,* to acquire up to 850 shares of Union Bancorporation, Inc., Union Grove, Wisconsin, and increase its ownership up to 38.24 percent, and thereby indirectly increase its control of Community State Bank, Union Grove, Wisconsin.

Board of Governors of the Federal Reserve System, March 4, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–5384 Filed 3–8–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (NOT–ES–11–007): Needs and Approaches for Assessing the Human Health Impacts of Exposure to Mixtures

AGENCY: National Institutes of Health (NIH), HHS.

ACTION: Request for information.

SUMMARY: The National Institute of Environmental Health Sciences (NIEHs), the Division of Extramural Research and Training (DERT) and the National Toxicology Program (NTP) seek input for identification of key research areas in mixtures. Information provided will be used in planning a workshop for late summer 2011 to help inform the development of intramural and extramural research efforts that address the combined health effects of multiple environmental exposures ("mixtures"). This request for information (RFI) is for planning purposes only and should not be construed as a funding opportunity or grant program. Input from all interested parties is welcome including the lay public, environmental health researchers, health professionals, educators, policy makers, industry, and others. Please respond on-line at the Mixtures Request for Information Web page (*http://ntp.niehs.nih.gov/go/rfimix*) by April 15, 2011.

DATES: Please respond online at the Mixtures Request for Information Web page (*http://ntp.niehs.nih.gov/go/rfimix*) by April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Other correspondence regarding this RFI should be directed to either (1) Dr. Danielle Carlin, DERT Program Administrator, NIEHS, P.O. Box 12233, MD K3–04, Research Triangle Park, NC 27709, (telephone) 919–541–1409, (e-mail) *carlindj@niehs.nih.gov* or (2) Dr. Cynthia Rider, NTP Toxicologist, NIEHS, P.O. Box 12233, MD K2–12, Research Triangle Park, NC 27709, (telephone) 919–541–7638, (e-mail) *ridercv@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NIEHS mission is to reduce the burden of human illness and disability by understanding how the environment influences the development and progression of human disease. To accomplish this, the NIEHS supports research and professional development in environmental health sciences, clinical research, and public health.

DERT plans, directs and evaluates the NIEHS grant program, which supports research and research training in environmental health. It develops program priorities and recommends funding levels to assure maximum utilization of available resources in attainment of NIEHS objectives. Through cooperative relationships with NIH and with public and private institutions and organizations, DERT maintains an awareness of national research efforts and assesses the need for research and research training in environmental health.

The NTP is an interagency program whose mission is to evaluate agents of public health concern by developing and applying tools of modern toxicology and molecular biology. The NTP designs and conducts laboratory studies and testing programs and analyzes its findings to assess potential hazards to human health from exposure to environmental substances. The NTP also carries out formal review and literature analysis activities.

The evaluation of human health effects from multiple environmental exposures represents a special challenge to the research community due to the

inherent complexity of the topic. The term "mixture" can be broadly interpreted and can refer to a substance with variable composition or to mixtures resulting from combined exposures. For the purposes of this RFI, "mixtures" pertains to any set of multiple environmental exposures (chemical or non-chemical) that may contribute jointly to adverse human health outcomes, irrespective of whether people are exposed to the substances at the same/different times or through similar/distinct sources or routes.

Continuous human exposure to complex and dynamic mixtures precludes directly testing the toxicity of each possible exposure combination. Therefore, predictive models of mixture toxicity must be developed and validated in order to characterize the hazard associated with complex exposures. In order to develop these models, a better understanding is required of both the composition of real-world exposures and the fundamental principles of chemical interactions. Combinatorial or statistical approaches are needed to address the potential interactions of complex exposures. Moreover, these approaches should be used to move beyond assessment of individual chemicals and further our understanding of the impacts of realistic exposures.

Information gathered through this RFI will be used in planning a workshop on mixtures to be held in late summer 2011. The date and location have not yet been determined, but when set, will be announced in the **Federal Register**. The overarching goals of this workshop are to foster discussion on the approaches, infrastructure, and resources needed to make progress and to identify new scientific opportunities by applying innovative tools to the field of mixtures research. Additionally, the workshop should provide opportunities for development of collaborations and foster multidisciplinary interactions among the mixtures scientific community. The workshop will bring together experts from multiple disciplines including, but not limited to, exposure assessment, risk assessment, biostatistics, toxicology, biology, regulatory science, and epidemiology.

Information Requested

DERT and the NTP request information on the challenges and potential solutions in mixtures research. Responses to any or all of the questions below are invited from interested individuals/groups, including, but not limited to, the environmental health research community, health professionals, educators, policy makers, industry, and the public.

- What are the underlying scientific knowledge gaps for assessing the effects of mixtures on human health?
- What are the scientific issues encountered in performing risk assessments of mixtures that can be addressed by new research?
- What types of scientific data (*e.g.,* mechanistic, epidemiological) are needed to address these underlying knowledge gaps?
- What are the new technologies and innovative approaches that could be leveraged to address these underlying knowledge gaps?

All responses to information requested in this RFI are optional. The information collected will be analyzed and considered for use in the further development of the workshop. The summarized data (without identifiers) may appear in future reports. Although the NIH will provide safeguards to prevent the release of identifying information, there is no guarantee of confidentiality. This RFI is for planning purposes only and shall not be construed as a solicitation for applications or as an obligation on the part of the Government. The Government will not pay for the preparation of any information submitted or for the Government's use of that information. Acknowledgement of receipt of responses will be provided through the Web site (*http://ntp.niehs.nih.gov/go/rfimix*), but respondents will not be notified of the Government's assessment of the information received. No basis for claims against the Government shall arise as a result of responses to this RFI, or in the Government's use of such information as part of its evaluation process.

Dated: February 28, 2011.

Linda S. Birnbaum,

Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. 2011–5352 Filed 3–8–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11BH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The Division of Behavior Surveillance (DBS) Gulf States Population Survey—New—Public Health Surveillance Program Office (PHSPO), Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On April 20, 2010, the BP Deepwater Horizon oil rig exploded in the Gulf of Mexico spilling more than 4.9 million barrels of oil into the Gulf. The lives and livelihoods of persons residing in the Gulf coastal communities were affected by this event due to loss of work, disruption in the fishing and tourism industries, and the effect on the physical environment in which they live.

An ongoing public health concern following the spill is the effect on the mental and behavioral health of populations living in and around the Gulf region and access to the mental health services required to meet that need.

On October 7, 2010 the Office of Management and Budget (OMB) granted emergency clearance (OMB control # 0920–0868, expiration date April 30, 2011) to CDC's Public Health Surveillance Program Office (PHSPO), Division of Behavioral Surveillance (DBS) to conduct a survey to monitor the mental and behavioral health status of this affected population. Data collection for the DBS Gulf States Population Survey began on December 14, 2010 and will continue monthly for a one-year period. No data were collected from October 2010 to December 13, 2010, because the sampling and data collecting contracts had not been awarded.

Using the existing capacity and infrastructure of the Behavioral Risk Factor Surveillance System (BRFSS), DBS implemented a standalone survey designed to monitor mental and behavioral health indicators in the adult population in selected coastal counties affected by the oil spill. The survey includes health related questions taken

from the ongoing BRFSS as well as additional questions taken from standardized scales or from other surveys designed to measure anxiety, depression, and potential stress-associated physical health effects.

The survey questionnaire was developed by DBS in partnership with the Substance Abuse and Mental Health Services Administration (SAMHSA) and state public health and mental health departments from Louisiana, Mississippi, Alabama, and Florida, where the survey is being conducted.

Coastal counties within 32 miles of an area where fishing was closed due to the Deepwater Horizon Event were selected for inclusion. These include the following Gulf coast counties:

Louisiana: Assumption Parish, Calcasieu Parish, Cameron Parish, Iberia Parish, Jefferson Parish, Jefferson Davis Parish, Lafourche Parish, Orleans Parish, Plaquemines Parish, St. Bernard Parish, St. Charles Parish, St. Mary Parish, St. Tammany Parish, Tangipahoa Parish, Terrebonne Parish, Vermilion Parish

Mississippi: Hancock County, Harrison County, Jackson County

Alabama: Baldwin County, Mobile County

Florida: Escambia County, Okaloosa County, Santa Rosa County, Walton County

Since the publication of the 60-day **Federal Register** Notice, DBS proposes to include the following modifications to the Gulf States Population Survey.

- Addition of a Spanish translation of the questionnaire.
- Minor modifications in the wording of some survey questions to improve respondent's understanding of the question.
- Extension of the sample area to the entirety of the four states (AL, FL, LA, MS), which will allow comparison of results from the Gulf Coast counties to non-Gulf Coast counties.
- Addition of cellular phones to the sampling frame. Extension of the sample area to the entirety of the four states (AL, FL, LA, MS) will allow DBS to sample cellular phone responses in addition to land-line telephones. This will improve the survey representativeness because those who have a cellular phone, but no land-line telephone, have a demographic profile that differs from those who do have land-line telephones.

The objective of the survey is to provide state health and mental health departments, SAMHSA, and other appropriate organizations data they need to assess the need for mental and behavioral health services in the selected counties and to inform the provision of those services.

The telephone survey will collect data from a random sample of telephone households which include landline and cellular phone telephones in the selected counties. Approximately 2,500 interviews will be completed each month in the targeted coastal areas and approximately 1,250 interviews will be completed in the comparison areas. Adults 18 years or older will be asked to take part in the survey, but only one adult per household will be interviewed. Potential respondents will be notified through an introductory script that participation is voluntary and they will not be compensated for participating. For those who agree to participate, interviews should last approximately 30 minutes.

Since the OMB emergency clearance for the DBS Gulf States Population Survey expires April 30, 2011, DBS is submitting and information collection request (ICR) to continue data collection for one year.

Preliminary data from the survey will be available to SAMHSA and participating states monthly (pending sample size). The final dataset and analyses will be provided to SAMHSA and participating states in January 2012.

There is no cost to respondents other than their time. The total estimated annual burden hours are 20,000.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form	Group	Number of respondents	Number responses per respondent	Average burden per pesponse (in hours)
Individuals	GSPS	Coastal Counties	30,000	1	30/60
		Comparison Group Counties	10,000	1	30/60

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–5294 Filed 3–8–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10232 and CMS–R–211]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* State Plan Template to Implement Section 6062 of the Deficit Reduction Act; *Form No.:* CMS–10232 (OMB#: 0938–1045); *Use:* The Deficit Reduction Act (DRA) provides States with numerous flexibilities in operating their State Medicaid Programs. Section 6062 of the DRA (Opportunity for families of Disabled Children to Purchase Medicaid Coverage for Such Children) provides States the opportunity to provide Medicaid benefits to disabled children who would otherwise be ineligible because of family income that is above the State's highest Medicaid eligibility standards for children. States must establish a State Plan for medical assistance to implement this provision. To do this,

State Medicaid Agencies will complete the template. CMS will review the information to determine if the State has met all the requirements of the DRA provision; *Frequency:* Once; *Affected Public:* State, Federal, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 10; *Total Annual Hours:* 60. (For policy questions regarding this collection contact Barbara Washington at 410–786–9964. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Model Application Template and Instructions for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program; *Form No.:* CMS–R–211 (OMB#: 0938–0707); *Use:* The information will be used to assess State plan performance and health outcomes and to evaluate the amount of substitute private coverage and the effect of subsidies on access to coverage; *Frequency:* Yearly, occasionally; *Affected Public:* State, Federal, or Tribal Governments; *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Hours:* 3,200. (For policy questions regarding this collection contact Nancy Goetschius at 410–786–0707. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *May 9, 2011:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 28, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–5365 Filed 3–4–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Measurement Development: Quality of Caregiver-Child Interactions for Infants and Toddlers (Q–CCIIT).

OMB No.: New Collection.

Description: The Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACE), U.S. Department of Health and Human Services (HHS), is proposing to develop a new observation measure to assess the quality of child care settings, specifically the quality of caregiver-child interaction for infants and toddlers in nonparental care. The measure will be appropriate for use across child care settings, center-based and family child care settings as well as single- and mixed-age classrooms.

The two-year data collection activity will include two phases: (1) A pilot test and (2) a psychometric field test. We will request information about the child care setting, its classrooms and families for recruitment into the study. Information will be collected through observations, focus groups, and questionnaires.

In the pilot and field tests, the new Q–CCIIT observation measure will include observing a small group activity structured with a common task and asking follow-up observation questions. Caregivers observed will also complete a background questionnaire. Focus groups to obtain stakeholder input on caregiver-child interactions will be conducted separately with parents, caregivers, and training and technical assistance providers. Focus group participants will also complete a demographic questionnaire. Parents of children served by caregivers will complete a questionnaire on their child's competencies related to cognitive, language/communication, and social-emotional development. Parents will complete this questionnaire, which will also include family and child characteristics, once in the pilot test and twice in the field test, at the start of the field test and 6 months later to assess growth.

The purpose of this data collection is to support the 2007 reauthorization of the Head Start program (Pub. L. 110–134), which calls for periodic assessments of Head Start's quality and effectiveness.

Respondents: Child care setting representatives (directors or owners), caregivers (center-based and family child care settings), parents of children in those child care settings, and training and technical assistance providers.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per hour per respondent	Average burden hour per response	Estimated annual burden hours
Child care setting recruitment form	190	1	0.5	95
Q–CCIIT measure-small group activity and follow-up	290	1	0.25	73
Caregiver background questionnaire	520	1	0.25	130
Focus group interview guide	20	1	1.90	38
Parent focus group demographic questionnaire	10	1	0.10	1
Caregiver focus group demographic questionnaire	5	1	0.10	1
Training and technical assistance provider focus group demographic questionnaire	5	1	0.10	1
Parent-report child competence questionnaire	880	2	0.75	1,320

Estimated Total Annual Burden Hours: 1,659.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agencys estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 2, 2011.

Steven Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2011–5171 Filed 3–8–11; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meetings

AGENCY: Administration for Children and Families' Office of Head Start (OHS), HHS.

ACTION: Notice of Tribal Consultation Meetings to be held on March 25, 2011, and April 1, 2011.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of one-day Tribal Consultation Sessions to be held between the Department of Health and Human Services, Administration for Children and Families, OHS leadership, and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of these Consultation Sessions is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, Section 640(l)(4)].

Dates & Locations: The initial 2011 OHS Tribal Consultation Sessions will be held as follows:

Friday, March 25, 2011—Rapid City, South Dakota—Best Western Ramkota.

Friday, April 1, 2011—Boston, Massachusetts—JFK Federal Building.

FOR FURTHER INFORMATION CONTACT: Camille Loya, Tribal Policy Lead, e-mail *Camille.Loya@acf.hhs.gov* or phone (202) 401–5964. Additional information and online meeting registration is available at *http://www.headstartresourcecenter.org.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services announces the first 2011 OHS Tribal Consultations for leaders of Tribal Governments operating Head Start and Early Head Start programs. These Consultation Sessions will take place Friday, March 25, 2011, in Rapid City, South Dakota, and Friday, April 1, 2011, in Boston, Massachusetts. Both of these Head Start Tribal Consultation Sessions will immediately follow Department of Health and Human Services Tribal Consultations being held in Regions VIII and I, respectively.

The agendas for these initial OHS Tribal Consultations will be organized around the statutory purposes of Head Start Tribal Consultations related to meeting the needs of American Indian and Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in 2010 OHS Tribal Consultations.

Tribal leaders and designated representatives interested in submitting written testimony or proposing specific agenda topics for the Rapid City, South Dakota, or Boston, Massachusetts, Consultation Sessions should contact Camille Loya at *Camille.Loya@acf.hhs.gov* at least three days in advance of the Session. Proposals should include a brief description of the topic area along with the name and contact information of the suggested presenter.

The Consultation Sessions will be conducted with elected or appointed leaders of Tribal Governments and their designated representatives [42 U.S.C.9835, Section 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the Tribe. The letter should be submitted at least three days in advance of the Consultation Session to Camille Loya at (202) 205–9721 (fax). Other representatives of Tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of each Consultation Session will be prepared and made available within 90 days of the Consultation Session to all Tribal Governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Camille Loya at *Camille.Loya@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting.

Oral testimony and comments from the Consultation Session will be summarized in the report without attribution, along with topics of concern and recommendations. Hotel and logistical information for all Consultation Sessions has been sent to Tribal leaders via e-mail and posted on the Head Start Resource Center Web site at *http://www.headstartresource center.org.*

Dated: March 1, 2011.

Yvette Sanchez Fuentes,

Director, Office of Head Start.

[FR Doc. 2011–5258 Filed 3–8–11; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0084]

Agency Information Collection Activities; Proposed Collection; Comment Request; Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an

opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's guidance for industry entitled "Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations."

DATES: Submit either electronic or written comments on the collection of information by May 9, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations (OMB Control Number 0910–0562)—Extension

The Food Quality Protection Act of 1996 (FQPA), which amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (the FD&C Act), established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. The Environmental Protection Agency (EPA) is responsible for regulating the use of pesticides (under FIFRA) and for establishing tolerances or exemptions from the requirement for tolerances for residues of pesticide chemicals in food commodities (under the FD&C Act). EPA may, for various reasons, *e.g.,* as part of a systematic review or in response to new information concerning the safety of a specific pesticide, reassess whether a tolerance for a pesticide residue continues to meet the safety standard in section 408 of the FD&C Act (21 U.S.C. 346a). When EPA determines that a pesticide's tolerance level does not meet that safety standard, the registration for the pesticide may be canceled under FIFRA for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities. Under section 408(l)(2) of the FD&C Act, when the registration for a pesticide is canceled or modified due to, in whole or in part, dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the Agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture (USDA) has responsibility for monitoring residue levels and enforcing pesticide tolerances in egg products and most meat and poultry products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. FDA would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an "adulterated" food. However, the channels of trade provision of the FD&C Act addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision (section 408(l)(5) of the FD&C Act) states that food containing a residue of such a pesticide shall not be deemed "adulterated" by virtue of the residue, if the residue is within the former tolerance, and the responsible party can demonstrate to FDA's satisfaction that the residue is present as the result of an application of the pesticide at a time and in a manner which were lawful under FIFRA.

In the **Federal Register** of May 18, 2005 (70 FR 28544), FDA announced the availability of a guidance document entitled "Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations." The guidance represents the Agency's current thinking on its planned enforcement approach to the channels of trade provision of the FD&C Act and how that provision relates to FDA-regulated products with residues of pesticide chemicals for which tolerances have been revoked, suspended, or modified by EPA pursuant to dietary risk considerations. The guidance can be found at *http://www.cfsan.fda.gov/guidance.html.* FDA anticipates that food bearing lawfully applied residues of pesticide chemicals that are the subject of future EPA action

to revoke, suspend, or modify their tolerances, will remain in the channels of trade after the applicable tolerance is revoked, suspended, or modified. If FDA encounters food bearing a residue of a pesticide chemical for which the tolerance has been revoked, suspended, or modified, it intends to address the situation in accordance with provisions of the guidance. In general, FDA anticipates that the party responsible for food found to contain pesticide chemical residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, suspended, or modified will be able to demonstrate that such food was handled, *e.g.,* packed or processed, during the acceptable timeframes cited in the guidance by providing appropriate documentation to the Agency as discussed in the guidance document. FDA is not suggesting that firms maintain an inflexible set of documents where anything less or different would likely be considered unacceptable. Rather, the Agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so handled during the acceptable timeframes.

Examples of documentation which FDA anticipates will serve this purpose consist of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

FDA is requesting the extension of OMB approval for the information collection provisions in the guidance.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food-processing industries that handle food products that may contain residues of pesticide chemicals after the tolerances for the pesticide chemicals have been revoked, suspended, or modified.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Documentation Submission	1	1	1	3	3

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA expects the total number of pesticide tolerances that are revoked, suspended, or modified by EPA pursuant to dietary risk considerations in the next 3 years to remain at a low level, as there have been no changes to the safety standard for pesticide residues in food since 1996. Thus, FDA expects the number of submissions it will receive pursuant to the guidance document will also remain at a low level. However, to avoid counting this burden as zero, FDA has estimated the burden at one respondent making one submission a year for a total of one annual submission.

FDA based its estimate of the hours per response on the assumption that the information requested in the guidance is readily available to the submitter. We expect that the submitter will need to gather information from appropriate persons in the submitter's company and to prepare this information for submission to FDA. The submitter will almost always merely need to copy existing documentation. We believe that this effort should take no longer than 3 hours per submission.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	No. of record-keepers	Annual fre-quency per recordkeeping	Total annual records	Hours per record	Total hours
Documentation Recordkeeping	1	1	1	16	16

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In determining the estimated annual recordkeeping burden, FDA estimated that at least 90 percent of firms maintain documentation, such as packing codes, batch records, and inventory records, as part of their basic food production or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms that may not be currently maintaining this documentation to develop and maintain documentation, such as batch records and inventory records. In previous information collection requests, this recordkeeping burden was estimated to be 16 hours per record. FDA has retained its prior estimate of 16 hours per record for the recordkeeping burden. As shown in table 1 of this document, FDA estimates that one respondent will make one submission per year. Although FDA estimates that only 1 out of 10 firms will not be currently maintaining the necessary documentation, to avoid counting the recordkeeping burden for the 1 submission per year as 1/10 of a recordkeeper, FDA estimates that 1 recordkeeper will take 16 hours to develop and maintain documentation recommended by the guidance.

Dated: March 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5286 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0012]

Campaign To Improve Poor Medication Adherence (U18)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the Center for Drug Evaluation and Research. A goal of the Center for Drug Evaluation and Research is to raise consumers' awareness of the

importance of good medication adherence, a vital first step toward improved adherence behavior and better public health outcomes.

DATES: Important dates are as follows:

1. The application due date is April 15, 2011.
2. The anticipated start date is April 16, 2011.
3. The opening date is March 15, 2011.
4. The expiration date is April 15, 2011.

For Further Information and Additional Requirements Contact: Programmatic Contact: Tamara Ford, Center for Drug Evaluation and Research, Food and Drug Administration, Office of Executive Programs, 10903 New Hampshire Ave., rm. 6114, Silver Spring, MD 20993, 301–796–5226, FAX: 301–847–8737, e-mail: *Tamara.Ford@fda.hhs.gov;* Grants Management Contact: Oluyemisi Akinneye, Division of Acquisition Support and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–0079, FAX: 301–827–7101, e-mail: *Oluyemisi.Akinneye@fda.hhs.gov.*

For more information on the funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://grants2.nih.gov/grants/guide/* and/or *http://www.fda.gov/Drugs/DrugSafety/ucm187806.htm.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

A. Background

This funding opportunity is a single source application for the award of a cooperative agreement to the National Consumers League (NCL) to develop and lead a groundbreaking national campaign to raise consumers' awareness of the importance of good medication adherence and provide tools to prescribers to help their patients use their medications in the most safe and efficacious manner. This campaign is a vital first step toward improved adherence behavior and better health outcomes.

Relevance

Inadequate medication adherence is a $290 billion dollar problem that touches everyone. Nearly three out of four Americans report that they do not take their medications as directed. One in three people never fill their prescriptions. Americans with chronic conditions account for nearly 45 percent of the population, and they are at greater risk for health complications and negative health outcomes because of medication adherence problems. Understanding the root causes for inadequate medication adherence, and effecting changes in knowledge and behaviors to increase appropriate medication adherence and thus enhance health outcomes is an important goal for all Americans.

B. Research Objectives

The goal of this broad campaign is to increase consumer awareness of the importance of medication adherence; targeting both consumers with chronic conditions and health care practitioners as well as to provide tools and support for both health care practitioners and consumers in managing and adhering to their medications and medication regimens. To plan and facilitate the campaign the NCL has brought together a public-private coalition of more than 110 stakeholder organizations from within and outside the health care arena, including businesses, chain drug stores, health care professionals, insurance companies, labor, researchers, pharmaceutical companies, health information technology companies, and government agencies. The NCL has the expertise, background, and motivation necessary to successfully lead this campaign. In addition, the campaign complements FDA's mission, protecting the public health by assuring the safety, efficacy, and security of human drugs and helping the public obtain accurate, science-based information that they need to use medicines and foods to maintain and improve their health.

C. Eligibility Information

Competition is limited to the NCL because it has unique expertise and capacity found nowhere else. As part of the implementation of their campaign, the NCL is building on extensive research and lessons learned from earlier adherence promotion efforts, and with the active involvement of more than 110 leading nonprofit organizations, professional associations, businesses, and Federal Agencies, including FDA, the NCL will: (1) Leverage partnerships with public and private stakeholders to raise awareness and disseminate campaign messages through their networks, (2) reach out to people suffering from common chronic conditions and their caregivers, and (3) conduct more intensive targeted outreach in six strategic markets.

II. Award Information/Funds Available

A. Award Amount

The estimated amount of support in fiscal year (FY) 2011 will be up to ($40,000) total costs (direct plus indirect cost) with a possibility of 2 additional years at $40,000 each for FY 2012 and FY 2013.

B. Length of Support

The award will provide 1 year of support, with the possibility of 2 additional years of support, contingent upon satisfactory performance in the achievement of project and program report objectives during the preceding year and the availability of Federal FY appropriations.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://grants2.nih.gov/grants/guide/* and/or *http://www.fda.gov/Drugs/DrugSafety/ucm187806.htm.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Persons interested in applying for a grant may obtain an application from the PHS 398 application instructions available at *http://grants.nih.gov/grants/forms.htm,* or *http://www.fda.gov/Drugs/DrugSafety/ucm187806.htm.* For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number.
- Step 2: Register With Central Contractor Registration.
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit paper applications to: *http://www.fda.gov/Drugs/DrugSafety/ucm187806.htm;* Tamara Ford, Center for Drug Evaluation and Research, Food and Drug Administration, Office of Executive Programs, 10903 New Hampshire Ave., rm. 6114, Silver Spring, MD 20993; Oluyemisi Akinneye, Division of Acquisition Support and Grants (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 2129, Rockville, MD 20857.

Dated: March 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5287 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0441]

Anastasios Pappas: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Anastasios Pappas, MD, for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on findings that Dr. Pappas was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. Dr. Pappas was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Pappas failed to respond. Dr. Pappas' failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective March 9, 2011.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits FDA to debar an individual if it finds that the individual has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act and if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On April 4, 2006, Dr. Pappas pleaded guilty to a misdemeanor offense of introducing and causing the introduction into interstate commerce of a misbranded drug in violation of 21 U.S.C. 352(o), 331(a) and 333(a)(1). On August 14, 2006, the U.S. district court for the district of South Dakota, Southern Division, entered judgment against Dr. Pappas for misdemeanor misbranding.

FDA's finding that debarment is appropriate is based on the misdemeanor conviction referenced herein. The factual basis for the conviction is as follows: Dr. Pappas was a licensed dermatologist in the state of South Dakota and a partner with Dakota Dermatology in Sioux Falls, SD. Between August and November 2004, in the District of South Dakota and elsewhere, Dr. Pappas placed three orders for a total of six vials of botulinum toxin type A (TRI-toxin) from Toxin Research International (TRI). Between September and November 2004, Dr. Pappas administered TRI-toxin to patients. TRI was not duly registered with FDA and, therefore, the TRI-toxin is deemed misbranded under 21 U.S.C. 352(o).

As a result of his convictions, on November 16, 2010, FDA sent Dr. Pappas a notice by certified mail proposing to debar him for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(I) of the FD&C Act, that Dr. Pappas was convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and the conduct that served as a basis for the conviction undermines the process for the regulation of drugs. The proposal also offered Dr. Pappas an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Pappas failed to respond within the timeframe prescribed by regulation and therefore has waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(I) of the FD&C Act, under authority delegated to him (Staff Manual Guide 1410.35), finds that Anastasios Pappas has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct that served as a basis for the conviction undermines the process for the regulation of drugs.

As a result of the foregoing finding, Dr. Pappas is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (*see* **DATES**), (see sections 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(iii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Pappas, in any capacity during Dr. Pappas' debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Pappas provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act (21 U.S.C. 335b(a)(7))). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Pappas during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Dr. Pappas for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 335a(d)(1)) should be identified with Docket No. FDA–2010–N–0441 and sent to the Division of Dockets Management (*see* **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 16, 2011.

Howard Sklamberg,

Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2011–5309 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0473]

David E. Berman: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring David E. Berman, MD, for 3 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Berman was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. Dr. Berman was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Berman failed to respond. Dr. Berman's failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective March 9, 2011.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits FDA to debar an individual if it finds that the individual has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act and if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On October 30, 2007, Dr. Berman pleaded guilty to a misdemeanor offense of the introduction into interstate commerce of a misbranded drug in violation of 21 U.S.C 331(a), 333(a)(1), and 352(i)(3), and judgment was entered against Dr. Berman by the U.S. District Court, Eastern District of Virginia.

FDA's finding that debarment is appropriate is based on the misdemeanor conviction referenced herein. The factual basis for the conviction is as follows: Dr. Berman is a medical doctor licensed by the Virginia Department of Health Professions, specializing in plastic surgery with an office in Sterling, VA. On or about January 16, 2004, and on or about February 16, 2004, Dr. Berman caused TRI-toxin, an unapproved botulinum toxin type A product, to be introduced into interstate commerce by causing Toxin Research International, Inc., to ship vials of TRI-toxin from Arizona to the Eastern District of Virginia. TRI-toxin was a misbranded drug in that Dr. Berman offered it for sale to, and used it on, thirty of his patients as BOTOX Cosmetic. Dr. Berman did not disclose to his patients that he was using a substitute, unapproved, unlicensed, and less expensive botulinum toxin type A product. TRI-toxin was not duly registered with the FDA and, therefore, the TRI-toxin is deemed misbranded.

As a result of his convictions, on December 17, 2010, FDA sent Dr. Berman a notice by certified mail proposing to debar him for 3 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(I) of the FD&C Act, that Dr. Berman was convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and the conduct that served as a basis for the conviction undermines the process for the regulation of drugs. The proposal also offered Dr. Berman an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Berman failed to respond within the timeframe prescribed by regulation and therefore has waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(I) of the FD&C Act, under authority delegated to him (Staff Manual Guide 1410.35), finds that David E. Berman has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct that served as a basis for the conviction undermines the process for the regulation of drugs.

As a result of the foregoing finding, Dr. Berman is debarred for 3 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (*see* **DATES**), (see sections 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(iii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Berman, in any capacity during Dr. Berman's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Berman provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Berman during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Dr. Berman for termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2010–N–0473 and sent to the Division of Dockets Management (*see* **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 16, 2011.

Howard R. Sklamberg,

Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2011–5308 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Nonprescription Drugs Advisory Committee and the Pediatric Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 17, 2011, from 8 a.m. to 5 p.m. and on May 18, 2011, from 8 a.m. to 12 noon.

ADDRESSES: FDA is opening a docket for public comment on this meeting. The docket number is FDA–2011–N–0002. The docket will open for public comment on *March 9, 2011.* The docket will close on June 30, 2011. Interested persons may submit electronic or written comments regarding this meeting. Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments received will be posted without change, including any personal information provided. Submit a single copy of electronic comments or a paper copy of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this meeting notice. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Comments received on or before May 3, 2011, will be provided to the committee before the meeting.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Diem-Kieu Ngo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO31–2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *diem.ngo@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 17 and 18, 2011, the committees will review pertinent pharmacokinetic (how drugs are absorbed, distributed, used, and eliminated by the body), safety and efficacy data, and discuss whether new dosing information for oral over-the-counter (OTC) drug products containing acetaminophen should be added to the label for children less than 2 years of age. In addition, the committees will consider adding a weight-based dosing regimen to the existing age-based dosing regimen for children 2 to 12 years of age. Dosing for children 12 years of age and older will not be discussed. Lastly, the committees will discuss ways that administration by caregivers can be improved so that medication errors can be minimized.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (*see* the **ADDRESSES** section of this document) on or before May 3, 2011, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 3 p.m. and 5 p.m. on May 17, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 25, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 26, 2011.

FDA will work with sponsors of acetaminophen products who wish to make presentations to ensure that adequate time, separate from the 3 p.m. to 5 p.m. time slots for the general open public hearing, is provided. Sponsors interested in making formal presentations to the committees should notify the contact person on or before April 25, 2011. Sponsors with common interest are urged to coordinate their oral presentations.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5284 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Neurological Devices Panel of the Medical Devices Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Neurological Devices Panel of the Medical Devices Advisory Committee. This meeting was announced in the **Federal Register** of February 7, 2011 (76 FR 6625). The amendment is being

made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Olga I. Claudio, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1611, Silver Spring, MD 20993–0002, 301–796–7608, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 7, 2011, FDA announced that a meeting of the Neurological Devices Panel of the Medical Devices Advisory Committee would be held on March 17 and 18, 2011. On page 6625, in the second column, in the last paragraph, in the first and second sentences, the "for the NovoTTF–100A Treatment Kit, sponsored by Hogan Lovells US LLP for NovoCure, Ltd. The NovoTTF–100A Treatment Kit" portion of the document is changed to read as follows: "for the NovoTTF–100A System, sponsored by NovoCure, Ltd. The NovoTTF–100A System".

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: March 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–5285 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–E–0483 and FDA–2010–E–0484]

Determination of Regulatory Review Period for Purposes of Patent Extension; AMPYRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for AMPYRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these Acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product AMPYRA (dalfampridine). AMPYRA is indicated to improve walking in patients with multiple sclerosis. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for AMPYRA (U.S. Patent Nos. 5,370,879 and 5,540,938) from Elan Pharma International Ltd., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 30, 2010, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of AMPYRA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AMPYRA is 9,845 days. Of this time, 9,569 days occurred during the testing phase of the regulatory review period, while 276 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* February 10, 1983. The applicant claims January 1, 1980, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND was initially placed on clinical hold. The applicant was informed that the investigational studies were allowed to proceed on February 10, 1983, the effective date of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* April 22, 2009. FDA has verified the applicant's claim that the new drug application (NDA) for AMPYRA (NDA 22–250) was submitted on April 22, 2009.

3. *The date the application was approved:* January 22, 2010. FDA has verified the applicant's claim that NDA 22–250 was approved on January 22, 2010.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,827 and 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments and ask for a redetermination by May 9, 2011. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 5, 2011. To meet its burden, the petition must contain sufficient facts

to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 14, 2011.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2011–5312 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–E–0332]

Determination of Regulatory Review Period for Purposes of Patent Extension; CERVARIX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CERVARIX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product CERVARIX (human papillomavirus bivalent (types 16 and 18) vaccine). CERVARIX is indicated for prevention of the following diseases caused by oncogenic human papillomavirus types 16 and 18: cervical cancer; cervical intraepithelial neoplasia grade 2 or sores and adenocarcinoma in situ; and cervical intraepithelial neoplasia grade 1. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CERVARIX (U.S. Patent No. 7,351,533) from MedImmune, LLC., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 26, 2010, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of CERVARIX represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CERVARIX is 4,027 days. Of this time, 3,094 days occurred during the testing phase of the regulatory review period, while 933 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* October 9, 1998. The applicant claims September 8, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 9, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* March 29, 2007. FDA has verified the applicant's claim that the biologics license application (BLA) for CERVARIX (BLA 125259/0) was submitted on March 29, 2007.

3. *The date the application was approved:* October 16, 2009. FDA has verified the applicant's claim that BLA 125259/0 was approved on October 16, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 562 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments and ask for a redetermination by May 9, 2011. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 5, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) electronic or written

comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 14, 2011.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2011–5310 Filed 3–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Supplemental Information Request for the Submission of the Updated State Plan for the Home Visiting Program (OMB No. 0915–0336)—[Extension]

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), historic and transformative legislation designed to make quality, affordable health care available to all Americans, reduce costs, improve health care quality, enhance disease prevention, and strengthen the health care workforce. Through a provision authorizing the creation of the Maternal, Infant, and Early Childhood Home Visiting Program, (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf*, pages 216–225), the Act responds to the diverse needs of children and families in communities at risk and provides an unprecedented opportunity for collaboration and partnership at the Federal, State, and community levels to improve health and development outcomes for at-risk children through evidence-based home visiting programs.

The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program is designed: (1) To strengthen and improve the programs and activities carried out under Title V; (2) to improve coordination of services for at-risk communities; and (3) to identify and provide comprehensive services to improve outcomes for families who reside in at-risk communities.

To achieve the legislative requirements of the MIECHV program, the following application steps were required:

The first step was submission of an application for funding: the Funding Opportunity Announcement (FOA) HRSA–10–275 was issued on June 10, 2010, and State applications were due July 9, 2010. These applications were to include plans for completing the statewide needs assessment and initial State plans for developing the program in order to meet the criteria identified in the legislation. Submission of the needs assessments in the form and manner required by the Secretary is also a required condition for States to receive FY 2011 Title V Block Grant allotments. On September 20, 2010, all 50 States, the District of Columbia, and five U.S. territories submitted needs assessments that identified communities at risk. The needs assessments submitted were approved, and all 56 applicants have received FY 2011 Title V Block Grant funds.

As a condition of receiving the remaining grant award made to States in July 2010, each of the 56 applicants is also required to develop an Updated State Plan for a State Home Visiting Program. The Secretary of Health and Human Services must approve the Updated State Plan before the release of the remaining grant funds.

The information requested for the Updated State Plan is intended to help States view their proposed State Home Visiting Program as a service strategy aimed at developing a comprehensive, high-quality early childhood system that promotes maternal, infant, and early childhood health, safety and development, and strong parent-child relationships in the targeted community(ies) at risk. Ultimately, the information provided will help States develop a comprehensive plan that addresses community risk factors, builds on strengths identified in the targeted community(ies), and responds to the specific characteristics and needs of families in each of these communities.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Section 1: Identification of the State's Targeted At-Risk Community(ies)	56	1	56	30	1,680
Section 2: State Home Visiting Program Goals and Objectives	56	1	56	30	1,680
Section 3: Selection of Proposed Home Visiting Model(s) and Explanation of How the Model(s) Meet the Needs of Targeted Community(ies)	56	1	56	30	1,680
Section 4: Implementation Plan for Proposed State Home Visiting Program	56	1	56	60	3,360

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Section 5: Plan for Meeting Legislatively-Mandated Benchmarks	56	1	56	60	3,360
Section 6: Plan for Administration of State Home Visiting Program	56	1	56	40	2,240
Section 7: Plan for Continuous Quality Improvement	56	1	56	20	1,120
Section 8: Technical Assistance Needs	56	1	56	1	56
Total	56				15,176

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 2, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–5366 Filed 3–8–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Administration for Children and Families

Advisory Committee on the Maternal, Infant and Early Childhood Home Visiting Program Evaluation

AGENCY: Health Resources and Services Administration (HRSA), and Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice to announce the establishment of the Advisory Committee on the Maternal, Infant and Early Childhood Home Visiting Program Evaluation.

SUMMARY: HRSA and ACF announce through this notice the establishment of the Advisory Committee on the Maternal, Infant and Early Childhood Home Visiting Program Evaluation ("the Committee"), pursuant to subsection 2951(g) of the Patient Protection and Affordable Care Act (Affordable Care Act). Under this authority, the Secretary of Health and Human Services ("the Secretary") is to appoint an independent advisory panel consisting of experts in program evaluation and research, education, and early childhood development. The purpose of the Committee is to provide advice to the Secretary on the design, plan, progress, and findings of the evaluation required for the home visiting program under the Affordable Care Act.

FOR FURTHER INFORMATION CONTACT: Billie Butler, Maternal and Child Health Bureau; *bbutler@hrsa.gov;* (301) 443–1149.

SUPPLEMENTARY INFORMATION: Subsection 2951(g) of the Affordable Care Act of 2010 mandates the appointment of an advisory committee to review, and make recommendations on, the design and plan for the evaluation required under the Affordable Care Act, and to maintain and advise the Secretary regarding the progress of the evaluation. To comply with the authorizing directive and the 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 U.S. Senate and House of Representatives, and the Library of Congress to establish the Committee as a non-discretionary Federal advisory committee. The charter was filed on January 27, 2011.

Objectives and Scope of Activities

The purpose of the Committee is to provide advice and make recommendations to the Secretary through the Administrator, HRSA, and the Assistant Secretary, ACF, with respect to the design, plan, progress and results of the evaluation.

Membership and Designation

The Committee shall consist of up to 25 voting members appointed by the Secretary. Members shall be experts in the areas of program evaluation and research, education, and early childhood development. Independent members shall be appointed as Special Government Employees. The Committee may also include voting members representing HRSA, ACF, and other agencies of the Federal Government designated by the Secretary as ex-officio members. The HRSA Administrator and ACF Assistant Secretary each shall recommend nominees for Co-Chairs of the Committee. Members shall be invited to serve from the date of appointment through March 31, 2015; such terms are contingent upon the renewal of the Committee by appropriate action prior to its termination.

Administrative Management and Support

Coordination, management and operational services for the Committee shall be provided by HRSA with assistance from ACF. A copy of the Committee charter can be obtained from the designated contact or by accessing the FACA database that is maintained by the GSA Committee Management Secretariat. The website for the FACA database is *http://fido.gov/facadatabase/.*

Authority: The Committee is authorized by subsection 511(g)(1) of Title V of the Social Security Act (42 U.S.C. 701 *et seq.*), as amended by subsection 2951(g) of the Affordable Care Act of 2010 (Pub. L. 111–148). The Committee is governed by provisions of Public Law 92–463, as amended (5 U.S.C. App.2), which sets forth standards for the formation and use of advisory committees.

Dated: March 4, 2011.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration.

Dated: March 4, 2011.

Mark Greenberg,

Deputy Assistant Secretary for Policy, Administration for Children and Families.

[FR Doc. 2011–5504 Filed 3–7–11; 4:15 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Administration for Children and Families

Advisory Committee on the Maternal, Infant and Early Childhood Home Visiting Program Evaluation; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name: Advisory Committee on the Maternal, Infant and Early Childhood Home Visiting Program Evaluation.

Date and Time: March 23, 2011, 9 a.m.–3 p.m. EST.

Place: Webinar.

The Advisory Committee on the Maternal, Infant and Early Childhood Home Visiting Program Evaluation will meet for its first session on Wednesday, March 23, 2011, from 9 a.m. to 3 p.m. EST. The general public can join the meeting via webinar by logging onto *http://www.mchcom.com/LiveWebcastDetail.asp?leid=469*, clicking on the "Register now" button, and then following the instructions. Participants should launch the webinar no later than 8:40 a.m. EST in order for the logistics to be established for participation in the call. If there are technical problems gaining access to the call, please click on the "Report a technical problem/request help" link associated with the registration page: *http://www.mchcom.com/LiveWebcastDetail.asp?leid=469*.

Meeting Registration: General public participants are asked to register for the conference by going to the registration Web site at *http://www.mchcom.com/LiveWebcastDetail.asp?leid=469*.

Special Accommodations: Attendees requiring special accommodations such as large print materials or additional special accommodations may make comments when registering at the online Web site by clicking on the "Report a technical problem/request help" link associated with the registration page: *http://www.mchcom.com/LiveWebcastDetail.asp?leid=469*.

Agenda: The meeting will include: (1) Welcoming remarks and presentation of the charge for the Committee, (2) introduction of Committee members, (3) a presentation of the Maternal, Infant and Early Childhood Home Visiting (MIECHV) program, and (4) a presentation and discussion of the goals, challenges, and options for the design of the national evaluation of the MIECHV program. Agenda items are subject to change as priorities dictate.

Public Comments: Members of the public may submit written comments that will be distributed to Committee members prior to the conference call. Written comments must be received by Monday, March 21, 2011, for consideration. Comments can be submitted using the email link on the registration page: *http://www.mchcom.com/LiveWebcastDetail.asp?leid=469*.

FOR FURTHER INFORMATION CONTACT: Any person interested in obtaining other relevant information can contact Ms. Billie Butler, Maternal and Child Health Bureau, Health Resources and Services Administration; e-mail: *bbutler@hrsa.gov;* telephone: (301) 443–1149.

SUPPLEMENTARY INFORMATION: The Advisory Committee on the Maternal, Infant and Early Childhood Home Visiting Program Evaluation is authorized by subsection 511(g)(1) of Title V of the Social Security Act (42 U.S.C. 701 *et seq.*) as amended by section 2951 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) (Affordable Care Act). The purpose of the Committee is to advise the Secretary of Health and Human Services on the design, plan, progress, and findings of the evaluation required for the home visiting program under the Affordable Care Act. More specifically, the Committee is to review, and make recommendations on, the design and plan for this evaluation; maintain and advise the Secretary regarding the progress of the evaluation; and comment, if the Committee so desires, on the report submitted to Congress under subsection 511(g)(3) of Title V.

The study design options for this national evaluation will be formally presented to the Committee for review. The Administration for Children and Families (ACF) has contracted with MDRC, formerly known as Manpower Demonstration Research Corporation, a nonprofit, nonpartisan education and social policy research organization, to develop the design options for the evaluation of the home visiting program.

As specified in the legislation, the evaluation will provide a state-by-state analysis of the needs assessments and the States' actions in response to the assessments. Additionally, as specified in the legislation, the evaluation will provide an assessment of: (a) The effect of early childhood home visiting programs on outcomes for parents, children, and communities with respect to domains specified in the Affordable Care Act (such as maternal and child health status, school readiness, and domestic violence, among others); (b) the effectiveness of such programs on different populations, including the extent to which the ability to improve participant outcomes varies across programs and populations; and (c) the potential for the activities conducted under such programs, if scaled broadly, to enhance health care practices, eliminate health disparities, improve health care system quality, and reduce costs.

Dated: March 4, 2011.

Mary K. Wakefield,

Administrator, Health Resources and Services Administration.

Dated: March 4, 2011.

Mark Greenberg,

Deputy Assistant Secretary for Policy, Administration for Children and Families.

[FR Doc. 2011–5508 Filed 3–7–11; 4:15 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), and the Director, Centers for Disease Control and Prevention (CDC), with authority to redelegate, the authority vested in the Secretary under Title XI, Part A, Section 1114, titled "Interagency Coordinating Committee on Newborn and Child Screening (Committee)," of the Public Health Service Act as amended, which was added by the Newborn Screening Saves Lives Act of 2008, Public Law 110–237, as amended, to serve as co-chairs of the Committee, and to select additional nonvoting Federal liaisons, as appropriate.

I hereby delegate to Administrator, HRSA, and Director, CDC, the authority vested in the Secretary under Title XI, Part A, Section 1110, titled "Evaluating the Effectiveness of Newborn and Child Screening Programs," of the Public Health Service Act, as amended. This authority may be redelegated.

This delegation excludes the authority to issue regulations, to submit reports to Congress, to establish advisory committees and councils, and appoint their members, and shall be exercised in accordance with the Department's

applicable policies, procedures, and guidelines.

I hereby affirm and ratify any actions taken by the Administrator, HRSA, the Director, CDC, or other HRSA and CDC officials, which involve the exercise of these authorities prior to the effective date of this delegation.

This delegation is effective upon date of signature.

Dated: March 2, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–5334 Filed 3–8–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review: Comment Request; Questionnaire Cognitive Interviewing and Pretesting (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 17, 2010 (75 FR 79009) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Questionnaire Cognitive Interview and Pretesting. *Type of Information Collection Request:* Extension. *Need and Use of Information Collection:* The purpose of the data collection is to conduct cognitive interviews, focus groups, Pilot household interviews, and experimental research in laboratory and field settings, both for applied questionnaire evaluation and more basic research on response errors in surveys. The most common evaluation method is the cognitive interview, in which a questionnaire design specialist interviews a volunteer participant. The interviewer administers the draft survey questions as written, but also probes the participant in depth about interpretations of questions, recall processes used to answer them, and adequacy of response categories to express answers, while noting points of confusion and errors in responding. Interviews are generally conducted in small rounds of 10–15 interviews. When possible, cognitive interviews are conducted in the survey's intended mode of administration. Cognitive interviewing provides useful information on questionnaire performance at minimal cost and respondent burden. Similar methodology has been adopted by other federal agencies, as well as by academic and commercial survey organizations. There are no costs to respondents other than their time. *Frequency of Response:* Once. *Affected Public:* Individuals and households, Private Sector (business or other for-profits, not-for-profit institutions) and possibly, State, Local or Tribal Governments. The table below represents the burden over a three-year data collection period, which is a typical request for a generic submission. The estimated total burden hours requested is 3,600 for the three-year clearance period. There are no annualized costs to respondents. The annualized costs to the Federal Government are estimated at $244,000 and include cost of NCI staff to plan, conduct, and analyze outcomes of questionnaire development, contracting for pretesting activities and research, travel costs, and additional materials needed to conduct and recruit participants for the research. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Number of respondents	Frequency of responses/ participant	Average hours per response	Burden hours
Physicians, Scientists, and similar Respondents	1,200	1	75/60 (1.25)	1,500.0
Experts in their Field	600	1	75/60 (1.25)	750.0
Administrators/Managers	600	1	75/60 (1.25)	750.0
General Public	1,200	1	30/60 (0.5)	600.0
Total	3,600			3,600.0

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Gordon Willis, PhD., Cognitive Psychologist, Applied Research Program, DCCPS, NCI/NIH, 6130 Executive Blvd, MSC 7344, EPN 4005, Bethesda, MD 20892 or call non-toll-free number 301–594–6652 or e-mail your request, including your address to: *willis@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: February 28, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–5353 Filed 3–8–11; 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; Member Conflict: Experimental Oncology.

Date: March 17, 2011.

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: Syed M Quadri, PhD, Chief, OTC IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@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; Program Project: Cell Biology.

Date: March 29–30, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: NeuroAIDS Applications.

Date: March 30–31, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Eduardo A Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Visceral Pain Relief.

Date: March 30, 2011.

Time: 1 p.m. to 2 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: M Catherine Bennett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 2, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5354 Filed 3–8–11; 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; K99 Grant Applications Review.

Date: April 4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@mail.nih.gov*.

(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: March 3, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–5355 Filed 3–8–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Access to Recovery (ATR) Program (OMB No. 0930–0266)—Revision

The Center for Substance Abuse Treatment (CSAT) is charged with implementing the Access to Recovery (ATR) program which will allow grantees (States, Territories, the District of Columbia and Tribal Organizations) a means to implement voucher programs for substance abuse clinical treatment and recovery support services. The ATR program is part of a Presidential initiative to: (1) Provide client choice among substance abuse clinical treatment and recovery support service providers, (2) expand access to a comprehensive array of clinical treatment and recovery support options (including faith-based programmatic options), and (3) increase substance abuse treatment capacity. Monitoring outcomes, tracking costs, and preventing waste, fraud and abuse to ensure accountability and effectiveness in the use of Federal funds are also important elements of the ATR program. Grantees, as a contingency of their award, are responsible for collecting Voucher Information (VI) [OMB (OMB No. 0930–0266); Expiration Date 05/31/2011] and Voucher Transaction (VT) [(OMB No. 0930–0266; 05/31/2011)] data from their clients.

The primary purpose of this data collection activity is to meet the reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. The following table is an estimated annual response burden for this effort.

ESTIMATES OF ANNUALIZED HOUR BURDEN [1]

Center/form/respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Total wage cost	Total hour cost/respondent [1]
Voucher information and transaction	53,333	1.5	80,000	.03	2,400	$18.40	$44,160

[1] This table represents the maximum additional burden if adult respondents for ATR provide responses/data at an estimated hourly wage (from 2010 Bureau of Labor Statistics).

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, 1 Choke Cherry Road, Rockville, MD 20857 *and* e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: March 2, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–5313 Filed 3–8–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1148]

RIN 1625–1148

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet in New Orleans to discuss safe transit of vessels and products to and from the ports and related waterways of the Lower Mississippi River and related waterways. This meeting will be open to the public.

DATES: The Committee will meet on Thursday, March 24, 2011, from 9 a.m. to 12 p.m. This meeting may close early if all business is finished. Written materials and requests to make oral presentations should reach the Coast Guard on or before March 10, 2011. Due to time limitations, all oral presentations will be limited to thirty (30) minutes to ensure procedural timeliness for this three hour meeting. Written materials should reach the Coast Guard on or before March 17, 2011 so that copies may be provided to the members of this committee prior to the meeting.

ADDRESSES: The Committee will meet at the Sector New Orleans Building, 200 Hendee Street, New Orleans Louisiana 70124, First Floor, Training Room A. Send written material and requests to make oral presentations to Commander, Coast Guard Sector New Orleans Designated Federal Officer (DFO) of Lower Mississippi River Waterway Safety Advisory Committee, ATTN: Waterways Management, 200 Hendee St., New Orleans, LA 70114. This notice, and documents identified in the **SUPPLEMENTARY INFORMATION** section as being available in the docket may be viewed in our online docket, USCG–2010–1148, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer David Chapman, Assistant to the DFO of Lower Mississippi River Waterway Safety Advisory Committee, telephone 504–365–2282.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the March 24, 2011 Committee meeting is as follows:

(1) Introduction of committee members and guest.

(2) Opening Remarks.

(3) Approval of the September, 2010 minutes.

(4) Captain of the Port remarks.

(5) Eighth Coast Guard District remarks.

(6) New Business, to include discussion of the Regulated Navigation Area (RNA); Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, Harvey Canal, Algiers Canal, New Orleans, LA published in the **Federal Register**, Vol. 75, page 32275 (75 FR 32275), on June 8, 2010, Docket No. USCG–2009–0139, with corrections published July 12, 2010 (75 FR 39632).

(7) Old Business.

(8) Adjournment.

The reports and minutes, which will be discussed by the Committee, may be viewed in our online docket. Go to *http://www.regulations.gov*, enter the docket number for this notice (USCG–2010–1148) in the "Keyword" box, and then click "Search."

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the DFO no later than March 17, 2011. As noted above, oral

presentations and comments by members of the public will be limited to 3 minutes. If you would like to submit written material for distribution at the meeting, please provide fifty (50) copies to the DFO no later than March 17, 2011. A copy of any submitted materials will be distributed to each member of the committee in advance of the meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the DFO as soon as possible.

Dated: February 28, 2011.

Mary E. Landry,

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

[FR Doc. 2011–5446 Filed 3–7–11; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0104]

Policy for Guidelines for Coast Guard Evaluations of Compliance With the U.S. Environmental Protection Agency's Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the release of policy letter 11–01, Policy for Guidelines for Coast Guard Evaluations of Compliance with the U.S. Environmental Protection Agency's (EPA) Vessel General Permit (VGP) for Discharges Incidental to the Normal Operation of Vessels. This policy letter provides guidance to assist Coast Guard personnel to evaluate compliance with the provisions of the EPA's VGP, for U.S. and foreign-flagged vessels subject to the VGP and operating in the waters of the United States.

DATES: This policy became effective on February 11, 2011.

ADDRESSES: This notice and the policy are available in the docket and can be viewed by going to *http://www.regulations.gov*, inserting USCG–2011–0104 in the "Keyword" box, and then clicking "Search." This policy is also available at *http://www.homeport.uscg.mil* under the Port State Control tab; Foreign Vessel Safety; Policy for Guidelines for Coast Guard Evaluations of Compliance with the U.S. Environmental Protection Agency's (EPA) Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels. 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 notice or the policy, call or e-mail Mr. John S. Sedlak, P.E., Foreign and Offshore Vessels Division (CG–5432), U.S. Coast Guard, telephone 202–372–1240. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The VGP is an EPA permitting program issued under the Clean Water Act (33 U.S.C. 1342) and provides requirements for discharges incidental to the normal operation of vessels. Under the Clean Water Act, discharges of pollutants from vessels that are not covered by the VGP are unlawful unless they are exempt or covered by another Clean Water Act permit. The Coast Guard shares a mutual interest in ensuring vessels comply with VGP provisions. In fulfilling its role as the nation's lead maritime law enforcement agency and to carry out its mission of environmental stewardship, it is in the interest of the Coast Guard to assist the EPA in the detection and reporting of VGP deficiencies onboard vessels during regularly scheduled inspections of U.S. vessels and during Port State Control (PSC) exams on foreign vessels. The Coast Guard will report detected VGP deficiencies to the EPA.

The Coast Guard has prepared policy letter 11–01, Policy for Guidelines for Coast Guard Evaluations of Compliance with the U.S. Environmental Protection Agency's Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels, in consultation with the EPA to assist Coast Guard staff in the preparation for and the execution of VGP compliance monitoring inspections and exams. Vessel owners and/or operators are ultimately responsible for compliance with all aspects of the VGP. Vessels may be subject to inspection to verify compliance with any and all legal requirements. Vessel owners and operators may wish to take note of the minimum items that the Marine Inspectors (MI) and PSC Officers may examine during VGP compliance exams, as outlined in the policy letter. Vessel owners and operators should note further that MI/PSC Officers are not limited in the depth and scope of the examination.

Policy Implementation

The Coast Guard will evaluate vessels for compliance with the Vessel General Permit beginning on March 13, 2011.

Authority: This notice is issued under authority of 5 U.S.C. 552(a), 33 U.S.C. 1223, 14 U.S.C. 93(a)(20), and 14 U.S.C. 141.

Dated: March 3, 2011.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–5412 Filed 3–8–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5486–N–05]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Transformation Initiative: Sustainable Construction in Indian Country Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* May 9, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Michael D. Blanford, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8216, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Michael D. Blanford at 202–402–5728 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban

Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Transformation Initiative: Sustainable Construction in Indian Country Grant Program.

OMB Control Number:

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–2880, HUD–2993, HUD–96010 and HUD–96011.

Members of the Affected Public: Institutions of higher education accredited by a national or regional accrediting agency recognized by the U.S. Department of Education are the official applicants.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	20	20	42	840
Quarterly Reports	5	20	6	120
Final Reports	5	5	6	30
Recordkeeping	5	5	4	20
Total	35	50	58	1010

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 1, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–5275 Filed 3–8–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–06]

Notice of Proposed Information Collection: Comment Request; Tenant Resource Network Program

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 9, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Claire Trivedi, Housing Program Manager, Office of Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Tenant Resource Network Program.

OMB Control Number, if applicable: 2502–new–65pTRNP.

Description of the need for the information and proposed use:

Agency form numbers, if applicable: SF–424, SF–424 Supplemental, HUD–424 CBW, SF–LLL, HUD–2880, HUD–92041, HUD 2994–A, HUD–96010, Form HUD–96011, Form HUD–50080–TRNP.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 438.67. The number of respondents is estimated to be 100, the number of responses is 1, the frequency of response is once annually, and the burden hour per response is 43.867.

Status of the proposed information collection: This is a new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: March 2, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2011–5274 Filed 3–8–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5478–N–01]

Privacy Act of 1974; Notice of a Computer Matching Program Between HUD and the United States Department of Veterans Affairs (VA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a computer matching program between the HUD and VA.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (June 19, 1989, 54 FR 25818), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," HUD is issuing a public notice of its intent to conduct a recurring computer matching program with VA to utilize HUD's Credit Alert Interactive Verification Response System (CAIVRS), with VA's debtor files. Additionally, the record to be matched section was updated to reflect HUD's new Privacy Act Systems of Records involved in the CAIVRS matching program. This update does not change the authority and the objectives of the existing HUD and VA computer matching program.

DATES: *Effective Date:* The effective date of the matching program shall begin *April 8, 2011* or 40 days from the date copies of the signed (by both HUD and VA's Data Integrity Boards (DIBs)) computer matching agreement is sent to both Housing of Congress and the Office of Management and Budget (OMB), whichever is later, providing no comments are received which will result in a contrary determination.

Comments Due Date: April 8, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, HUD, 451 Seventh Street, SW., Room 10276, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: From the "Recipient Agency" contact the Chief Privacy Officer, HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402–8073. From the "Source Agency" contact Jorgeana Williams, Debt Management Center, U.S. Department of Veteran Affairs, Bishop Henry Whipple Federal Building, Room 156E, 1 Federal Drive, Ft. Snelling, MN 55111, telephone number (612) 970–5703. These are not toll-free numbers. A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: HUD's data in the CAIVRS database includes delinquent debt information from the Department of Education, Veterans Affairs, Department of Justice, and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government for HUD or VA direct or guaranteed loans. Before granting a loan, the lending agency and/or the authorized lending institution will be able to prescreen the CAIVRS debtor files which contains the Social Security Numbers (SSNs) of HUD and VA delinquent debtors and defaulters to verify that the loan applicant is not in default or delinquent on a direct or guaranteed loans of participating federal programs of either agency. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

Reporting of a Matching Program: In accordance with the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), as amended, and Office of Management and Budget (OMB), Congress and the Public;" copies of this notice and report are being provided to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform.

Authority: The matching program will be conducted pursuant to "The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503)," as amended, and OMB Circular A–129 (Revised January 1993), Policies for Federal Credit Program and Non-Tax Receivables. One of the purposes of all Executive departments and agencies-including HUD-is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives to Be Met by the Matching Program: The matching program will allow VA access to a system which permits prescreening of applicants for loans owed or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to VA debtor data for prescreening purposes.

Records To Be Matched: HUD will use records from its systems of records HUD/SFH–01, Single Family Default Monitoring System; HUD/SFH–02, Single Family Insurance System CLAIMS Subsystem; HUD/HS–55, Debt Collection Asset Management System; and HUD/HS–59, Single Family Mortgage Asset Recovery Technology. The debtor files for programs involved are included in these systems of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans) or who have had their partial claim subordinate mortgage called due and payable and it has not been repaid in full or who have any outstanding claims paid during the last three years on a Title I insured or guaranteed home mortgage loan. VA will provide HUD with data from 88VA244, Accounts Receivable Records—VA. The exchange of data is consistent with routine use 17 of 88VA244. The 88VA244, Accounts Receivable Records was originally published in the **Federal Register** on April 6, 1998 (63 FR 16865). VA is responsible for the integrity of the data transmitted to HUD. VA will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for VA's data.

Notice Procedures: HUD and VA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their

records will be matched to determine whether they are delinquent or in default on a federal debt. HUD and VA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the federal government.

Categories of Records/Individuals Involved: The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: Former mortgagors and purchasers of HUD-owned and home improvement loan debtors who are delinquent or default on their loans or who have had their partial claim subordinate mortgage called due and payable and it has not been repaid in full.

Period of the Match: Matching is expected to begin at least 40 days from the date copies of the signed (by both HUD and VA's Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this notice is published in the **Federal Register**, which ever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew the agreement for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: February 28, 2011.

Kevin R. Cooke,

Deputy Chief Information Officer.

[FR Doc. 2011–5265 Filed 3–8–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5466–N–01]

Request for Comments on Trend Factor Methodology Used in the Calculation of Fair Market Rents

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Request for Public Comments on the methodology used to calculate the trend factor component of the Fair Market Rent estimates.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, for effect on October 1 of each year. Today's notice requests public comment regarding the manner in which HUD calculates the trend factor used in the Fair Market Rent (FMR) estimates to meet the statutory requirement that FMRs be "trended so the rentals will be current for the year to which they apply". HUD provides several proposed alternatives to the current trend factor and requests comments on these alternatives as well as suggestions of other ideas.

DATES: *Comment Due Date:* April 8, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's alternative proposals for trending FMRs and/or other ideas for trending FMRs, to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. There are two methods for submitting public comments:

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information on the current methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at (800) 245–2691 or access the information on the HUD Web site *http://www.huduser.org/portal/datasets/fmr.html.* Also at this Web address, HUD maintains detailed on-line documentation systems that catalog each step in the calculation of FMRs for any area of the country selected by the user.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD User page at *http://www.huduser.org/datasets/fmr.html.* **Federal Register** notices also are available electronically from *http://www.gpoaccess.gov/fr/index.html,* the U.S. Government Printing Office Web site.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the Housing Choice Voucher (HCV) program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (*see* 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c) states, in part, as follows:

> Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and

shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, *based on the most recent available data trended so the rentals will be current for the year to which they apply,* of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section. (emphasis added)

Equivalent language is repeated in HUD's regulations at 24 CFR part 888, which also provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs for effect at the beginning of the fiscal year. (*See* 24 CFR 888.115.)

The part of the statute that was emphasized is the basis for the application of a trend factor that establishes FMRs at the midpoint of the fiscal year, or to the following April. Because Consumer Price Index (CPI) data series for rent and utilities are used to update FMRs to the end of previous calendar year, the FMRs are trended forward 15 months. For example, the FY 2011 FMRs (75 FR 61254), were published for effect October 1, 2010, use 2009 annual CPI data for rent (rent of primary residence) and utilities (fuels and utilities). This CPI data brought the FMRs to the end of 2009. HUD trended the FY 2011 FMRs from 2009 year end to April 2011 (15 months) using an annual growth rate of 3.0 percent as the trend factor, applied over the 15-month period. This trend factor represents the average annual rate of growth in gross rents between 1990 and 2000, as measured by the decennial censuses. Prior to the application of the 2000 census data in the FMR estimation process (FY 2005 FMRs), HUD used a trend factor of 2.98 percent based on the average annual rate of growth in gross rent between 1980 and 1990, as measured by these decennial censuses.

II. FMR Estimation Methodology

This section provides a brief overview of how current FMRs are estimated. Documentation systems which completely describe the calculation processes are available for FMRs from FY 2005 through FY 2011 at *http://www.huduser.org/portal/datasets/fmr.html.* A timeline of the FMR estimation process is shown below: [1]

1. Begin with Final 2–Bedroom FMR for Current Fiscal Year.
2. Remove Trending and CPI Updates from this 2 Bedroom FMR, (do not remove ACS Update).
3. Determine Current Year ACS Update Factor and Apply to Value in Step 2.
4. Apply CPI Update Factor to Value in Step 3.
5. Apply National Historical Trend Factor for 15 months (to the Midpoint of the publication Fiscal Year).

A. Base Year Data

FMRs start with base rents estimated with Census 2000 long form survey data. The American Community Survey (ACS) replaces the decennial long-form survey, but with less data collected over a longer period of time. Since FY 2008, FMR base rents are updated using the most recent ACS data available for an area. In large metropolitan areas the 2000 base rents may be replaced rather than updated with rents from the ACS. Random digit dialing (RDD) surveys may also be used to replace 2000 base rents. ACS and RDD rents are compared with the previous year's FMR updated to the time of survey. If the survey data (from either the ACS or an RDD) is statistically different from the updated rent, the survey data becomes the base year rent.

B. Application of ACS Data

HUD applies ACS survey data according to the type of area (core-based statistical area (CBSA), metropolitan subarea, or nonmetropolitan county), the amount of survey data available, and the reliability of the survey estimates. HUD uses both one- and three-year ACS tabulations to update rents. Beginning with the FY 2012 FMRs HUD will incorporate the use of five-year ACS data. All areas are updated with the annual change in state or metropolitan one-year standard quality median rents. HUD tests these rent changes for statistical significance [2] before applying them to the appropriate base rent. Any state- or metropolitan-level change that is not statistically significant is not applied. HUD applies this test as a means to minimize fluctuations in rents due to survey error.

HUD uses metropolitan-level rent changes for CBSA areas and subareas that have more than 200 standard quality sample cases in 2007 and 2008. All other areas are updated with state-level rent changes. For subareas, State and CBSA change factors continue to be selected based on which factor brings the subarea rent closer to the CBSA-wide rent. HUD updates subareas that have 200 or more local standard quality survey observations with their local area update factor.

After all areas have been updated with a standard quality median rent change, HUD further evaluates local areas with estimates that reflect more than 200 one-year recent mover cases. If the updated rent is outside the confidence interval of the ACS recent mover estimate, HUD replaces the updated rent with the ACS recent mover rent estimate. In areas without 200 or more one-year ACS recent mover observations, but with 200 or more three-year ACS recent mover observations, HUD uses the three year estimate [3] if it is statistically different from the updated rent based on the standard quality median rent change. This process provides a June rent estimate.

C. Application of CPI

As described above, HUD uses ACS data to update the rents from June of the previous year to June of the year of the ACS data. In the FY 2011 FMRs, 2008 ACS data bring the FMRs forward 12 months from June 2007 to June 2008. HUD uses half of the 2008 (the 2007 to 2008) and all of the 2009 (the 2008 to 2009) change in CPI rent and utilities price index data to update the June 2008 rents to the end of 2009. HUD uses Local CPI data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses CPI data by Census regions to calculate update factors for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI information.

D. Application of Trend Factor

The national 1990 to 2000 average annual rent increase trend of 3 percent is applied to end-of-2009 rents for 15 months, to the midpoint of the FY 2011 FMRs, or April 2011.

The documentation system that provides area-specific data and computations used to calculate proposed FY 2011 FMRs and FMR area definitions can be found at *http://www.huduser.org/portal/datasets/fmr.html.*

[1] This timeline represents the general methodology used in the calculation of FMRs from FY 2009 through FY 2011.

[2] The change is considered statistically significant if $Z > 1.645$ where Z equals the Difference between the new and old rent estimate (EST_1-EST_2) divided by the square root of the difference of the standard error of the estimates [SQRT(SE_1-SE_2)].

[3] The recent mover estimate from the three year data includes all those who moved in the most recent 24 month period. The 3-year data used for FY 2011 FMRs is 2006–2008. That means that no 2006 survey data are included in this "three-year" recent mover classification and the likelihood of having a valid (with 200 or more sample cases) three-year recent mover rent is lower for these estimates.

III. FMR Trend Factor Issues

In an effort to balance programmatic needs with the desire to have FMRs be an accurate estimate of current market conditions, the following section discusses potential issues with the calculation of the trend factor used in the estimation process. The section poses questions that readers may choose to address in their comments.

Constant Trend Factor. HUD has historically used a trend factor based on the average annual growth in gross rents between the decennial censuses. This trend factor is a constant derived from the measured growth in gross rents over a ten-year period. The growth rate of gross rents measured in this way was little changed at about 3 percent over the two decades of the 1980s and 1990s. While early indications from the ACS suggest that a 10-year average growth rate for gross rents between the 2000 Census and the 2010 one-year ACS is likely again to be close to 3 percent, the comparison between these two surveys is not valid; the surveys have a significant difference in area coverage and error. HUD cannot update the current trend factor using the growth rate between the 2000 and 2010 censuses; the 2010 census does not provide a gross rent value. The ACS was not fully implemented until 2005, so the 2000 ACS test data is not fully comparable to survey results from 2005 and later. Is this a valid concern, or is the gross rent data at the national level good enough to allow such comparisons from 2000 test data or 2000 Census data? Should a growth rate be calculated over a fixed ten-year period, or with the ACS data available annually should the timeframe be allowed to "roll" over the most recent years of available data? Should the period be reduced to five fixed or rolling years, or an even shorter period? Both the shortening of the re-estimation period and the use of rolling years add variation to the trend factor.

A more basic issue is whether HUD should continue to use a constant factor, based on a standard historical time period (*e.g.,* five or ten years). Is a constant factor, that does not contribute additional variation to the FMR estimates from year to year, desirable or should the trend factor be adjusted annually as market conditions change? Which is of more importance for a trend factor, to not affect the FMR estimation, or to move the FMR closer to current market conditions?

Contemporaneous Trend Factor. A different approach to trending FMRs would use the most current data available as a projection. Based on HUD's experience and analysis of factors affecting affordable housing gross rents, a contemporaneous trend factor would be CPI (for rent and utilities) based. The CPI-based trend would make use of more current data that is available on a national, rather than local level. For example, monthly CPI data for all urban consumers is available nationally (as the U.S. City Average) or for the four Census regions (Northeast, Midwest, South and West), with a 6-week lag. The same trend factor based on the CPI for U.S. City Average could be applied to all areas, or the four regional factors CPI factors could be applied. The same rent and utility CPI data that is used on an area basis could be extended on a national basis, to provide more current data, or the CPI covering all products and services could be used (to prevent double counting of the rent and utility data and/or to provide the leading impact of other price changes).

HUD envisions several ways recent CPI data could be used to develop a trend factor. The Bureau of Labor Statistics (BLS) advocates calculating annual changes by showing the change from April of one year to April of the following year to eliminate seasonality issues. HUD would then apply this newly created index to the end of the FMR estimate, which is the previous year, to the midpoint of the next fiscal year, or 15 months. Under this approach, the FMR estimation process would include a double counting of CPI data. CPI data on an area basis (for most metropolitan areas) is used to bring the ACS-updated FMR to the end of the previous year, or 2009 in the case of the FY 2011 FMRs. The trend factor would be developed using April 2010 CPI data (nationally) over April 2009, but all of 2009 CPI data is already included in the FMR. Is this a concern? Should HUD calculate an index showing the change from December of the previous year to April of the current year (to use the most current data available without double counting any data already used), and apply it to the CPI-updated FMR?. Even though this second construct would not cover an entire 12 months, HUD would likely use the change as an annual change carrying the FMR forward to April of the next year.

Timeframe Considerations. As noted earlier, current practices and legislative constraints drive the publication and application of FMRs. HUD is required to publish FMRs in the **Federal Register,** both for comment, and in final form to be effective October 1st, the start of the fiscal year. FMRs shall be based on the most recent available data trended for the year to which they apply, which HUD interprets as the midpoint of the fiscal year or April. Given these constraints, April CPI data, available by mid-May, is the most recent that could possibly be used for FMR estimation. This data is not available by CPI area, except for the three largest metropolitan areas, New York City, Los Angeles, and Chicago. The remaining 24 large metropolitan areas have data collected bimonthly or semiannually. April CPI data could be incorporated into the FMR estimation process with the publication of a **Federal Register** notice of proposed FMRs likely in early July, providing six weeks to prepare the FMR and review them for publication; however, this is a shorter time period than normal and assumes no delays. Recently, HUD has published proposed FMRs as late as late as August, but many commenters have rightly complained that the limited time was not sufficient for them to provide analysis of the new FMRs, so a July publication date, becomes the earliest possible for incorporation of contemporaneous CPI data while also providing the most time possible for comments.

Historically, HUD published proposed FMRs for comment in April or May; however, HUD could only incorporate CPI data through February (only two additional months of data) to publish by early May, assuming the availability of other data sources such as the ACS. HUD could update the final FMR calculations to include more recent CPI data relative to what was available for the proposed FMRs. Following such a procedure could potentially render the proposed FMR publication and public comment meaningless however, as virtually all FMRs could be expected to change between the proposed and final FMRs when new CPI data are introduced.

Reduce Constraints Through Legislative Changes. As an alternative to making changes to the way a trend factor is calculated and applied, or in addition to, HUD could seek legislative changes that reduce the time period over which a trend factor is applied, or eliminate the need for a trend factor altogether. One possible avenue is to eliminate the requirement that HUD publish proposed FMRs for public comment. If HUD did not have to publish proposed FMRs in the **Federal Register** for comment, then more current data could be used in the final FMR estimation process. As currently proposed for HUD's FY 2012 budget, FMRs shall no longer be published in proposed form for comment. The proposed legislation establishes a separate procedure that allows interested parties to comment on FMRs and request reevaluation of FMRs in

their jurisdiction. FMRs would only be required to be published annually with an effective date no earlier than 30 days after publication. The FMRs would be published on the internet with notice of the publication in the **Federal Register**. These proposed changes eliminate the October 1 deadline for making FMRs effective. Interested parties would be provided an opportunity to comment on FMRs, and all comments will be addressed by subsequent Federal Register notices, including any proposed material changes in methodology.

The annual CPI data currently used in the FMR estimation process could allow publication of FMRs in April, effective in May or June. Similarly, half-yearly CPI data that is available for all the areas in the annual CPI data is released in mid-August. This data could be used to calculate local and regional factors which would update FMRs to June of the current year, providing an additional six months of update than the current process. The FMRs would then be trended to the midpoint of the fiscal year; the trend factor would be applied for a nine-month period instead of the current 15-month period for the trend factor. If HUD set FMRs at a level equal to the beginning of the fiscal year (October) instead of the mid-point of the fiscal year (April), only a three-month trend factor would be applied. Lastly, HUD could set the FMR equal to the date of the latest available data, thereby eliminating the required use of a trend factor; this would also require a Federal Register notice seeking comments on this change.

IV. Possible Effects on FMRs of Alternative Trend Factors

Currently HUD uses a constant trend factor that will be too low in markets where rents are increasing and too high for sluggish markets. This trend factor is based on historical data at the national level and does not attempt to reflect current market conditions. HUD developed the current trend factor methodology to minimize the impact on annual changes in FMRs. This notice outlines the consideration of using the trend factor to continue the annual adjustment of the FMR in markets with different movements in rents. Formerly, HUD conducted about 50 area-wide surveys to provide the most current data and improve the estimation of FMRs annually. Due to several factors, the expense of these surveys has limited this number conducted to at most 5 per year. Other data must be evaluated to improve the estimation of FMRs on an annual basis. Therefore, HUD is evaluating the calculation and timing of the application of the trend factor. Comments concerning the departure to a trend factor that is adjusted annually, based on the most current market data available and how to do so is what is being addressed in this notice.

Below are some alternatives to the current national trend factor that have been reviewed by HUD:

1. Use the most recent year's data from the overall CPI to calculate a trend factor;
2. Use the most recent year's data from CPI-rent and utilities to calculate a trend factor;
3. Use proprietary data covering rental markets (like REIS Reports, Inc.) to calculate a trend factor;
4. Assuming the legislative changes as proposed in the FY 2012 HUD budget, (and assuming that HUD trends to the midpoint of the fiscal year), and using CPI rent and utility data through the first half of the year to calculate the trend factor (by region and local area), apply the trend factor for nine months to April. These FMRs could be effective between October and December;
5. Assuming the legislative changes as proposed in the FY 2012 HUD budget (and assuming that HUD trends only to the beginning of the fiscal year), and using CPI rent and utility data through the first half of the year to calculate the trend factor (by region and local area), apply the trend factor for three months to the start of the fiscal year. These FMRs could be effective between October and December; and
6. Assuming the legislative changes as proposed in the FY 2012 HUD budget and HUD eliminates trending for the FMRS, the half-yearly CPI rent and utility data would provide the most recent update to the FMRs. There would be no trending and FMRs would effectively represent mid-year rent for the year they are published. But they would be published (effective) at the end of the year, between October and December.

Except for the third alternative (use of proprietary data), all of the alternatives HUD has examined rely on some use of CPI data to develop a new trend factor. The third alternative would rely on the use of private sector rent surveys that generally focus on rents in large apartment complexes; in turn, these large apartment complexes typically comprise 20 percent or less of most rental markets. HUD investigated data provided by REIS and similar sources as a means of updating FMRs, but have found these sources to be surprisingly uncorrelated with broader measures of rent over time such as the decennial census, and the American Housing Survey; therefore, HUD does not want to incorporate this type of information because it will not improve the FMR estimation process. In addition, the geographic limitations of these data sources further limit its use in the FMR estimation process. Nonmetropolitan areas and smaller metropolitan areas typically have no coverage in these data sources. Finally, these proprietary data have disclosure restrictions that may prevent HUD from fully documenting individual FMR calculations. HUD is required to provide as much transparency as possible in the FMR estimation process, especially after a 2004 study by the Government Accountability Office, and HUD does not want to reduce its efforts by using a data source that cannot be divulged.

The remaining suggestions focus on using the CPI, because the CPI measures rent and utility changes, and provides current data, at least on a national and regional basis. Local data, published for 27 consolidated metropolitan areas (and used for almost 100 FMR areas), is only available on a monthly basis for the three largest metropolitan areas (New York, NY, Los Angeles, CA, and Chicago, IL). Half-yearly CPI data for rent and utilities is all that is available for 13 of the remaining 24 local areas, but this information is not published until mid-August, too late to start the proposed/final publication of FMRs in the Federal Register under current regulations. The remaining 11 areas have CPI data on rent and utilities available every odd (four areas) or every even month (7 areas). This would provide inconsistent time periods for incorporating additional CPI data into the trend calculation. Aside from the three large metropolitan areas (New York, NY; Los Angeles, CA; and Chicago, IL), the lowest level of geographic area aggregation for monthly data, are the four census regions (Northeast, Midwest, South and West).

Monthly CPI data would have to be used to capture the recent trend in rent and utilities not already captured in the FMR estimation process (which uses CPI data as of the previous year-end). Capturing current CPI data, however, is limited by the time required to process, review and publish proposed FMRs for comment and to publish final FMRs by October 1. The review and publication process for both the proposed and final FMRs averages six weeks, though it has taken as little as four weeks. The minimum comment period is 30 days, though on an ongoing basis, 60 days provides more time for interested parties to analyze the proposed FMRs. The latest CPI month that could be used for a trend factor, would be April, which would be available in mid-May. Under

current statute and regulations, the proposed FMRs would be produced (2 weeks) and reviewed and published (4 weeks) in early July. A 30-day comment period (with an additional 1 week to be added to the end of the comment period to cover all filings that are not posted by the due date) would provide for analysis of comments (1 week), and 1 week to spare for publishing October 1. This timeline should not represent the normal process, because it does not provide HUD or commenters the time necessary to review comments and FMRs. With a trend factor that changes every year, it is important to provide additional time for all to have a chance to review proposed FMRs. Using the March CPI instead would increase the time for commenters to review their FMRs, though HUD's review of comments will be the same. HUD specifically requests comments as to whether or not an additional 3 or 4 months of CPI is believed to significantly improve the quality of the FMRs, or if, without legislative relief from publishing proposed FMRs, HUD should use a trend factor that mimics the average annual CPI data already used. This would eliminate a constant trend factor, and would extend the rent and utility changes from the most recent year an additional 15 months.

An additional concern regarding the monthly data is that, except at a national level, the monthly data are not seasonally adjusted. This means that basing trend factors on monthly CPI statistics would depend critically on which months are chosen as the base and final months. HUD analyzed applying a new trend factor using the six months of regional CPI data available in the summer 2009 (through June 2009) and the national average FMR was 1.6 percent higher than the national average FMR for the previous year. However, using only the first five months of CPI data (through May 2009), the national average FMR was 2.2 percent higher. There can be considerable monthly fluctuations in the rent and utility data of the CPI, even on a regional basis. This leads to another question: Should a national factor be used instead of a regional trend factor so that seasonally adjusted data can be used?

Under the current regulations and legislative constraints, CPI data are released in the interim period between publication of proposed and final FMRs; should these be incorporated? How would this best be achieved? Would this render the public comment process meaningless, as nearly all rents would change between proposed and final, and locations that would benefit from the new data would lobby for the update while those made worse off would push for the status quo?

The last three suggested alternatives assume the legislative changes that eliminate the requirement that FMRs be published for effect on October 1st, but there are three different assumptions about the date of the FMR, October, (3 months trending), April (9 months trending) and June (of that year and no trending). Is the accuracy of the FMRs best served by using the most current data and reducing or eliminating the trend factor?

V. Request for Public Comments

HUD seeks public comments on the trend factor that is used in the FMR estimation process. Comments on the trend factor must include sufficient information in support of one of the alternatives listed by HUD, or a new proposal. The following issues should be addressed:

1. Should HUD continue to use a constant trend factor or should the trend factor be updated annually to attempt to capture market changes?
2. The constant trend factor that HUD has used in the past cannot be replicated for 2000 to 2010 based on available 2010 Census data. If a constant trend factor is appropriate, what data and time period should be used for a constant trend factor?
3. Is a national trend factor appropriate, or should HUD limit itself to use of more local options such as regional factors?
4. Should HUD allow changes between the proposed and final FMRs resulting from updated trend factors?
5. Is using the more current data for estimating the FMRs more important than providing for public comment before establishing final FMRs for effect?
6. Is the seasonality of rent and utility prices important in considering what month to collect data for trending? If so, how should HUD select the month to use or to compare it with?
7. Is double counting of CPI data a concern?
8. Is it more important to base a trend on the most recent data possible, or on the most specific geography?
9. Is it better to use rent and utility CPI data in developing a trend factor or should other prices be included?
10. Should HUD pursue legislative and regulatory changes to reduce or eliminate the need for trending?
11. Is there a data source or aggregation of sources of data provided on a more current basis than the CPI that could be used in the FMR estimation process?

Dated: March 2, 2011.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2011–5263 Filed 3–8–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–R–2011–N030; 93261–1263–000–5C]

RIN 1018–AX35

Draft Fish and Wildlife Service Friends Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: We are reopening the comment period on our draft Fish and Wildlife Service Friends Policy, which we made available for public comment via a **Federal Register** notice published on October 18, 2010.

DATES: Submit comments on or before April 8, 2011.

ADDRESSES: You may submit comments on the draft policy by mail to: Kevin Kilcullen, Division of Visitors Services and Communication, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 635, Arlington, VA 22203; by FAX to (703) 358–2517; or by e-mail to *refugesystempolicycomments@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Kilcullen, (703) 358–2382.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice dated October 18, 2010 (75 FR 63851), we announced availability for public review and comment of a draft policy for Fish and Wildlife Service employees working with Refuge Friends groups. Established in 1996 to encourage and organize community involvement in National Wildlife Refuge System activities, the National Friends Program works to expand the effectiveness of community-based, nonprofit Friends organizations to build visibility and support for the Fish and Wildlife Service's conservation programs. Given the rapid growth and size of the program (currently about 230 organizations and an estimated 60,000 members), we have identified the need to issue national policy guidance on a number of issues affecting our relationship with Friends organizations. Those needs include administrative procedures, guidance on addressing financial and administrative information, a sample Friends

Partnership Agreement, and guidance on revenue-generating activities that will assist Service employees in working with Friends organizations. For more background on the draft policy, see our October 18, 2010, notice. The draft policy is available at *http://www.fws.gov/refuges/friends.*

We received several requests to extend the public comment period beyond the December 2, 2010, due date. In order to ensure that the public has an adequate opportunity to review and comment on our draft policy, we are reopening the comment period for an additional 30 days. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final policy.

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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 17, 2011.

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service (Acting).

[FR Doc. 2011–5307 Filed 3–8–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N046; 96300–1671–0000–P5]

Endangered Species Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA law requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before April 8, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Chicago Zoological Society dba Brookfield Zoo, Brookfield, IL; PRT-21862A

The applicant requests a permit to import a captive-born female Grevy's zebra (*Equus grevyi*) from Toronto Zoo, Ontario, Canada, for the purpose of enhancement of the survival of the species.

Applicant: St. John Fisher College, Rochester, NY; PRT–28080A

The applicant requests a permit to import biological samples from juvenile, captive-held African penguins (*Spheniscus demersus*) collected by Southern African Foundation for the Conservation of Coastal Birds (SANCCOB) for the purposes of enhancement of the survival of the species.

Applicant: U.S. Fish and Wildlife Service-MBO/SJV, Tucson, AZ; PRT–14239A

The applicant requests a permit to export live masked bobwhite (*Colinus virginianus ridgwayi*) from the Buenos Aires National Wildlife Refuge captive breeding facility to Sonora, Mexico, under the Sonoran Joint Venture for recovery and reintroduction. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–32684A

The applicant requests a permit to import ten live captive-bred gharial (*Gavialis gangeticus*) from the Madras Crocodile Bank Trust, Tamil Nadu, India, for the purpose of enhancement of the survival of the species.

Applicant: Jacksonville Zoological Society dba Jacksonville Zoo and Gardens, Jacksonville, FL; PRT–29540A

The applicant requests a permit to import eighteen live, captive-born Jamaican boas (*Epicrates subflavus*) from United Kingdom, for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John Cross, San Angelos, TX; PRT–35586A

Applicant: James McArtor, Cody, WY; PRT–35246A

Dated: March 4, 2011.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–5398 Filed 3–8–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N045; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with both endangered species and marine mammals. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit is\suance date
20282A	Kenneth Petersen	75 FR 54909; September 9, 2010	October 18, 2010.
22107A	Richard Young	75 FR 62139; October 7, 2010	November 17, 2010.
22592A	Jernigan Theodore	75 FR 62139; October 7, 2010	November 17, 2010.
23733A	Ronald Mika	75 FR 63196; October 14, 2010	November 17, 2010.
26730A	Frank Paino	75 FR 69701; November 15, 2010	December 17, 2010.
216076	William R. Morgan III	74 FR 32192; July 7, 2009	December 20, 2010.
23647A	Mark Conklin	75 FR 69701; November 15, 2010	December 22, 2010.
073403, 073404, 114454, 206853, and 809334.	Ferdinand Fercos-Hantig and Anton Fercos-Hantig.	75 FR 51284; August 19, 2010	December 17, 2010.
28344A	Harold Sheets	75 FR 75491; December 3, 2010	January 7, 2011.
28493A	Michael Moran	75 FR 75491; December 3, 2010	January 7, 2011.
26988A	Marc Bunting	75 FR 76022; December 7, 2010	January 11, 2011.
26015A	Loralee West	75 FR 76022; December 7, 2010	January 11, 2011.
25979A	Roy Trawick	75 FR 76022; December 7, 2010	January 11, 2011.
28274A	Gene Yates	75 FR 75491; December 3, 2010	February 24, 2011.
19933A	Gus Boniello	75 FR 52971; August 30, 2010	November, 10, 2010.
28293A	John Verlander	75 FR 75491; December 3, 2010	January 12, 2011.
28493A	Michael Moran	75 FR 75492; December 3, 2010	January 7, 2011.
28344A	Harold Sheets	75 FR 75492; December 3, 2010	January 7, 2011.
20209A	Virginia Safari Park Inc	75 FR 76022; December 7, 2010	January 18, 2011.
22511A	Dawn Zimmerman	75 FR 69701; November 15, 2010	January 18, 2010.
23847A	Gary Bailey	75 FR 78731; December 16, 2010	February 1, 2011.
29150A	John Estes	75 FR 78731; December 16, 2010	February 1, 2011.
15386A	Stephen Dunbar, Loma Linda University.	75 FR 63196; October 14, 2010	February 2, 2011.
26648A	David Erickson	75 FR 76022; December 7, 2010	January 31, 2011.
30840A	Reggie Pratt	75 FR 82409; December 30, 2010	February 1, 2011.
26460A	Charles Sanchez	75 FR 76022; December 7, 2010	February 16, 2011.
25354A	William Minore	76 FR 2408; January 13, 2011	February 15, 2011.
31829A	Gary Bartels	76 FR 2408; January 13, 2011	February 15, 2011.
20085A	Matthew McNeil	75 FR 54909; September 9, 2010	November 10, 2010.
22509A	David Crawford	75 FR 62139; October 7, 2010	November 10, 2010.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
038448	Dr. Iskande Larkin, University of Florida	75 FR 52971; August 30, 2010	February 24, 2011.
28829A	Floragenex, Inc.	76 FR 2408; January 13, 2011	February 24, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Dated: March 4, 2011.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–5402 Filed 3–8–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L16400000.PH0000 LXSS006F0000 261A; 11–08807; TAS: 14X1109]

Notice of Public Meeting: Correction for Northeastern Great Basin Resource Advisory Council, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice corrects the March 2011 meeting date published in the **Federal Register** on March 2, 2011 (76FR41) for the U.S. Department of the Interior, Bureau of Land Management, Northeastern Great Basin Resource Advisory Council.

DATES: The correct date of the meeting is Thursday, March 24, 2011.

FOR FURTHER INFORMATION CONTACT: Schirete Zick, (775) 635–4067, E-mail: *szick@blm.gov.*

Doran Sanchez,

Chief, Office of Communications, Nevada State Office.

[FR Doc. 2011–5299 Filed 3–8–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC09000 L14300000.ET0000; CACA 51408]

Notice of Public Meeting for Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: A Notice was published in the **Federal Register** on August 3, 2010, temporarily segregating approximately 28,953 acres of public land within the Clear Creek Management Area (CCMA) from location and entry under the United States mining laws for up to 2 years, while various studies and analyses are made to support a final decision on the withdrawal application. The Secretary of the Interior proposes to withdraw for a period of 20 years these lands located in San Benito and Fresno Counties, on behalf of the Bureau of Land Management (BLM), to limit impacts to public safety and human health from naturally occurring asbestos and past mining activities. In addition, approximately 3,763 acres of non-Federal lands are located inside of the proposed withdrawal area, and if those lands should be acquired by or returned to the United States by any means, they would also be included in the proposed withdrawal. Notice is hereby given, that a public meeting will be held in accordance with the regulations set forth in 43 CFR 2310.3–1. At this meeting, the focus will be on explaining the process of withdrawing public land from location and entry under the United States mining laws.

DATES: The meeting will be held April 12, 2011 in Hollister, CA and will begin at 6 p.m. at the Hollister Bureau of Land Management (BLM) Field Office, 20 Hamilton Court, Hollister, CA 95023.

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023. Telephone (831) 630–5022 or e-mail *christine_sloand@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM ordered the temporary closure of 31,000 acres of public lands in the CCMA on May 1, 2008, based on the results of the Environmental Protection Agency's (EPA) CCMA Asbestos Exposure and Human Health Risk Assessment. Using activity-based air sampling methods, the EPA concluded that visiting the CCMA more than once per year can put adults and children above the EPA's acceptable risk range for exposure to carcinogens. The applicant for the proposed withdrawal is the BLM at the address stated above. The petition/application requests the Assistant Secretary for Land and Minerals Management to withdraw, for a period of 20 years and subject to valid existing rights, those lands identified in the afore-mentioned "Notice of Proposed Withdrawal." In the **Federal Register** notice that was published on 08/03/2010, Notice of Proposed Withdrawal and Opportunity for Public Meeting; California, it was stated that an opportunity for a public meeting would be afforded in connection with the proposed withdrawal. This meeting is open to the public. The public will have the opportunity to bring forth issues relating to the withdrawal action.

Authority: 43 CFR 2310.3–1(a) and (c).

Dated: March 2, 2011.

Kathryn Hardy,

Central California District Manager.

[FR Doc. 2011–5300 Filed 3–8–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 5, 2011. Pursuant to sections 60.13 or 60.15 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of

Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 24, 2011.

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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

CALIFORNIA

San Bernardino County

Pacific Electric Etiwanda Depot, 7092 Etiwanda Ave, Rancho Cucamonga, 11000119

San Francisco County

South San Francisco Opera House, 4701–4705 Third St and 1601 Newcomb Ave, San Francisco, 11000117

COLORADO

San Juan County

Animas Forks, (Mining Industry in Colorado, MPS) Address Restricted, Silverton, 11000095

Minnie Gulch Cabins, (Mining Industry in Colorado, MPS) Address Restricted, Silverton, 11000096

Placer Gulch Boarding House, (Mining Industry in Colorado, MPS) Address Restricted, San Juan, 11000094

GEORGIA

Fulton County

Commercial Row 990 Peachtree St., NW, Atlanta, 11000090

INDIANA

Allen County

Brookview—Irvington Park Historic District, Roughly bounded by Norfolk Ave to the N; Lima Rd, Spy Run Ave Extended, and N Clinton St to the E; Jacobs St to the S, Fort Wayne, 11000121

Elkhart County

Dierdorff Farmstead, 2055 Dierdorff Rd, Goshen, 11000122

Johnson County

South Walnut Street Historic District, Roughly both sides of S Walnut St from Thompson St S to 507 and 514 S Walnut. Also including the 100 block of W Campbell, Edinburgh, 11000126

Toner Historic District, E Main Cross from the CSX tracks to White Oak Ln, Edinburgh, 11000127

Lake County

Brannon, James, House, 260 Burnham St, Lowell, 11000120

Hohman Avenue Commercial Historic District, Approx. 3 blocks lining Hohman between Clinton and Rimbach Sts, Hammond, 11000118

Southmoor Apartment Hotel, 5946 Hohman Ave, Hammond, 11000125

Porter County

Sigler, Eli, House, 104 W Church St, Hebron, 11000124

Randolph County

Winchester Residential Historic District, Roughly, both sides of Washington and Franklin Sts from Main St to Greenville Ave and both sides of Meridian and Main St, Winchester, 11000123

IOWA

Dallas County

Saint Patrick's Catholic Church and Rectory, 1312 Third St, Perry, 11000138

Winneshiek County

Calmar Passenger Depot, (Advent & Development of Railroads in Iowa MPS) 201 N Maryville St, Calmar, 11000137

MISSISSIPPI

Harrison County

Gulfport Army Air Field Hangar, Airport Rd, Gulfport, 11000111

Lawrence County

River Road, Between HWY 43 and Conerly Rd, Oak Vale, 11000108

Lee County

Spain House, 553 W Main St, Tupelo, 11000109

Monroe County

Sadler House, 400 Marshall St, Aberdeen, 11000113

Tallahatchie County

Black Bayou Bridge, 2nd St, Glendora, 11000112

Winston County

Baptist Church of Christ at Sardis, Sardis Rd, Louisville, 11000110

MONTANA

Carbon County

Red Lodge Communal Mausoleum, Montana HWY 78, Red Lodge, 11000114

Fergus County

Nelson, Gus, Homestead, Missouri River, River Mi #129.4–131.1 W side of river, Cow Island Vicinity, 11000093

NEBRASKA

Cass County

Greer, James and Margaret, Farmstead, 6135 202nd St, Alvo, 11000103

Knox County

St. Rose of Lima Catholic Church and School Complex, 1302–1316 S 5th St, Crofton, 11000106

Morrill County

Schuetz Log Cabin, HC 82 Box 103, Dalton, 11000105

Otoe County

Camp Creek Cemetery and Chapel, NE Corner of County Rd P and S Rd 70th, Nebraska City, 11000102

Phelps County

Brenstrom Farmstead, 10417 Westside Rd, Overton, 11000104

NEW YORK

Westchester County

Forster, Marmaduke, House, 413–415 Bedford Rd, Pleasantville, 11000139

PENNSYLVANIA

Chester County

Glenmoore Historic District, At the jct of Fairview and Creek Rds, roughly bounded by Park Ln, Indiantown Rd, and Howson Ln, Wallace, 11000107

TENNESSEE

Coffee County

Leming, John H., House, 414 E Main St, Manchester, 11000092

Johnson County

Maymead Farm, 1995 Roan Creek Rd, Mountain City, 11000100

Sumner County

Douglass—Clark House, Long Hollow Pike at Lower Station Camp Creek Rd, Gallatin, 11000098

Washington County

Broyles, Adam Alexander, House, 3118 Old SR 34, Limestone, 11000099

TEXAS

Bexar County

Lerma's Nite Club, 1602–1612 N Zarzamora, San Antonio, 11000135

Light House, 300 Argyle Ave, Alamo Heights, 11000131

El Paso County

Mills Building, (Commercial Structures of El Paso by Henry C. Trost TR) 303 N Oregon St, El Paso, 11000130

Glasscock County

Glasscock County Courthouse and Jail, 117 E Currie St, Garden City, 11000129

Houston County

First United Methodist Church, 701 E Goliad Ave, Crockett, 11000133

Sutton County

deBerry Ranch, Private Rd 1105, approximately 1.5 mi e of CR 108, Sonora, 11000134

Tarrant County

Henderson Street Bridge, (Historic Bridges of Texas MPS) Henderson Street at the Clear

Fork of the Trinity River, Fort Worth, 11000128

Texas Garden Clubs, Inc., Headquarters, 3111 Old Garden Rd, Fort Worth, 11000136

Travis County

Delwood Duplex Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Roughly bounded between Maplewood Ave and Kirkwood, Ashwood, and Wrightwood Rds, Austin, 11000132

VERMONT

Windham County

Middletown Rural Historic District, Middletown Rd, Avery Park Dr, Middletown Cemetery Rd, Woodchuck Hill Rd, Rte 121, Grafton, 11000101

WISCONSIN

Milwaukee County

Juneau Highlands Residential Historic District, 6600–6734 W Grant St, 2109–2180 S Livingston Terrace, 6608–6656 W Revere Place, and 6627–29 W Revere Pl, West Allis, 11000116

Oneida County

Mayer, George P., Boathouse, 7708 Braeger Rd, Town of Three Lakes, 11000115

WYOMING

Albany County

Durlacher House, 501 S 5th St, Laramie, 11000097

Other Actions:

Request for REMOVAL has been made for the following resources:

INDIANA

Marion County

Chadwick, 1005 N Pennsylvania St, Indianapolis, 83000061

TENNESSEE

Shelby County

Pippin Roller Coaster, Bounded by E Pkwy, Central and Southern Aves, and Early Maxwell Blvd, Memphis, 07001166

In the interest of preservation the comment period for the following resource has been shortened to (3) three days.

VIRGINIA

Appomattox County

Holiday Lake 4–H Educational Center, 1267 4–H Camp Rd, Rte 2, Appomattox, 11000091

[FR Doc. 2011–5400 Filed 3–8–11; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–764]

In the Matter of Certain Digital Televisions and Components Thereof, and Certain Electronic Devices Having a Blu-Ray Disc Player and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a first complaint was filed with the U.S. International Trade Commission on February 4, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of LG Electronics, Inc. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital televisions and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,785,906 (the '906 patent), U.S. Patent No. RE 37,326 (the '326 patent), U.S. Patent No. 5,533,071 (the '071 patent), and U.S. Patent No. 5,923,711 (the '711 patent). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

Notice is also given that a second complaint was filed with the U.S. International Trade Commission on February 4, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of LG Electronics, Inc. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices having a Blu-ray Disc player and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,701,835 (the '835 patent), U.S. Patent No. 7,577,080 (the '080 patent), U.S. Patent No. 7,619,961 (the '961 patent), and U.S. Patent No. 7,756,398 (the '398 patent). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaints, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaints, the U.S. International Trade Commission, on March 3, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, a consolidated investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital televisions and components thereof that infringe one or more of claims 1–9, 11–12, and 16–19 of the '906 patent, claims 29, 32, 35, 38 and 40 of the '326 patent, claim 1 of the '071 patent, and claims 1, 14, 31, and 38 of the '711 patent; whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic devices having a Blu-ray Disc player and components thereof that infringe one or more of claims 14–20 and 27–33 of the '835 patent, claims 16–29 of the '080 patent, claims 1–2, 5–7, 9–10 and 13–15 of the '961 patent and

claims 10 and 14 of the '398 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: LG Electronics, Inc., LG Twin Towers, 20, Yeouido-dong, Yeongdeungpo-gu, Seoul 150–721, Korea.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sony Corporation, 7–1 Konan, 1-chome, Minato-ku, Tokyo 108–0075, Japan;
Sony Corporation of America, 550 Madison Avenue, New York, NY 10022;
Sony Electronics, Inc., 16530 Via Esprillo, San Diego, CA 92127;
Sony Computer Entertainment, Inc., 2–6–21, Minami-Aoyama, Minato-ku, Tokyo 107–0062, Japan;
Sony Computer Entertainment America LLC, 919 East Hillsdale Blvd., Foster City, CA 94404.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaints and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaints and the notice of investigation. Extensions of time for submitting responses to the complaints and the notice of investigation will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaints and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaints and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaints and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 3, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–5399 Filed 3–8–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–763]

In the Matter of Certain Radio Control Hobby Transmitters and Receivers and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 14, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Horizon Hobby, Inc. An amended complaint was filed on February 28, 2011. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio control hobby transmitters and receivers and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,391,320, U.S. Copyright Reg. No. TX–7–226–001, and U.S. Trademark Reg. No. 3,080,770. The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 2, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain radio control hobby transmitters and receivers and products containing same that infringe one or more of claims 1–5 of U.S. Patent No. 7,391,320, or U.S. Copyright Reg. No. TX–7–226–001, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain radio control hobby transmitters and receivers and products containing same that infringe U.S. Trademark Reg. No. 3,080,770, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Horizon Hobby, Inc., 4105 Fieldstone Road, Champaign, IL 61822.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Koko Technology Ltd., 4F, Building 3, Area B, Hedan Industrial Zone, No. 41, Wuhe Road South, Bantian. Shenzhen, Guangdong, China,

Cyclone Toy & Hobby, 4/F Dawei Bldg., Industrial West RD, Longhua Bao'an District, Shenzhen, Guangdong, China.

(c) The Commission investigative attorney, party to this investigation, is Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 3, 2011.

James R. Holbein,

Acting Secretary to the Commission.

[FR Doc. 2011–5403 Filed 3–8–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee, Notice of Meeting and Agenda

The Data Users Advisory Committee will meet on Friday, March 25, 2011. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Committee provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on technical matters related to the collection, analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Rooms 1, 2, and 3 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 a.m. Registration.
8:45 a.m. Introductions and Welcome.
9 a.m. Commissioner's Remarks on the State of the BLS.
10 a.m. The BLS Strategic Plan.
11:15 a.m. BLS Outreach Activities.
1:15 p.m. The Role of Labor Market Statistics: How the Federal statistical system can better serve the needs of labor market participants and labor market policy makers.
3 p.m. Current Challenges in Price Measurement.
4:30 p.m. Wrap-up.

The meeting is open to the public. Any questions concerning the meeting should be directed to Kathy Mele, Data Users Advisory Committee, on 202.691.6102. Individuals who require special accommodations should contact Ms. Mele at least two days prior to the meeting date.

Signed at Washington, DC, this 1st day of March 2011.

Tod R. Sirois,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–5350 Filed 3–8–11; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Biological Sciences Advisory Committee (#1110).

Date and Time: March 29, 2011; 8:30 a.m. to 5 p.m.

March 30, 2011; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1401 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Chuck Liarakos, National Science Foundation, Room 605, 4201 Wilson Boulevard, Arlington, VA 22230. Tel No.: (703) 292–8400.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Items on the agenda include the NSF and BIO FY 2012 budget request, the 2010 America Competes Act, and a progress report on BIO's ongoing experiments in innovation. In addition, the BIO AC will discuss "information exchange environments" and STEM education, workforce and careers in science.

Dated: March 4, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–5364 Filed 3–8–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Cyber Review of Phase II Centers for Chemical Innovation (CCI), 2011 Awardees by NSF Division of Chemistry (CHE), #1191.

Dates and Times:

March 31, 2011; 8 a.m.–5:30 p.m.
April 1, 2011; 8 a.m.–5 p.m.
April 2, 2011; 8 a.m.–5 p.m.

Place: Beckman Conference Center, 100 Academy Way, Irvine, CA 92617.

Type of Meeting: Part-open.

Contact Person: Dr. Robert Kuczkowski, Program Director, Chemistry Centers Program, Division of Chemistry, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4454.

Purpose of Meeting: To provide advice and recommendations concerning Phase II progress.

Agenda:

Thursday, March 31, 2011

8 a.m.–9:15 a.m. Closed—Panel Briefing and Discussion.
9:15 a.m.–11:15 a.m. Open—Presentation: Center for Molecular Interfacing.
11:30 a.m.–12:15 a.m. Open—Post presentations.

12:15 p.m.–1:30 p.m. Closed—Panel/Lunch and Discussion.
1:30 p.m.–2:45 p.m. Open—Panel wrap-up presentation and Q&A.
2:45 p.m.–5:30 p.m. Closed—Panel Discussion.

Friday, April 1, 2011

8 a.m.–8:30 a.m. Closed—Panel Discussion.
8:30 a.m.–10:30 a.m. Open—Presentation: Center for Green Materials Chemistry.
10:45 a.m.–11:30 a.m. Open—Post Presentation.
11:30 a.m.–12:45 p.m. Closed—Panel/Lunch and Discussion.
1 p.m.–2:15 p.m. Open—Panel wrap-up presentation and Q&A.
2:15 p.m.–5 p.m. Closed—Panel Discussion.

Saturday, April 2, 2011

8 a.m.–8:30 a.m. Closed—Panel Briefing and Discussion.
8:30 a.m.–10:30 a.m. Open—Presentation: Center for Chemistry of The Universe.
10:45 a.m.–11:30 a.m. Open—Poster Presentations.
11:30 a.m.–12:45 p.m. Closed—Panel/Lunch and Discussion.
1 p.m.–2:15 p.m. Open—Panel wrap-up presentation and Q&A.
2:15 p.m.–5 p.m. Closed—Panel Discussion.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 4, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–5376 Filed 3–8–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, March 15, 2011.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The TWO items are open to the public.

MATTERS TO BE CONSIDERED:

8046A Crash During Attempted Go-Around After Landing, East Coast Jets Flight 81, Hawker Beechcraft Corporation 125–800A, N818MV, Owatonna, Minnesota, July 31, 2008.

7802E Most Wanted Board Order—Board Members will consider beginning to use the NTSB notation (written voting) process followed by a press conference to announce the annual Most Wanted List of Safety Improvements, rather than the past practice of deliberating the contents of the list at a meeting of the Board.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, March 11, 2011.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Dated: March 4, 2011.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2011–5356 Filed 3–7–11; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0338]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 29, 2010.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* "DOE/NRC Form 741 (Nuclear Material Transaction Report) and Associated Instructions (NUREG/BR–0006)."

3. *Current OMB approval number:* 3150–0003.

4. *The form number if applicable:* NRC Form 741.

5. *How often the collection is required:* Form 741 is submitted when specified events occur (nuclear material or source material transfers, receipts, or inventory changes).

6. *Who will be required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material. Any licensee who ships, receives, or otherwise undergoes an inventory change of special nuclear or source material is required to submit a Form 741 to document the change.

7. *An estimate of the number of annual responses:* 16,493.

8. *The estimated number of annual respondents:* 400.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 20,616.

10. *Abstract:* NRC is required to collect nuclear material transaction information for domestic safeguards use and make it available to the International Atomic Energy Agency (IAEA). Licensees use Form 741 to make inventory and accounting reports for certain source or special nuclear material, or for transfer or receipt of 1 kilogram or more of source material. This form enables NRC to collect, retrieve, analyze, and submit the data to IAEA to fulfill its reporting responsibilities.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 8, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0003), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 1st day of March, 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–5344 Filed 3–8–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0441]

South Carolina Electric and Gas Company (SCE&G) and the South Carolina Public Service Authority (Santee Cooper); Notice of Availability of Application for a Combined License

On March 27, 2008, South Carolina Electric and Gas Company (SCE&G) acting as itself and agent for the South Carolina Public Service Authority also known as Santee Cooper filed with the U.S. Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the Code of Federal Regulations (10 CFR) part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," an application for combined licenses (COLs) for two AP1000 advanced passive pressurized water reactors at the existing Virgil C. Summer Nuclear Site (VCSNS) located in Fairfield County, South Carolina. The reactors are to be identified as VCSNS Units 2 and 3. The application is currently under review by the NRC staff.

An applicant may seek a COL in accordance with subpart C of 10 CFR part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. This notice is being provided in accordance with the requirements found in 10 CFR 50.43(a)(3).

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents 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*. The accession number for the cover letter of the application is ML081300460. Other publicly available documents related to the application, including revisions filed after the initial submission, are also posted in ADAMS. 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 staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html*.

Dated at Rockville, Maryland, this 2nd day of March 2011.

For the Nuclear Regulatory Commission.

Joseph M. Sebrosky,

Senior Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–5345 Filed 3–8–11; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Renewals

AGENCY: Peace Corps.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Peace Corps has submitted the following two (2) information collection to the Office of Management and Budget (OMB) for extension under the provisions of the Paperwork Reduction Act of 1995. This notice invites the public to comment on the renewal of three information collections: Peace Corps Week Brochure (OMB 0420–0529); Peace Corps Career Information Consultation (CIC) Waiver Form (OMB Control No. 0420–0531); and, Peace Corps Response Application Form (OMB Control No. 0420–0533). Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

DATES: Comments regarding this collection must be received on or before April 8, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via e-mail to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. *Attention:* Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcfr*@peacecorps.gov. Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION: Proposal to renew the following three (3) information collections currently approved collection of information:

1. *Title:* Peace Corps Week Brochure.

OMB Control Number: 0420–0529.

Type of Review: Extension, without change, of a currently approved information collection.

Respondents: Returned Peace Corps Volunteers and parents of currently serving Peace Corps Volunteers.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

a. Estimated total annual reporting burden: 500 hours.

b. Estimated average burden response: 3 minutes.

c. Frequency of response: Once.

d. Estimated number of likely respondents: 10,000.

e. Estimated cost to respondents: $0.00.

General description of collection: This collection allows the Returned Volunteer Services Office to identify and provide support for interested people, promote these activities in local communities, and maintain address databases for future contact.

2. *Title:* Career Information Consultation (CIC) Waiver Form.

OMB Control Number: 0420–0531.

Type of Review: Regular—extension, without change, currently approved collection.

Respondents: Returned Peace Corps Volunteers and professionals in specific career fields.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

a. Total annual reporting burden: 208 hours.

b. Estimated average burden response: 5 minutes.

c. Frequency of response: Annually.

d. Estimated number of likely respondents: 2500.

General description of collection: Returned Volunteer Services needs this information to update contact information for individuals who volunteer to share information about their career field, their past or current

employer(s), and their career and educational paths with current and returned Peace Corps Volunteers. These individuals voluntarily provide this information in assisting with employment re-entry for Returned Peace Corps Volunteers. This is a service outreach part of transitioning from the Peace Corps to the business world. The individuals who provide the information are offering to assist, mentor or network for jobs.

3. *OMB Control Number:* 0420–0533.

Old Title: Peace Corps Crisis Corps Application Form.

New Title: Peace Corps Response Application Form.

Type of Review: Extension, with change, of a currently approved information collection. A section was added to address specific qualifications for which the applicant is applying:

"Please explain how your skills and experience will lead to the overall success of this project."

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

a. Estimated annual number of respondents: 1000.

b. Estimated average time to respond: 7 minutes.

c. Estimated total annual burden hours: 117 hours.

d. Frequency of response: One time.

e. Estimated cost to respondents: $0.00.

General description of collection: Returned Volunteer Services needs this information to update contact information for individuals who volunteer to share information about their career field, their past or current employer(s), and their career and educational paths with current and returned Peace Corps Volunteers. These individuals voluntarily provide this information in assisting with employment re-entry for Returned Peace Corps Volunteers. This is a service outreach part of transitioning from the Peace Corps to the business world. The individuals who provide the information are offering to assist, mentor or network for jobs.

Dated: March 3, 2011.

Earl W. Yates,

Associate Director for Management.

[FR Doc. 2011–5314 Filed 3–8–11; 8:45 am]

BILLING CODE 6051–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0187; RI 38–31)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Request for Information About Your Missing Payment" (OMB Control No. 3206–0187; RI 38–31), is sent in response to a notification by an individual of the loss or non-receipt of a payment from the Civil Service Retirement and Disability Fund. This form requests the information needed to enable OPM to trace and/or reissue payment. Missing payments may also be reported to OPM by a telephone call.

Approximately 8,000 reports of missing payments are processed each year. Of these, we estimate that 7,800 are reports of missing checks. Approximately 200 reports of missing checks are reported using RI 38–31 and 7,600 are reported by telephone. A response time of ten minutes per form reporting a missing check is estimated; the same amount of time is needed to report the missing checks or electronic funds transfer (EFT) payments using the telephone. The annual burden for reporting missing checks is 1,300 hours. The remaining 200 reports relate to EFT payments. No missing EFT payments are reported using RI 38–31. The annual burden for reporting missing EFT payments is 33 hours. The total burden is 1,333 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to— Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, and OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RS/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–5395 Filed 3–8–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Court Orders Affecting Retirement Benefits

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0204, Court Orders Affecting Retirement Benefits. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until May 9, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 or send via electronic mail to *Martha.Moore@opm.gov*.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: Court Orders Affecting Retirement Benefits, 5 CFR 838.221, 838.421, and 838.721 describe how former spouses give us written notice of a court order requiring us to pay benefits to the former spouse. Specific information is needed before OPM can make court-ordered benefit payments.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Court Orders Affecting Retirement Benefits, 5 CFR 838.221, 838.421, and 838.721.

OMB Number: 3206–0204.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 19,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 9,500.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–5392 Filed 3–8–11; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Transfer of Commercial First-Class Mail Parcels to Competitive Product List

AGENCY: Postal Service.™

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice that it has filed a request with the Postal Regulatory Commission to transfer commercial First-Class Mail Parcels from the Mail Classification Schedule's Market-Dominant Product List to its Competitive Product List.

DATES: March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Nabeel Cheema, 202–268–7178.

SUPPLEMENTARY INFORMATION: On February 24, 2011, the United States Postal Service® filed with the Postal Regulatory Commission a *Request of the United States Postal Service* to transfer commercial First-Class Mail Parcels from the Mail Classification Schedule's Market-Dominant Product List to its Competitive Product List, pursuant to 39 U.S.C. 3642. The transfer would take place in two steps: First, commercial First-Class Mail Parcels would be removed from the market-dominant product list; then, a new product, provisionally titled Lightweight Commercial Parcels, would be added to the competitive product list. Lightweight Commercial Parcels would be identical to commercial First-Class Mail Parcels, except that Lightweight Commercial Parcels would have a content restriction prohibiting the inclusion of any item classified as a "letter" under the Private Express Statutes. Documents pertinent to this request are available at *http://www.prc.gov,* Docket No. MC2011–22.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2011–5272 Filed 3–8–11; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–13; SEC File No. 270–27; OMB Control No. 3235–0035.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for in the following rule: Rule 17a–13 (17 CFR 240.17a–13) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). The Commission plans to submit a request for approval of extension of the existing collection of information to the Office of Management and Budget.

Rule 17a–13(b) (17 CFR 17a–13(b)) generally requires that at least once each calendar quarter, all registered brokers and dealers physically examine and count all securities held and account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) (17 CFR 17a–13(c)) provides that under specified conditions, the securities counts, examination, and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not require filing a report with the Commission, discrepancies between a broker-dealer's records and the securities counts may be required to be reported, for example, as a loss on Form X–17a–5 (17 CFR 248.617), which must be filed with the Commission under Rule 17a–5 (17 CFR 17a–5). Rule 17a–13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities. The Rule also does not apply to certain broker-dealers required to register only because they effect transactions in securities futures products.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and the Self Regulatory Organizations ("SROs") to those firms having problems in their back offices.

Currently, there are approximately 5,030 broker-dealers registered with the Commission. However, given the variability in their businesses, it is difficult to quantify how many hours per year each broker-dealer spends complying with the Rule. As noted, the Rule requires a respondent to account for all securities in its possession. Many respondents hold few, if any, securities; while others hold large quantities. Therefore, the time burden of complying with the Rule will depend on respondent-specific factors, including size, number of customers, and

proprietary trading activity. The staff estimates that the average time spent per respondent is 100 hours per year on an ongoing basis to maintain the records required under the Rule. This estimate takes into account the fact that more than half the 5,030 respondents—according to financial reports filed with the Commission—may spend little or no time in complying with the rule, given that they do not do a public securities business or do not hold inventories of securities. For these reasons, the staff estimates that the total compliance burden per year is 503,000 hours (5,030 respondents × 100 hours/respondent).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Comments should be directed to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or comments may be sent by e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 2, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5280 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–2; SEC File No. 270–189; OMB Control No. 3235–0201.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–2 (17 CFR 240.17a–2)—Recordkeeping Requirements Relating to Stabilizing Activities

Rule 17a–2 requires underwriters to maintain information regarding stabilizing activities conducted in accordance with Rule 104. The collections of information under Regulation M and Rule 17a–2 are necessary for covered persons to obtain certain benefits or to comply with certain requirements. The collections of information are necessary to provide the Commission with information regarding syndicate covering transactions and penalty bids. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under Rule 104(i) (17 CFR 242.104(i)) and Rule 17a–2(c), none of the information required to be collected or disclosed for PRA purposes will be kept confidential. The recordkeeping requirement of Rule 17a–2 requires the information be maintained in a separate file, or in a separately retrievable format, for a period of three years, the first two years in an easily accessible place, consistent with the requirements of Exchange Act Rule 17a–4(f) (17 CFR 240.17a–4(f)).

There are approximately 745 respondents per year that require an aggregate total of 3,725 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 5 hours to complete. Thus, the total compliance burden per year is 3,725 burden hours. The total compliance cost for the respondents is approximately $212,213.25, resulting in a cost of compliance for the respondent per response of approximately $284.85 (i.e., $212,213.25/745 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 2, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5281 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–7 and Form 19b–7; OMB Control No. 3235–0553; SEC File No. 270–495.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in Rule 19b–7 (17 CFR 240.19b–7) and Form 19b–7—Filings with respect to proposed rule changes submitted pursuant to Section 19b(7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

The Exchange Act provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges and national securities associations (collectively, self-regulatory organizations or "SROs"), have primary responsibility for regulating their members or participants. The role of the Commission in this framework is primarily one of oversight: the Exchange Act charges the Commission with supervising the SROs and assuring that each complies with and advances the policies of the Exchange Act.

The Exchange Act was amended by the Commodity Futures Modernization Act of 2000 ("CFMA"). Prior to the CFMA, federal law did not allow the trading of futures on individual stocks or on narrow-based stock indexes (collectively, "security futures products"). The CFMA removed this restriction and provides that trading in security futures products would be regulated jointly by the Commission and the Commodity Futures Trading Commission ("CFTC").

The Exchange Act requires all SROs to submit to the SEC any proposals to amend, add, or delete any of their rules. Certain entities (Security Futures Product Exchanges) would be national securities exchanges only because they trade security futures products. Similarly, certain entities (Limited Purpose National Securities Associations) would be national securities associations only because their members trade security futures products. The Exchange Act, as amended by the CFMA, established a procedure for Security Futures Product Exchanges and Limited Purpose National Securities Associations to provide notice of proposed rule changes relating to certain matters.[1] Rule 19b–7 and Form 19b–7 implemented this procedure. Effective April 28, 2008, the SEC amended Rule 19b–7 and Form 19b–7 to require that Form 19b–7 be submitted electronically.[2]

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should remain in affect or abrogated.

The respondents to the collection of information are SROs. Five respondents file an average total of 12 responses per year. Each response takes approximately 13.25 hours to complete, which corresponds to an estimated annual response burden of 159 (12 responses × 13.25 hours) hours. The average cost per response is $4,465.50 (13.25 hours multiplied by a weighted average hourly rate of $337.02).[3]

Compliance with Rule 19b–7 is mandatory. Information received in response to Rule 19b–7 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: March 1, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5282 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

[1] These matters are higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products; sales practices for security futures products for persons who effect transactions in security futures products; or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. *See* 15 U.S.C. 78s(b)(7)(A).

[2] *See* Securities Exchange Act Release No. 57526 (March 19, 2008), 73 FR 16179 (March 27, 2008).

[3] The average cost per response is $4,465.50 (13.25 hours multiplied by a weighted average hourly rate of $337.02). The resultant total related cost of compliance for these respondents is $53,586 per year (12 responses × $4,465.50 per response).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(3)–3T; SEC File No. 270–571; OMB Control No. 3235–0630.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collections of information discussed below.

Temporary rule 206(3)–3T (17 CFR 275.206(3)–3T) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) is entitled: "Temporary rule for principal trades with certain advisory clients." The temporary rule provides investment advisers who are registered with the Commission as broker-dealers an alternative means to meet the requirements of section 206(3) of the Advisers Act (15 U.S.C. 80b–6(3)) when they act in a principal capacity in transactions with certain of their advisory clients.

Temporary rule 206(3)–3T permits investment advisers also registered as broker-dealers to satisfy the Advisers Act's principal trading restrictions by: (i) Providing written, prospective disclosure regarding the conflicts arising from principal trades; (ii) obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; (iii) making oral or written disclosure and obtaining the client's consent before each principal transaction; (iv) sending to the client confirmation statements disclosing the capacity in which the adviser has acted; and (v) delivering to the client an annual report itemizing the principal transactions.

The Commission staff estimates that approximately 380 investment advisers make use of rule 206(3)–3T, including an estimated 24 advisers (on an annual basis) also registered as broker-dealers who do not offer non-discretionary services, but whom the Commission staff estimates will choose to do so and rely on rule 206(3)–3T. The Commission staff estimates that these advisers spend, in the aggregate, approximately 378,992 hours annually in complying with the requirements of the rule, including both initial and annual burdens. The aggregate hour burden, expressed on a per-eligible-adviser basis, is therefore approximately 997 hours per eligible adviser (378,992 hours divided by the estimated 380 advisers that will rely on rule 206(3)–3T).

The information collected pursuant to the rule is not required to be filed with the Commission, but rather takes the form of disclosures to, and responses from, clients. Accordingly, these filings are not kept confidential. To the extent advisers include any of the information required by the rule in a filing, such as Form ADV, the information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 1, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5283 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64007; File No. SR–CBOE–2011–021]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

March 2, 2011.

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 March 1, 2011, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] 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 is proposing to amend its Fees Schedule to reduce an away-market routing fee and extend a fee waiver related to the PULSe workstation. The Exchange is also proposing to make a non-substantive formatting change to its Fee Schedule. The text of the proposed rule change is available on the Exchange's Web site *http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE 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 reduce an away-market routing fee and extend a fee waiver related to the PULSe workstation. The Exchange is also proposing to make a non-substantive formatting change to its Fee Schedule.

By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of CBOE and CBOE Stock Exchange, LLC ("CBSX"). In addition, the PULSe workstation provides a user with the capability to send options orders to other U.S. options exchanges and stock orders to other U.S. stock exchanges through a PULSe Routing Intermediary ("away-market routing").[5]

The first purpose of this proposed rule change is to reduce the PULSe away market routing fee. Currently the fee is set at $0.10 per executed contract or share equivalent. The Exchange is proposing to reduce the fee to $0.05 per executed contract or share equivalent effective March 1, 2011.

The second purpose of this proposed rule change is to extend the waiver of the PULSe Routing Intermediary fee. Currently the Exchange has waived the Routing Intermediary fee through March 31, 2011. The Exchange is proposing to extend this waiver through June 30, 2011. Thus this fee will be assessed beginning July 1, 2011.

Finally, the third purpose of this proposed rule change is to make a non-substantive formatting change to its Fee Schedule. In particular, the Fees Schedule currently contains references to fees for Professional and Voluntary Professional transactions in S&P 500 Index options series that trade on the Hybrid Trading System. Specifically, the fee schedule references "SPX Options Trading on Hybrid." The Exchange is proposing to change these references to the trading symbol for such options, which is simply "SPXW." This change is non-substantive and should simplify the Fees Schedule in a manner consistent with other existing references to option trading symbols.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders in that the same fees and fee waivers are applicable to all Trading Permit Holders that use the PULSe Workstation. In addition, the change of the references from SPX Options Trading on Hybrid to the trading symbol SPXW should simplify the Fees Schedule in a manner consistent with other existing references to option trading symbols.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] For a more detailed description of the PULSe workstation and its other functionalities, *see, e.g.,* Securities Exchange Act Release Nos. 62286 (June 11, 2010), 75 FR 34799 (June 18, 2010) (SR–CBOE–2010–051) and 63721 (January 14, 2011), 76 FR 3929 (January 21, 2011) (SR–CBOE–2011–001).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 [9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–021 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2011–021. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–021 and should be submitted on or before March 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5277 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64008; File No. SR–C2–2011–009]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

March 2, 2011.

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 March 1, 2011, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(9f)(2) thereunder.[4] 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 is proposing to amend its Fees Schedule to reduce an away-market routing fee and extend a fee waiver related to the PULSe workstation. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to reduce an away-market routing fee and extend a fee waiver related to the PULSe workstation.

By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of C2. In addition to providing the capability to send orders to the C2 market, the PULSe workstation will also provide a user with the capability to send options orders to other U.S. options exchanges and stock orders to other U.S. stock exchanges through a PULSe Routing Intermediary ("away market routing").[5]

The first purpose of this proposed rule change is to reduce the PULSe

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] For a more detailed description of the PULSe workstation and its other functionalities, *see, e.g.,* Securities Exchange Act Release No. 63246 (November 4, 2010), 75 FR 69478 (November 12, 2010)(SR–C2–2010–007).

away market routing fee. Currently the fee is set at $0.10 per executed contract or share equivalent. The Exchange is proposing to reduce the fee to $0.05 per executed contract or share equivalent effective March 1, 2011.

The second purpose of this proposed rule change is to extend the waiver of the PULSe Routing Intermediary fee. Currently the Exchange has waived the Routing Intermediary fee through March 31, 2011. The Exchange is proposing to extend this waiver through June 30, 2011. Thus this fee will be assessed beginning July 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Permit Holders in that the same fees and fee waivers are applicable to all Permit Holders that use the PULSe workstation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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–C2–2011–009 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–C2–2011–009. 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–C2–2011–009 and should be submitted on or before March 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5278 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64022; File No. SR–MSRB–2011–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Rule Change Consisting of Amendments to MSRB Rule A–3, on Membership on the Board

March 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") 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 MSRB. The MSRB has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(iii),[3] 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 change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change consisting of amendments to MSRB Rule A–3, on membership on the Board.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC–Filings/2011–Filings.aspx,* at the MSRB's principal office, 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 MSRB included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 Board 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 make changes to MSRB Rule A–3(i) as are necessary and appropriate to retain a 21 member Board of Directors, including 11 public members and 10 regulated representatives, consistent with current MSRB transitional Rule A–3(i) and the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (the "Dodd-Frank Act").[5] Transitional Rule A–3(i), adopted on September 30, 2010 to comply with the Board composition requirements of Section 975 of the Dodd-Frank Act, established a two-year transition period for achieving a permanent Board structure under the new composition requirements of the Dodd-Frank Act and envisioned a series of further amendments to the rule during the transition period in furtherance thereof. The transitional period commenced on October 1, 2010 and concludes on September 30, 2012. The proposed rule change consists of amendments to MSRB Rule A–3(i) to provide for a three-year term for the class of five Board members—two public and three representing MSRB regulated entities—who will commence service on October 1, 2011. The amendments to Rule A–3(i) provide that the next class of Board members will consist of two public members and three members representing any category of regulated entity, including broker-dealers, bank dealers, and municipal advisors. The rule change further provides that the new class of five members of the Board of Directors will serve a three-year term.

The rule would state explicitly that five new members would be elected to the Board of Directors, although implicit in the rule, since five Board members are retiring as of September 30, 2010, and the MSRB must maintain a Board of Directors of 21 members during the transitional period. Further, the rule would state explicitly that two of the five new members would be public directors and three would be representative of MSRB regulated entities. While also implicit in Rule A–3(i), the rule change would make clear that the three industry positions may be filled by representatives of broker-dealers, bank dealers or municipal advisors, since the retiring industry members are representative of broker-dealers or bank dealers. Finally, the rule change would provide that the new class of five directors would have a three-year term. While the directors have historically served three-year terms, the most recent Board class, elected at the start of the transitional period, was elected for a two-year term.

Thus, this proposed rule change is intended to establish a three-year term for the five new Board members who will commence service on October 1, 2011, consistent with Section 15B(b)(1) of the Securities Exchange Act of 1934 and prior Board practice. The proposed rule change would amend MSRB Rule A–3(i) in order to provide for the election of a new five member class for a three-year term commencing on October 1, 2011. Of the five new members, two would be members of the public and three would be regulated representatives who are representative of and associated with brokers, dealers, municipal securities dealers or municipal advisors.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(B)[6] of the Act, which provides that the MSRB's rules shall:

> establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives.

The MSRB believes that the proposed rule change is consistent with the Act, as amended by the Dodd-Frank Act, in that it would provide for the maintenance of a 21 member Board with a majority of public members and have fair representation of broker-dealers, bank dealers, and municipal advisors, consistent with MSRB Rule A–3(i) as approved by the SEC.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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, since it is solely concerned with the administration of the MSRB and, in any event, provides for fair representation on the Board of public representatives, broker dealer representatives, bank dealer representatives and municipal advisor representatives.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act[7] because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after filing or such shorter time as the Commission may designate consistent with the protection of investors and the public interest.[8] The MSRB provided the required written notice of its intention to file the proposed rule change to the Commission on February 10, 2011, and the proposed rule change will become operative on April 1, 2011, which is more than 30 days after the filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

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:

[5] *See* Exchange Act Release No. 63025 (Sep. 30, 2010), 75 FR 61806 (Oct. 6, 2010).

[6] 15 U.S.C. 78o–4(b)(2)(B)

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

[9] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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–MSRB–2011–02 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–MSRB–2011–02. 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 website 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 MSRB's offices. 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–MSRB–2011–02 and should be submitted on or before March 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5279 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64032; File No. SR–NASDAQ–2011–029]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Minor Rules Violation Plan of the Nasdaq Options Market With Respect to Standardized Options

March 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify the Minor Rules Violation Plan with respect to standardized options as set forth in Chapter X, Section 7 of the Nasdaq Options Market ("NOM") rules.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, 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, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19–b4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Minor Rules Violation Plan ("MRVP") fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by Options Participants and associated persons. The MRVP is particularly useful in reducing both the number and extent of rule violations because the text of the rule, located at Chapter X, Section 7, enables staff to promptly impose a limited but meaningful financial penalty soon after the violations are detected. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of Options Participants and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange's rules, particularly those parties who may not pay attention to mere warnings that they are violating Exchange rules. By promptly imposing a meaningful financial penalty for such violations, the MRVP focuses on correcting conduct before it gives rise to more serious enforcement action.

The Exchange believes its proposal places the Exchange on par with all other options exchanges. Currently, all options exchanges have entered into a plan pursuant to Rule 17d–2 of the Act (the "Plan") to agree to allocate regulatory responsibility for certain rules common to all options exchanges. Adding the proposed rules to the Exchange's minor rule plan promotes consistency with the minor rule violations plans of the other exchanges, particularly with respect to rule [sic] that are classified as common rules pursuant to the Plan.

In light of recent amendments to Exchange rules, the Exchange is proposing to make amendments to the MVRP as described in greater detail below. While the MRVP will continue to be used for inadvertent and occasional rule violations, serious violations of Exchange rules will continue to be addressed through formal enforcement action.[3]

LOPR Reporting and Position Limit Violations

Proposed new subsection (d) of Chapter X, Section 7 will govern minor violations of the rules regarding Large Option Position Report ("LOPR") Reporting and Position Limits as set forth in Chapter III, Sections 7–10. This

[3] *See* Exchange Section 9200 Series Rules.

section applies to position limits and maintaining and furnishing reports related to applicable position limits for options contracts. For minor rule violations of LOPR Reporting, the fine for a first offense would be $1,000; the fine for a second offense would be $2,500; and for any subsequent offense the fine would be $5,000. For minor rule violations of position limits, the fine for a first offense would be $500; for a second offense the fine would be $1,000; and for any subsequent offense the fine would be $2,500. The scope of this proposed subsection is substantially similar to and is applicable to the conduct covered by the MRVP provision of Rule 476A, Part 1C(i)(17) of the NYSE Amex Exchange ("Amex"). Specifically, Amex Rule 476A, Part 1C(i)(17), entitled "Position Limit or Exercise Limit Violation. (Rule 904, 904C, 905, 905C, 1107, 1108)" governs violations of position and exercise limits set forth in the enumerated Amex rules. Furthermore, proposed new subsection (d) references Chapter III, Sections 7, 8, and 9 of the Exchange Rules and also govern violations of position (Sections 7 and 8) and exercise (Section 9) limits. Likewise, Amex Rule 476A, Part 1C(i)(38), entitled "Reporting of options positions. (Rule 906(a) and 906C(a))" governs a failure to report options positions as set forth in Amex Rule 906 (Reporting of Options Positions), which is similar to Exchange Rule Chapter III, Section 10 (Reports Related to Position Limits). Based on the similarity of rules between the Exchange and Amex and the overlap between NOM and Amex members, the Exchange believes that the proposal is non-controversial.

Expiring Exercise Declaration Rule Violations

Proposed new subsection (e) would govern minor violations regarding exercise of options contracts, allocation of exercise notices and delivery and payment of the underlying security set forth in Chapter VIII, Sections 1–3 of the Exchange's Rules. For these minor rules violations by individuals, the fine for a first offense would be $500, the fine for a second offense would be $1,000, and for any subsequent offense the fine would be $2,500. For these minor rules violations by a firm, the fine for a first offense would be $1,000, the fine for a second offense would be $2,500, and for any subsequent offense the fine would be $5,000. The language of this proposed subsection is identical to and applicable to the conduct covered by the MRVP provision in Chapter X, Section 2(f) of the rules of the rules of Boston Options Exchange ("BOX").

Audit Trail Submissions and Record Keeping Requirements Violations

Proposed new subsection (f) would govern minor violations of the Audit Trail Submissions and Record Keeping Requirements set forth in Chapter V, Section 7 and Chapter IX, Sections 1–3 of the Exchange's Rules. These rules address the submission of audit trail information and require information to be recorded, retained and provided upon request by the Exchange's Regulation or other applicable regulatory entity. For minor rules violations regarding the submission of audit trail information, the fine for a first offense would be $1,500, the fine for a second offense would be $3,000, and for any subsequent offense the fine would be $5,000. The proposed provision is substantially similar to and applicable to conduct covered by Rule 10.12(h)(2) entitled "Failure to comply with order formal and system entry requirements of Rule 6.67" and Rule 10.12(k)(i)(2) of the rules of the NYSE Arca, Inc. ("NYSE Arca"). Likewise, the fine amounts are mirror NYSE Arca for minor rules violations regarding recordkeeping requirements and requirements for providing records upon request—the fine for a first offense would be $2,000, the fine for a second offense would be $4,000, and for any subsequent offense the fine would be $5,000. The proposed provision is substantially similar to and applicable to conduct covered by Rule 10.12(j)(10) entitled "Failure to comply with the books and records requirements of Rule 9.17" and Rule 10.12(k)(iii)(10) of the rules of NYSE Arca.

Representation of Orders Violations

Proposed new subsection (g) will govern minor violations of the rules regarding Representation of Orders set forth in Chapter VII, Section 12 of the Exchange Rules. These rules restrict options participant executions of principal orders they represent as agent unless proper exposure parameters are applied. For these minor rules violations, the fine for a first offense would be $1000, the fine for a second offense would be $2,500, and for any subsequent offenses the fine would be $5,000. This proposed provision is substantially similar to and applicable to the same conduct and fines covered by Rules 10.12(h)(34) entitled "Failure to satisfy the Order Exposure Requirements set forth in Rule 6.47A and its Commentary" and Rule 10.12(k)(i)(34) of the rules of NYSE Arca. NYSE Arca Rule 6.47A governs requirements for exposed orders.

Trade Reporting Violations

Proposed new subsection (h) will govern minor violations of the Trade Reporting rules set forth in Chapter VI, Sections 14 and 15 of the Exchange Rules. These rules require that all transactions effected on the Exchange: (i) be submitted for clearance to The Options Clearing Corporation; (ii) that Options Participants report the name of the Clearing Participants; and (iii) the prompt reporting of any change in this identity to the Exchange. For these minor rules violations, the fine for a first offense would be $1,500, the fine for a second offense would be $3,000, and for any subsequent offense the fine would be $5,000. This proposed provision is substantially similar to and applicable to the same conduct and fines covered by Rule 10.12(h)(38) entitled "Failure to comply with the reporting duties of Rule 6.69)" of the rules of NYSE Arca. Specifically, NYSE Arca Rule 6.69(e) governs the submission of trade reporting information regarding clearing through The Options Clearing Corporation.

Locked and Cross Market Violations

Proposed new subsection (i) will govern Locked and Cross Market Violations as set forth in Chapter XII, Section 3 of the Exchange Rules. The Locked and Crossed Markets rules address violations of the rules regarding avoidance of Locked or Crossed Markets. For these minor rules violations, the fine for a first offense would be $500, the fine for a second offense would be $1,000, and for any subsequent offense the fine would be $2,500. The language of this proposed subsection is identical to and applicable to the conduct and fines covered by Rule 10.12(h)(35) entitled "Failure to avoid locking a market (Rule 6.95)" and 10.12(k)(i)(35) of the rules of NYSE Arca. The underlying provisions of the Exchange and NYSE Arca rules are all based on the same provisions of the Options Order Protection and Locked/Crossed Market Plan.[4]

Trade-Through Violations

Proposed new subsection (j) would govern Trade-Through Violations that occur pursuant to Chapter XII, Section 2(a) of the Exchange Rules. The Trade-Through Rules prevent market

[4] On August 31, 2009, the Nasdaq Stock Market, LLC and NASDAQ OMX PHLX LLC (herein collectively referred to as "NASDAQ") entered into the "Options Order Protection and Locked/Crossed Market Plan" ("Plan") amongst other Participants, which was approved by the Securities and Exchange Commission ("SEC") pursuant to Section 11A(a)(3)(B) of the Exchange Act and Rule 608, effective on August 28, 2009, Release No. 34–60582.

participants from executing orders at prices that are inferior to other displayed quotations. For these minor rules violations, the fine for a First Offense would be $500, the fine for a second offense would be $1,000, and for any subsequent offense the fine would be $2,500. The language of this proposed subsection is substantially applicable to the conduct and fines covered by Rule 10.12(h)(29) entitled "Failure to comply with the requirements for avoidance of trade-throughs set forth in Rule 6.94(a)" and Rule 10.12(k)(i)(29) of the rules of NYSE Arca. The underlying provisions of the Exchange and NYSE Arca rules are all based on the same provisions of the Options Order Protection and Locked/Crossed Market Plan.

Failure to Timely File Amendments to Form U4, Form U5 and Form BD Violations

Proposed new subsection (k) would govern Failure to Timely File Amendments to Form U4, Form U5 and Form BD. Any member and/or participant organization that is required to file Form U4, Form U5 or Form BD pursuant to Section 1031 of the Exchange Rules, the Act, and/or the rules promulgated thereunder, is required to amend the applicable Form U4, Form U5 or Form BD to keep such forms current at all times. Members and/or participant organizations must amend Form U4, Form U5 and Form BD within thirty days after the filer knew of or should have known of the need for the amendment. For these minor rules violations, implemented on a running twelve (12) month period the fine for a first offense would be $500, the fine for a second offense would be $1,000, and for any subsequent offense the fine would be $2,000. The language of this proposed subsection is identical to and applicable to the conduct and fines covered by the MRVP provision in Chapter X, Section 2(e) of the rules of BOX, which addresses the same provisions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change is consistent with the statute in that it directly addresses fraudulent and manipulative acts and practices by NOM members.

The proposed rule change is consistent with Section 6(b)(6) of the Act[7] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The establishment and modification of a MRVP directly addresses such requirement.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder,[9] The [sic] Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for thirty days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has provided 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.

The Exchange believes that the filing may appropriately be designated for filing under Rule 19b–4(f)(6) because the filing eliminates inconsistencies between the Exchange's MRVP and those of other exchanges. The proposed rules of the Exchange are substantially similar to the rules of other exchanges. This similarity is the basis for the Exchange's belief that the proposed rule change is non-controversial. Since no significant issues have been raised with this "copycat" filing, the Exchange believes that this filing will afford it the same operability regarding the MRVP as the other exchanges.[10] In addition, the proposal will improve the regulation of NOM and its members, and enhance investor protection on the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–NASDAQ–2011–029 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–NASDAQ–2011–029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) at 40151, where the Securities and Exchange Commission acknowledges that "any increase in the number of proposed rule changes that may become effective upon filing with the Commission should improve the ability of SROs to amend their rules efficiently, particularly with respect to rules relating to trading systems and "copycat" proposals, which will enhance their ability to respond to competitive pressures by allowing them to file changes to their systems on an immediately-effective basis".

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 website 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–NASDAQ–2011–029, and should be submitted on or before March 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5380 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64028; File No. SR–BX–2010–059]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Disapprove Proposed Rule Change, as Modified by Amendment No. 1, To Create a Listing Market on the Exchange

March 3, 2011.

On August 20, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a listing market on the Exchange. The proposed rule change was published for comment in the **Federal Register** on September 8, 2010.[3] The Commission received three comment letters on the proposal.[4] The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to December 7, 2010.[5] On December 6, 2010, the Exchange filed Amendment No. 1 to the proposed rule change.[6] On December 7, 2010, the Commission instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[7] The Commission thereafter received seven comments on the proposal.[8] The Exchange responded to these comments on February 17, 2011.[9]

Section 19(b)(2) of the Act[10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on September 8, 2010. March 7, 2011 is 180 days from that date, and May 6, 2011 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been submitted in connection with this proposed rule change, and the Exchange's response to such issues in its response letter. Specifically, while the Exchange noted a number of benefits to the proposal,[11] as the Commission noted in the Order Instituting Proceedings, the proposal raises issues such as whether BX-listed securities could be more prone to manipulation, and whether investors will understand that BX-listed securities could pose substantially more risk than those listed on other markets.[12]

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[13] designates May 6, 2011, as the date by which the Commission should either approve or disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5379 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 ("Notice").

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated September 28, 2010; Michael R. Trocchio, Bingham McCutchen LLP, on behalf of Pink OTC Markets Inc., dated October 3, 2010; and Tom A. Alberg, Managing Director and Founder, Madrona Venture Group, dated December 1, 2010.

[5] *See* Securities Exchange Act Release No. 63105 (October 14, 2010), 75 FR 64772 (October 20, 2010) ("Extension").

[6] *See* Securities Exchange Act Release No. 63597 (December 22, 2010), 75 FR 82098 (December 29, 2010) ("Amendment No. 1").

[7] *See* Securities Exchange Act Release No. 63448 (December 7, 2010), 75 FR 77036 (December 10, 2010) ("Order Instituting Proceedings").

[8] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from James J. Angel, Ph.D., CFA, dated January 14, 2011; K. Richard B. Niehoff, Chairman and CEO, United States OTC Markets, Inc., dated January 20, 2011; Mark G. Heesen, President, National Venture Capital Association, dated January 21, 2011; Alan F. Eisenberg, Executive Vice President, Emerging Companies and Business Development, Biotechnology Industry Organization, dated January 24, 2011; Michael R. Trocchio, Bingham McCutchen LLP, on behalf of OTC Markets Group Inc., dated January 24, 2011; Rey Ramsey, President and CEO, TechNet, dated January 24, 2011; and William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated January 26, 2011.

[9] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ OMX Group, dated February 17, 2011.

[10] 15 U.S.C. 78s(b)(2).

[11] The Exchange believes that a BX listing could help companies that are being delisted from another national securities exchange for failure to meet its quantitative listing standards and companies with smaller market capitalization contemplating an initial exchange listing to raise capital, and in turn promote job creation within the United States. *See* Amendment No. 1, *supra* note 6 at 82100. The Exchange further believes that the proposed listing venue will provide a transparent, well-regulated marketplace for these companies and their investors. *See id.* at 82099.

[12] *See* Order Instituting Proceedings, *supra* note 7 at 77040.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64027; File No. SR–CBOE–2011–020]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Fees Schedule for the CBOE Stock Exchange

March 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 25, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the Fees Schedule for its CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing proposes to make several changes to the CBSX Fees Schedule. The Exchange proposes to modify CBSX Maker and Taker transaction fees and rebates for transactions in securities priced $1 or greater. Maker fees and Taker rebates for transactions in a select group of stocks (BAC, BIL, BGZ, C, CIM, DXD, FAZ, IAU, LVLT, NBG, PVI, QID, SDS, SIRI, SKF, SNV, UDN, UNG, UUP, XLF) will remain unchanged. Transactions in securities priced $1 or greater in another select group of stocks (AA, AMAT, AMD, ATML, BRCD, BSX, CMCSA, COCO, CSCO, CX, DELL, DIA, DOW, DRYS, DUK, EBAY, EMC, EWJ, EWT, FAS, FAX, F, FITB, FLEX, GBG, GDX, GE, GLD, GLW, HBAN, HPQ, IDIX, INTC, IWM, IYR, JPM, KEY, LVS, MDT, MFE, MGM, MO, MRVL, MSFT, MU, NLY, NOK, NVDA, NWSA, ONNN, ORCL, PBR, PFE, PSQ, QCOM, Q, QLD, QQQQ, RF, RFMD, SBUX, S, SH, SLV, SMH, SNDK, SPLS, SPXU, SPY, SSO, SYMC, TBT, T, TLT, TNA,TSM, TWM, TXN, TZA, UCO, USO, UWM, UYG, VALE, VWO, VXX, VZ, WFC, XHB, XLB, XLE, XLI, XLK, XLP, XLU, XLV, XLY, XRT, XRX, YHOO) will incur Maker fees of $0.0009 per share and Taker rebates of $0.0006 per share. Transactions in securities priced $1 or greater for all other stocks will be assessed a $0.0001 fee. The Exchange is customizing transaction by security based on CBSX's experience in trades involving those securities.

The Exchange also proposes to modify transaction fees for cross trades that are the stock components of Qualified Contingent Trades. The Exchange proposes to eliminate the minimum fee of $1 per trade and raise the maximum fee from $15 to $20 in order to encourage more submissions of such cross trades on CBSX while recouping more fees to cover the Exchange's costs regarding such trades.

CBSX also proposes to lower the perimeter booth fee for CBSX Trading Permit Holders that are not CBSX Market-Makers who use booth space on the CBOE trading floor from $350 per month to $195 per month to make such fee consistent with the equivalent CBOE fee.

The Exchange also proposes to raise to trading an average of 100,000 shares per day over a calendar month the threshold by which CBSX Trading Permit Holders may avoid being subject to the Inactivity Fee. This proposed change will ensure that CBSX Trading Permit Holders are sufficiently active on CBSX.

Finally, the Exchange proposes to reorganize the notes and footnotes in Section 2 to eliminate any possible confusion between the two. All of the fee changes described in this proposed rule filing will take effect on March 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[3] in general, and furthers the objectives of Section 6(b)(4) [4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. The Exchange believes that the proposed changes to the transaction fees will allow CBSX to remain competitive with other exchanges. The elimination of the minimum transaction fee for cross trades that are the stock components of Qualified Contingent Trades also allows the Exchange to attract more transactions to the Exchange, while the increase of the maximum fee for such cross trades will provide for a more equitable allocation of fees. Reducing the CBSX perimeter booth fee to the same amount charged on CBOE also provides for a more equitable allocation of fees. Raising the threshold by which CBSX Trading Permit Holders may avoid being subject to the Inactivity Fee also provides for a more equitable allocation of fees by requiring that CBSX Trading Permit Holders are sufficiently active to cover the Exchange's costs of regulating the activity of such CBSX Trading Permit Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and paragraph (f)(2) of Rule 19b-4 thereunder.[6] At any time within 60 days of the filing of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–020 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2011–020. 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–CBOE–2011–020 and should be submitted on or before March 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5377 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64023; File No. SR–BX–2011–012]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Prohibit Members From Voting Uninstructed Shares on Certain Matters

March 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2011, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 2251 to prohibit members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless instructed by the beneficial owner of the shares. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

2251. Forwarding of Proxy and Other Issuer-Related Materials

(a)–(c) No change.

(d) Notwithstanding the foregoing, an Exchange Member that is not the beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

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

Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") adopted new Section 6(b)(10) of the Securities Exchange Act.[4] This new provision requires all national securities exchanges to adopt rules that prohibit their members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless the member receives voting instructions from the beneficial owner of the shares.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq [sic] found at *http://nasdaqomxbx.cchwallstreet.com.*

[4] 15 U.S.C. 78f(b)(10).

BX Rule 2251 governs when BX members may vote shares held for customers by adopting the FINRA rule on this point. The FINRA rule, in turn, prohibits members from voting any uninstructed shares, but also permits the member to follow the rules of another SRO instead.[5] In order to assure compliance, in all cases, with newly adopted Section 6(b)(10), the Exchange proposes to modify Rule 2251 to provide that in no event could a member vote uninstructed shares on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, unless instructed by the beneficial owner of the shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general and with Sections 6(b)(5) and 6(b)(10) of the Act,[7] in particular. Section 6(b)(5) requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change is consistent with this requirement in that it will protect investors and the public interest by adopting the requirements of Section 957 of the Dodd-Frank Act. Section 6(b)(10) requires that a national securities exchange's rules must prohibit any member that is not the beneficial owner of a security registered under Section 12 from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission. The proposed rule change will adopt the prohibition required by Section 6(b)(10) and is therefore consistent with that provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–2011–012 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–2011–012. 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 website 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–012 and should be submitted on or before March 30, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, BX requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8]

The Commission believes that the proposal is consistent with Section 6(b)(10)[9] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5)[10] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts

[5] The Commission notes that the FINRA rule, and by reference BX's rule, only allows a member to follow the rules of another SRO of which it is a member, provided that the records of the member clearly indicate the procedure it is following. *See* FINRA Rule 2251(c)(2).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5) and (10).

[8] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(10).

[10] 15 U.S.C. 78f(b)(5).

Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares." [11] The proposed rule change will make BX compliant with the new requirements of Section 6(b)(10) by specifically prohibiting, in BX's rule language, broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the member receives voting instructions from the beneficial owner of the shares.[12]

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[13]

Based on the above, the Commission finds that the BX proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform BX Rule 2251 to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that BX's proposed rule change is identical to Nasdaq Rule 2251(d), which was previously approved by the Commission and for which no comments were received.[15] Therefore, the Exchange's proposed rule change raises no new regulatory issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–BX–2011–012) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5303 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

[11] *See* S. Rep. No. 111–176, at 136 (2010).

[12] The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect BX to adopt coordinating rules promptly to comply with the statute.

[13] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[14] 15 U.S.C. 78s(b)(2).

[15] *See* Securities Exchange Act Release No. 62992 (September 24, 2010), 75 FR 60844 (October 1, 2010) (SR–Nasdaq–2010–114).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64024; File No. SR–BX–2011–011]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Adopt Section 16 (Proxy Voting) to Chapter III of the BOX Trading Rules Concerning Broker Voting

March 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2011, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons, and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Section 16 (Proxy Voting) to Chapter III, of the Rules of the Boston Options Exchange Group, LLC ("BOX") in accordance with the provision of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In accordance with Section 957 of the Dodd-Frank Act, the Exchange is proposing to adopt Section 16 (Proxy Voting) to Chapter III of the BOX Trading Rules. As proposed, this section will codify a provision to prohibit Participants from voting uninstructed shares if the matter voted on relates to (i) the election of a member of the board of directors of an issuer (other than an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

uncontested election of a director of an investment company registered under the Investment Company Act of 1940 ("Investment Company Act"); (ii) executive compensation, or (iii) any other significant matter, as determined by the Securities and Exchange Commission (the "Commission"), by rule.

Section 957 of the Dodd-Frank Act amended Section 6 (b) [3] of the Securities Exchange Act of 1934 (the "Exchange Act") to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12 [4] of the Exchange Act from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to adopt proposed Section 16 to Chapter III of the BOX Trading Rules to prohibit any Participant from giving a proxy to vote stock that is registered in its name, unless: (i) Such Participant is the beneficial owner of such stock; (ii) pursuant to the written instructions of the beneficial owner; or (iii) pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Participant clearly indicate the procedure it is following. The Exchange is proposing to adopt these rules because other national securities exchanges and associations do allow proxy voting under certain limited circumstances while the current Exchange Rules are silent on such matters. Therefore, a Participant that is also a member of another national securities exchange or association may vote the shares held for a customer when allowed under its membership at another national securities exchange or association, provided that the records of the Participant clearly indicate the procedure it is following.

Notwithstanding the above, under the proposal, a Participant that is not the beneficial owner of a security registered under Section 12 of the Exchange Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote with respect to the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Participant to vote the proxy in accordance with the voting instructions of the beneficial owner.

Because Section 957 of the Dodd-Frank Act does not provide for a transition phase, the Exchange is proposing to adopt the proposed rule change pursuant to Section 19(b) of the Exchange Act to comply with Section 957 of the Dodd-Frank Act and is requesting that the Commission approve the proposal on an accelerated basis. Additionally, the proposed adoption of Section 16 to Chapter III of the BOX Trading Rules is based upon International Securities Exchange, LLC ("ISE") Rule 421.

2. Statutory Basis

The basis under the Exchange Act for these proposed rule changes is the requirement under Section 6(b)(5) [5] to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange is adopting this proposed rule change to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Exchange Act, particularly with respect to the protection of investors and the public interest.

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. 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–2011–011 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–2011–011. 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

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 781.

[5] 15 U.S.C. 78f(b)(5).

should refer to File Number SR–BX–2011–011 and should be submitted on or before March 30, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act, and because the proposed rule text is based upon ISE Rule 421. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6]

The Commission believes that proposed Section 16(a) to Chapter III is consistent with Section 6(b)(5)[7] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under proposed Section 16(a) to Chapter III, a Participant shall be prohibited from voting uninstructed shares unless (1) that Participant is the beneficial owner of the stock; (2) pursuant to the written instructions of the beneficial owner; or (3) pursuant to the rules of any national securities exchange or association of which it is also a member, provided that the Participant's records clearly indicate the procedure it is following. This provision is based upon ISE Rule 421, which was previously approved by the Commission.[8] The Commission notes that the proposed change to Section 16(a) to Chapter III will provide clarity to Exchange Participants going forward on whether broker discretionary voting is permitted by Exchange Participants under limited circumstances when the Exchange Participant is also a member of another national securities exchange that permits broker discretionary voting. In approving this portion of the Exchange proposal, the Commission notes that proposed Section 16(a) to Chapter III is consistent with the approach taken under the rules of other national securities exchanges or national securities association, and for Exchange Participants who are not also members of another national securities exchange prohibits broker discretionary voting on any matter, consistent with investor protection and the public interest.

The Commission believes that proposed Section 16(b) to Chapter III is consistent with Section 6(b)(10)[9] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule.

The Commission believes that proposed Section 16(b) to Chapter III is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which enacted Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares."[10] The proposed rule change will make the Exchange compliant with the new requirements of Section 6(b)(10) by specifically prohibiting, in the Exchange's rule language, broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the Participant receives voting instructions from the beneficial owner of the shares.[11]

The Commission also believes that proposed Section 16(b) to Chapter III is consistent with Section 6(b)(5)[12] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the rule assures that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[13]

Based on the above, the Commission finds that the Exchange proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that good cause exists to grant accelerated approval to proposed Section 16(a) to Chapter III, because this proposed rule will conform the BOX rule to ISE Rule 421, NYSE Arca Rule 9.4, and FINRA Rule 2251, which were published for public comment in the **Federal Register** and approved by the Commission, and for which no

[6] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 63139 (October 20, 2010), 75 FR 65680 (October 26, 2010) (SR–ISE–2010–99). *See also* NYSE Arca Rule 9.4 and FINRA Rule 2251, which are similar and previously approved by the Commission. *See* Securities Exchange Act Release No. 48735 (October 31, 2003), 68 FR 63173 (November 7, 2003) (SR–PCX–2003–50); 61052 (November 23, 2009), 74 FR 62857 (December 1, 2009) (SR–FINRA–2009–066) (finding that the proposed rule change was consistent with the Act because the Rule "will continue to provide FINRA members with guidance on the forwarding of proxy and other issuer-related materials.").

[9] 15 U.S.C. 78f(b)(10).

[10] *See* S. Rep. No. 111–176, at 136 (2010).

[11] The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect the Exchange to adopt coordinating rules promptly to comply with the statute.

[12] 15 U.S.C. 78f(b)(5).

[13] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[14] 15 U.S.C. 78s(b)(2).

comments were received.[15] Because proposed Section 16(a) is substantially similar to the ISE, NYSE Arca, and FINRA rules, it raises no new regulatory issues.

The Commission also believes that good cause exists to grant accelerated approval to proposed Section 16(b) to Chapter III, which conforms the Exchange rule to the requirements of Section 6(b)(10) of the Act. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant accelerated approval to proposed Section 16(b) to Chapter III, because it will conform the Box rules to the requirements of Section 6(b)(10) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–BX–2011–011) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5304 Filed 3–8–11; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* note 8 *supra.*

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a Draft Environmental Impact Statement will be prepared for a proposed highway project in Los Angeles County, California.

DATES: Public Scoping Meetings will be held at the following locations:

San Gabriel, March 15, 2011, 6 p.m. to 8 p.m.

Alhambra, March 16, 2011, 6 p.m. to 8 p.m.

Glendale, March 22, 2011, 6 p.m. to 8 p.m.

South Pasadena, March 23, 2011, 6 p.m. to 8 p.m.

El Sereno, March 29, 2011, 6 p.m. to 8 p.m.

Pasadena, March 30, 2011, 6 p.m. to 8 p.m.

An online Virtual Scoping Meeting will be held on March 21, 2011. Register to participate at *metro.net/sr710conversations* and click the "Participate from Home" tab. (It will begin live at 6 p.m. and continue on demand through April 14, 2011).

ADDRESSES: San Gabriel—Jefferson Middle School, 1372 East Las Tunas Drive, San Gabriel, CA 91776.

Alhambra—Civic Center Library, 101 S. First Street, Alhambra, CA 91801.

Glendale—Glendale Community College, (Student Center RM 212), 1500 North Verdugo Road, Glendale, CA 91208.

South Pasadena—South Pasadena High School, (Auditorium), 1401 Fremont Ave., South Pasadena, CA 91030.

El Sereno—LA Christian Presbyterian Church, (Gymnasium), 2241 N. Eastern Ave., Los Angeles, CA 90032.

Pasadena—Lake Avenue Church, (4th floor above Harris Hall), 393 N. Lake Ave., Pasadena, CA 91101.

FOR FURTHER INFORMATION CONTACT: Ronald Kosinski, Deputy District Director, California Department of Transportation, District 7, Division of Environmental Planning, 100 South Main Street, Mail Stop 16A, Los Angeles, CA 90012.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated National Environmental Policy Act (NEPA) agency will prepare a Draft Environmental Impact Statement on a proposal for the State Route 710 Gap North Closure project in Los Angeles County, California. The proposed project, depending on the results of a thorough environmental analysis of all possible transportation improvements during the NEPA/CEQA process, may include, but not be limited to: surface and subsurface highway/freeway construction, heavy rail and bus/light rail systems, local street upgrades, traffic management systems and a no build alternative. There currently is a gap in the I–710 corridor, for a distance of approximately 4.5 miles (7.2 km), which extends between Valley Boulevard to the south and Del Mar Boulevard to the north. As originally identified in the April 13, 1998 Record of Decision for the Meridian Variation alignment, this gap contributes to congestion on local streets and the regional freeway system. The objective of this project is to relieve congestion and improve mobility within the study area.

It is anticipated that the proposed project may require the following federal approvals and permits: a Biological Opinion from the United States Fish and Wildlife Service, approval of a PM10 and PM2.5 Hot Spot Analysis by the Conformity Working Group for transportation conformity determination under the Clean Air Act. Section 404 nationwide permit from the U.S. Army Corps of Engineers, Section 401 Water Quality Certification from the California Regional Water Quality Control Board, Section 1601 Streambed Alteration Agreement from the California Department of Fish and Game, and encroachment permits from the various cities in which project construction would occur.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating Agencies, Tribal Governments and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. The public scoping process will officially begin in March 2011. Public scoping meeting(s) will be held in San Gabriel, Alhambra, Glendale, South Pasadena, Los Angeles, El Sereno, and Pasadena in March 2011. In addition, one online Virtual Scoping Meeting will be held on March 21, 2011. (It will begin live at 6 p.m. and continue on demand through April 14, 2011). Further, a public hearing will be held once the Draft Environmental Impact Statement is completed. Public notice will be given of the time and place of the meeting and hearing. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing to ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Caltrans at the address provided above.

(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 apply to this program.)

Issued on: March 3, 2011.

Shawn E. Oliver,

Federal Highway Administration, Sacramento, California.

[FR Doc. 2011–5407 Filed 3–8–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Departmental Offices Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Consumer Financial Protection Bureau implementation team is soliciting comments regarding forms for questions, complaints, and other information about consumer financial products and services.

DATES: Written comments should be received on or before May 9, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrew Trueblood, Consumer Financial Protection Bureau implementation team, 1801 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Andrew Trueblood in writing at Consumer Financial Protection Bureau implementation team, 1801 L Street, NW., Washington, DC 20036, by telephone at (202) 435–7070, or by e-mail at *andrew.trueblood@treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consumer Financial Protection Bureau Consumer Response Intake Fields.

OMB Control Number: NEW.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, Title X, established the Consumer Financial Protection Bureau (CFPB). Among the CFPB's functions is to facilitate the centralized collection of, monitoring of, and response to complaints concerning consumer financial products and services. In order to collect data about the consumer financial market and facilitate the appropriate routing of, handling of, and response to complaints, questions, and other information concerning consumer financial products and services, the CFPB is developing online and paper intake methods which will have fields for persons to complete. The fields will help document information such as the type of contact; the substance of the complaint, question, or other information; contact information for the person making the contact and/or related persons; information about any subject incident and institution; and identifying information about the consumer or consumer's household.

Type of Review: NEW.

Affected Public: Individuals and households with questions, complaints, and other information about consumer financial products and services.

Estimated Number of Respondents: Approximately 1–3 million per year. CFPB's intake of complaints, questions, and other information relating to consumer financial products and services is a new collection that may centralize intake now performed by existing agencies. As such, the projections of the number of respondents have a high level of uncertainty.

Estimated Average Time per Respondent: 10 minutes per response. The time to complete the form will depend on the nature of the contact. Simple feedback may take as little as a few minutes to complete while more complicated complaints could take longer to describe.

Estimated Total Annual Burden Hours: Approximately 330,000 burden hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the intake of complaints, questions, and other information relating to consumer financial products and services is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burden of the information collection; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of automated collection techniques or other forms of information technology; (e) estimates of capital or start-up costs of operation, maintenance, and purchase of services to provide information; and (f) specific types of information that would be useful for CFPB to collect through its intake forms, in order to advance the mission of CFPB.

Robert Dahl,

Treasury Departmental Clearance Officer.

[FR Doc. 2011–5349 Filed 3–8–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 3, 2011.

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 contacting the Treasury Department Office Clearance Officers 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 11020, Washington, DC 20220.

Dates: Written comments should be received on or before April 8, 2011 to be assured of consideration.

Departmental Offices (DO)

Summary: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of the Treasury has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Treasury is requesting clearance for eight separate OMB Control Numbers for eight bureaus and offices within the Department. Each clearance will have the same title and purpose, but will be available for use by each bureau under their control number and burden estimate, as detailed below.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the

Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Total Burden Estimate for the Department of the Treasury

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 120.

Respondents: 120,000.

Annual responses: 120,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 120,000.

Breakdown of Separate Agency Clearances and Burden Estimates:

Treasury Departmental Offices 1505–xxxx

Average Expected Annual Number of activities: 40.

Respondents: 40,000.

Annual responses: 40,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 40,000.

Financial Crimes Enforcement Network: 1506–xxxx

Average Expected Annual Number of activities: 10.

Respondents: 10,000.

Annual responses: 10,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 10,000.

United States Mint: 1525–xxxx

Average Expected Annual Number of activities: 10.

Respondents: 10,000.

Annual responses: 10,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 10,000.

Community Development Financial Institutions Fund: 1559–xxxx

Average Expected Annual Number of activities: 10.

Respondents: 10,000.

Annual responses: 10,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 10,000.

Financial Management Service: 1510–xxxx

Average Expected Annual Number of activities: 10.

Respondents: 10,000.

Annual responses: 10,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 10,000.

Alcohol and Tobacco Tax and Trade Bureau: 1513–xxxx

Average Expected Annual Number of activities: 10.

Respondents: 10,000.

Annual responses: 10,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 10,000.

Bureau of Public Debt: 1535–xxxx

Average Expected Annual Number of activities: 10.

Respondents: 10,000.

Annual responses: 10,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 10,000.

Internal Revenue Service: 1545–xxxx

Average Expected Annual Number of activities: 20.

Respondents: 20,000.

Annual responses: 20,000.

Frequency of Response: Once per request.

Average minutes per response: 60.

Burden hours: 20,000.

Departmental Clearance Officer: Robert Dahl, OCIO, 1750 Pennsylvania Ave., NW., Ste. 11020, Washington, DC 20220; (202) 622–3119.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2011–5351 Filed 3–8–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Department of Veterans Affairs, Office Information and Technology (National Cemetery Administration, Veterans Benefit Administration, and Veterans Health Administration).

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, Department of Veterans Affairs will submit a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery " to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*).

DATES: Comments must be submitted April 8, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235,

Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (Qualitative Feedback)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–New (Qualitative Feedback).

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide Department of Veterans Affairs projected average estimates for the next three years: [1]

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 8.

Respondents: 200,000.

Frequency of Response: Once per request.

Average minutes per response: 30 minutes.

Burden hours: 100,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: March 4, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–5327 Filed 3–8–11; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Department of Veterans Affairs, Office Information and Technology, (Administration Offices).

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, Department of Veterans Affairs will submit a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery " to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*).

DATES: Comments must be submitted April 8, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (Qualitative Feedback)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–New (Qualitative Feedback).

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative

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[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide Department of Veterans Affairs projected average estimates for the next three years: [1]

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 6.

Respondents: 100,000.

Frequency of Response: Once per request.

Average minutes per response: 30 minutes.

Burden hours: 50,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: March 4, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–5332 Filed 3–8–11; 8:45 am]

BILLING CODE P

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0657]

Agency Information Collection (Conflicting Interests Certification for Proprietary Schools) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 8, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0657" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0657."

SUPPLEMENTARY INFORMATION:

Title: Conflicting Interests Certification for Proprietary Schools Only, VA Form 22–1919.

OMB Control Number: 2900–0657.

Type of Review: Extension of a currently approved collection.

Abstract: VA pays education benefits to veterans and other eligible person pursuing approved programs of education. Employees of VA and State approving agency enrolled in a proprietary profit school are prohibit from owning any interest in the school. Educational assistance provided to veterans or eligible person based on their enrollment in proprietary school and who are officials authorized to signed certificates of enrollment are also prohibit from receiving educational assistance based on their enrollment. Propriety schools officials complete VA Form 22–1919 certifying that the institution and enrollees do not have any conflict of interest.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 21, 2010, at pages 80115–80116.

Affected Public: Business or other for–profit.

Estimated Annual Burden: 105 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 631.

Dated: March 4, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–5328 Filed 3–8–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0129]

Proposed Information Collection (Supplemental Disability Report); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to evaluate claims for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 9, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans

Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0129" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplemental Disability Report, VA Form Letter 29–30a.

OMB Control Number: 2900–0129.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–30a is used by the insured to provide additional information required to process a claim for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 548 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,570.

Dated: March 4, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–5329 Filed 3–8–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0068]

Agency Information Collection (Application for Service-Disabled Veterans Insurance) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; republication.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument. We are republishing this notice because we inadvertently omitted certain information from the **Federal Register** notice published on January 18, 2011 (76 FR 2953). This document contains the omitted information and agrees with the information in the notice published on November 4, 2010 (75 FR 68036).

DATES: Comments must be submitted on or before April 8, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0068" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0068."

SUPPLEMENTARY INFORMATION:

Title: Application for Service-Disabled Veterans Insurance, VA Forms 29–4364, 29–4364c and 29–0151.

OMB Control Number: 2900–0068.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans complete VA Forms 29–4364 and 29–0151 to apply for service-disabled veterans insurance, designate a beneficiary and select an optional settlement. VA uses the data collected on VA Forms 29–4364 and 29–0151 to determine the claimant's eligibility for insurance.

VA Form 29–4364c is used by veterans who were rated unemployable or with certain severely disabling conditions. Veterans completing VA Form 29–4364c do not need to provide medical information to qualify for this insurance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 4, 2010, at pages 68036–68037.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Dated: March 4, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–5330 Filed 3–8–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0606]

Proposed Information Collection (Regulation for Submission of Evidence); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to collect or recover cost for medical care or services provided or furnished to veterans with non-service-connected conditions.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before May 9, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Cynthia Harvey Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail: cynthia.harvey-pryor@va.gov*. Please refer to "2900–0606" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation for Submission of Evidence—Title 38 CFR 17.101(a)(4).

OMB Control Number: 2900–0606.

Type of Review: Extension of a currently approved collection.

Abstract: Under the provisions of 38 CFR 17.101(a)(4), a third party payer that is liable for reimbursing VA for care and services VA provided to veterans with non-service-connected conditions continues to have the option of paying either the billed charges or the amount the health plan demonstrates it would pay to providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted by the health plan is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion. VA uses the information to determine whether the third-party payer has met the test of properly demonstrating its equivalent private sector provider payment amount for the same care or services VA provided.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 800 hours.

Estimated Average Burden per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Dated: March 4, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–5331 Filed 3–8–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 46 March 9, 2011

Part II

Library of Congress

Copyright Royalty Board

37 CFR Part 380

Digital Performance Right in Sound Recordings and Ephemeral Recordings; Final Rule

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2009–1 CRB Webcasting III]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule and order.

SUMMARY: The Copyright Royalty Judges are announcing their final determination of the rates and terms for two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, for the period beginning January 1, 2011, and ending on December 31, 2015.

DATES: *Effective Date:* March 9, 2011.

Applicability Dates: These rates and terms are applicable to the period January 1, 2011, through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707–7658. E-mail: *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Subject of the Proceeding

This is a rate determination proceeding convened under 17 U.S.C. 803(b) *et seq.* and 37 CFR part 351 *et seq.,* in accord with the Copyright Royalty Judges' Notice announcing commencement of proceeding, with a request for Petitions to Participate in a proceeding to determine the rates and terms for the digital public performance of sound recordings by means of an eligible nonsubscription transmission or a transmission made by a new subscription service under section 114 of the Copyright Act, as amended by the Digital Millennium Copyright Act ("DMCA"), and for the making of ephemeral copies in furtherance of these digital public performances under section 112, as created by the DMCA, published at 74 FR 318 (January 5, 2009). The rates and terms set in this proceeding apply to the period of January 1, 2011 through December 31, 2015. 17 U.S.C. 804(b)(3)(A).

B. Statutory Background

A lengthy review of the history of the sound recordings compulsory license is contained in the Final Determination for Rates and Terms in Docket No. 2005–1 CRB DTRA, 72 FR 24084 (May 1, 2007) ("*Webcaster II*").[1] This history was summarized by the United States Court of Appeals for the District of Columbia Circuit in *Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Board,* 574 F.3d 748, 753–54 (DC Cir. 2009), as follows:

> [Since the nineteenth century, the Copyright Act protected the performance right of "musical works" (the notes and lyrics of a song), but not the "sound recording." Writers were protected but not performers.]
>
> In 1995, Congress passed the Digital Performance Right in Sound Recordings Act. Pub. L. No. 104–39, granting the owners of sound recordings an exclusive right in performance "by means of a digital transmission." 17 U.S.C. § 106(6); *see Beethoven.com LLC* v. *Librarian of Cong.,* 394 F.3d 939, 942 (D.C. Cir. 2005). The Digital Millennium Copyright Act of 1998, Pub. L. No. 105–304, "created a statutory license in performances by webcast," to serve Internet broadcasters and to provide a means of paying copyright owners. *Beethoven.com,* 394 F.3d at 942; *see* 17 U.S.C. § 114(d)(2), (f)(2). To govern the broadcast of sound recordings, Congress also created a licensing scheme for so-called "ephemeral" recordings, "the temporary copies necessary to facilitate the transmission of sound recordings during internet broadcasting." *Beethoven.com,* 394 F.3d at 942–43; *see* 17 U.S.C. § 112(e)(4).
>
> Congress has delegated authority to set rates for these rights and licenses under several statutory schemes. The most recent, passed in 2005 [sic], directed the Librarian of Congress to appoint three Copyright Royalty Judges who serve staggered, six-year terms. *See* 17 U.S.C. § 801, *et seq.* These Judges conduct complex, adversarial proceedings, described in 17 U.S.C. § 803 and 37 CFR § 351, *et seq.,* and ultimately set "reasonable rates and terms" for royalty payments from digital performances. 17 U.S.C. § 114(f). * * * Rates should "most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller." *Id.* [17 U.S.C. § 114(f)(2)(B)] "In determining such rates and terms," the Judges must "base [their] decision on economic, competitive and programming information presented by the parties." *Id.* Specifically, they must consider whether "the service may substitute for or may promote the sales of phonorecords" or otherwise affect the "copyright owner's other streams of revenue." *Id.* § 114(f)(2)(B)(i). The Judges must also consider "the relative roles of the copyright owner and the transmitting entity" with respect to "relative creative contribution, technological contribution, capital investment, cost, and risk." *Id.* § 114 (f)(2)(B)(ii). Finally, "[i]n establishing such rates and terms," the Judges "may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements described in subparagraph (A)." *Id.* § 114(f)(2)(B).

Intercollegiate Broadcast System, Inc. v. *Copyright Royalty Board,* 574 F.3d 748, 753–54 (DC Cir. 2009).

Forty petitions to participate were filed in response to the January 5, 2009, notice of commencement of the proceeding. The great majority of the petitioners were webcasters. During the subsequent period of voluntary negotiations, settlements were reached among many of the parties. In addition to the negotiation phase required in this proceeding, 17 U.S.C. 803(b)(3), Congress enacted the Webcaster Settlement Acts of 2008 and 2009, which expanded the opportunities to resolve the issues in this proceeding, as well as the issues in *Webcaster II.* This legislation further impacted *Webcasting III* by permitting the settling parties to determine if the settlements could be considered as evidence before the Copyright Royalty Judges ("Judges").[2] Eight settlements were resolved under the Webcaster Settlement Acts. 74 FR 9293 (March 3, 2009) (three agreements); 74 FR 34796 (July 17, 2009) (one agreement); 74 FR 40614 (August 12, 2009) (four agreements). The rates and terms under these settlements were the basis of approximately 95 percent of webcasting royalties paid to SoundExchange in 2008 and 2009. SX PFF at ¶¶ 50, 51.[3] Evidence was presented in this proceeding by SoundExchange, Inc. ("SX"), representing the owners, and three webcasters, College Broadcasters, Inc. ("CBI"), Live365, Inc. ("Live365"), and Intercollegiate Broadcasting System,

[1] The two prior webcasting proceedings often have been referred to informally as "Webcaster I" and "Webcaster II," respectively, as opposed to the formal caption "DTRA" (which stands for "Digital Transmissions Rate Adjustment"). In the current proceeding, we use the caption "Webcasting III" and intend to caption future webcasting proceedings using the term "Webcasting" followed by the appropriate Roman numeral.

[2] In the pleadings filed and during the testimony, Live365 attempted to introduce evidence about agreements that contained provisions that they were not to be considered as precedential under the Webcaster Settlement Acts. Following the clear language of the statute that these agreements were not "admissible as evidence or otherwise taken into account," 17 U.S.C. 114(f)(5)(C), these attempts were rejected. *See, e.g.,* 4/19/10 Tr. at 210:9–10 (sustaining objection to Live365's motion to enter into evidence the "Pure Play Agreement").

[3] References to the proposed findings of fact and conclusions of law shall be cited as "PFF" or "PCL," respectively, and reply findings and conclusions of law shall be cited as "RFF" or "RCL," respectively, preceded by the name of the party that submitted same and followed by the paragraph number. Similarly, references to the written direct testimony shall be cited as "WDT" preceded by the last name of the witness and followed by the page number. Likewise, references to the written rebuttal testimony shall be cited as "WRT" preceded by the last name of the witness followed by the page number. References to the transcript shall be cited as "Tr." preceded by the date and followed by the page number and the name of the witness.

Inc. ("IBS").[4] CBI only presented evidence to support adoption of its settlement with SoundExchange for noncommercial educational webcasters. SoundExchange and Live365 presented evidence related to commercial webcasters. The webcasting royalties paid by Live365 to SoundExchange for 2008 and 2009 were less than 3 percent of total webcasting royalties paid to SoundExchange. SX PFF at ¶ 53. SoundExchange presented evidence related to noncommercial webcasters, and IBS presented evidence for small noncommercial webcasters. Written statements, discovery and testimony for both direct case and rebuttal case were filed on these issues.

On December 14, 2010, the Judges issued their Initial Determination of Rates and Terms. Pursuant to 17 U.S.C. 803(c)(2)(B) and 37 CFR 353.4, motions for rehearing were due to be filed no later than December 29, 2010. No motions were received.

II. Commercial Webcasters

A. Commercial Webcasters Encompassed by the National Association of Broadcasters-SoundExchange Agreement

On June 1, 2009, the National Association of Broadcasters ("NAB") and SoundExchange filed a settlement of all issues between them in the proceeding, including the proposed rates and terms. This was one of the Webcaster Settlement Act agreements, published by the Copyright Office in the **Federal Register**, and was filed in this proceeding, pursuant to 17 U.S.C. 801(b)(7)(A), to be adopted as rates and terms for some services of commercial broadcasters for the period 2011 through 2015. It applies to statutory webcasting activities of commercial terrestrial broadcasters, including digital simulcasts of analog broadcasts and separate digital programming. The settlement includes per performance royalty rates, a minimum fee and reporting requirements that are more comprehensive than those in the current regulations. Section 801(b)(7)(A) allows for the adoption of rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Copyright Royalty Judges for approval. This section provides that in such event:

(i) The Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) The Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

17 U.S.C. 801(b)(7)(A).

The Judges published the settlement (with minor modifications) in the **Federal Register** on April 1, 2010, and provided an opportunity to comment and object by April 22, 2010. 75 FR 16377 (April 1, 2010). No comments or objections were submitted, so the provisions of 17 U.S.C. 801(b)(7)(A)(ii) do not apply. Absent objection from a party that would be bound by the proposed rates and terms and that would be willing to participate in further proceedings, the Copyright Royalty Judges adopt the rates and terms in the settlement for certain digital transmissions of commercial broadcasters for the period of 2011–2015. 17 U.S.C. 801(b)(7)(A). *Cf. Review of the Copyright Royalty Judges Determination, Docket No. 2009–1,* 74 FR 4537, 4540 (January 26, 2009) (review of settlement adoption).

B. All Other Commercial Webcasters

1. Stipulation Concerning the Section 112 Minimum Fee and Royalty Rate and Stipulation Concerning the Section 114 Minimum Fee

In between the direct and rebuttal phases, SoundExchange and Live365 presented two settlements of issues for all remaining commercial webcasters not encompassed by the NAB-SoundExchange agreement: (1) The minimum fee and royalty rates for the section 112 license and (2) the minimum fee for the section 114 license. These two settlements were included in one stipulation. The terms of the settlement are the same as the agreement reached and included as a final rule in *Webcaster II,* following remand. *See Digital Performance Right in Sound Recordings and Ephemeral Recordings (Final rule),* 75 FR 6097 (February 8, 2010). The minimum fee for commercial webcasters is an annual, nonrefundable fee of $500 for each individual channel and each individual station (including any side channel), subject to an annual cap of $50,000. The royalty rate for the section 112 license is bundled with the fee for the section 114 license. There is one additional term in the stipulation that was not included in *Webcaster II.* The royalty rate for the section 112 license is attributed to be 5% of the bundled royalties. There was no objection to the stipulation. There was evidence presented to support the minimum fee for commercial webcasters and the bundled royalty rates. SX PFF at ¶¶ 459–468, 472. No evidence disputed it. These provisions are supported by the parties and the evidence. The Judges accept and adopt these two stipulations as settling these issues.

2. Rate Proposals for the Section 114 License for Commercial Webcasters

The contending parties propose vastly different rate amounts for the use of the section 114 license for commercial webcasters. In its second revised rate proposal, SoundExchange argues in favor of a performance rate beginning at $.0021 per performance in 2011 and increasing annually by .0002 to a level of $.0029 by 2015. SX PFF at ¶ 118.

Live365 also proposes a per performance fee structure. By contrast, under the Live365 proposal, commercial webcasters would pay $.0009 per performance throughout the period 2011–2015. Rate Proposal For Live365, Inc., Appendix A, Proposed Regulations at § 380.3(a)(1).[5]

Notwithstanding the gulf between the SoundExchange and Live365 proposed royalty amounts, there is no difference between the parties with respect to the basic *structure* of their proposed compensation schemes. Both SoundExchange and Live365 propose that per performance rates (typically stated as a fraction of a penny) be applicable in the case of the section 114 license. Furthermore, the per performance usage structure was adopted in *Webcaster II. Webcaster II,* 72 FR 24090 (May 1, 2007). It remains the best structure for the reasons stated therein. *Id.* at 24089–90. Therefore, the only issues we are left to decide are the applicable amount of the webcaster royalty rate and whether any discount to that rate should be made on those occasions when certain types of webcasters are aggregated.

The starting point for our determination is the applicable amount of the section 114 performance rate.

[4] After filing Written Direct Statements, RealNetworks, Inc. withdrew from the proceedings, and Royalty Logic, LLC, did not participate further.

[5] In addition, Live365 seeks a 20% discount applicable to this commercial webcasting per performance rate for certain "qualified webcast aggregation services." This proposal is discussed *infra* at Section II.B.5.

3. The Parties' Disparate Approaches To Rate Setting for the Section 114 License for Commercial Webcasters

Both Live365 and SoundExchange agree that the willing buyer/willing seller standard should be applied by the Copyright Royalty Judges in determining the rates for the section 114 license. Both recognize that those rates should reflect the rates that would prevail in a hypothetical marketplace that was not constrained by a compulsory license.

However, in contrast to the positions of the copyright owners and commercial services in *Webcaster II,* in the instant case SoundExchange and Live365 do not agree that the best approach to determining rates is to look to comparable marketplace agreements as "benchmarks" indicative of the prices to which willing buyers and willing sellers would agree in the hypothetical marketplace. On the one hand, Live365 primarily seeks to support its rate proposal by means of a modeling analysis that aims to determine the amount of any residue that may remain for compensating the sound recording input a commercial webcaster uses, after reducing webcaster revenues by an amount equal to the cost of all other inputs utilized by the webcaster in providing its service and also by an assumed amount of webcaster profits. By contrast, SoundExchange puts forward a benchmark approach in support of its rate proposal, similar to the primary argument it made in *Webcaster II* and an approach adopted by the Judges therein.

a. The Live365 Approach

Live365 relies primarily on a modeling analysis provided by Dr. Mark Fratrik that seeks to identify the rate that commercial webcasters "would have been willing to pay in a negotiated settlement between a willing buyer and a willing seller." Fratrik Corrected and Amended WDT at 5. We find that Dr. Fratrik presumes behavioral constraints not found in the statutory standard and, that even if we were to ignore the distortions created by such added constraints, his analysis suffers from so many other unwarranted explicit assumptions and data defects as to make his analysis untenable.

i. Dr. Fratrik's Model and the Hypothetical Market

The terms "willing buyer" and "willing seller" in the statutory standard simply refer to buyers and sellers who are unconstrained in their marketplace dealings. In other words, the buyers and sellers operate in a free market unconstrained by government regulation or interference. (*See, for example, Noncommercial Educational Broadcasting Compulsory License (Final rule and order),* 63 FR 49823, 49834 (September 18, 1998). ("[I]t is difficult to understand how a license negotiated under the constraints of a compulsory license, where the licensor has no choice to license, could truly reflect 'fair market value.' "). Moreover, neither the buyers nor the sellers exercise such monopoly power as to establish them as price-makers and, thus, make negotiations between the parties superfluous. *Webcaster II,* 72 FR 24091 (May 1, 2007). ("In other words, neither sellers nor buyers can be said to be 'willing' partners to an agreement if they are coerced to agree to a price through the exercise of overwhelming market power.")

Dr. Fratrik and Live365 either misperceive the plain meaning of the terms of the statute or deliberately seek to expand the meaning of a "willing buyer" as articulated in the willing buyer-willing seller standard that governs this proceeding. For them, a "willing buyer" is viewed through the lens of an additional policy consideration nowhere articulated in the statute—i.e., that a buyer can only be considered "willing" if that buyer is able to obtain the sound recording input at a price that allows the buyer to earn at least a 20 percent operating profit margin from the use of that input. Thus, in Dr. Fratrik's analysis, a "representative" *single* buyer is deemed to be constrained in its behavior from participating in the input market for sound recordings unless its operating profit margin expectations in the output market for webcasting services are guaranteed at a level consistent with an *industry-wide* average profit margin for a purportedly comparable industry such as terrestrial radio. Fratrik Corrected and Amended WDT at 21–22.

Nothing in the statute supports reading such a behavioral constraint into the hypothetical marketplace to be derived by the Judges in this proceeding. Indeed, a similar argument that economic viability based on the sufficiency of revenue streams to cover costs determines any individual buyer's "willingness" to pay for an input raised by Live365 in *Webcaster I,* was rejected in that proceeding. *Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings (Final rule and order)* ("*Webcaster I*"), 67 FR 45240, 45254 (July 8, 2002) ("Thus, the Panel had no obligation to consider the financial health of any particular service when it proposed the rates.").

Dr. Fratrik's notion of a representative entity adds an operating condition that distinguishes his conceptual formulation from that of a statistically average firm in an industry. His representative firm must reach one specified minimum profit margin and, therefore, can only be satisfied with a royalty rate sufficient to allow it to reach that profit margin. Any lower assumed profit margin would, ceterus paribus, necessarily result in a lower recommended royalty rate. Thus, Dr. Fratrik effectively assumes that his representative firm will never have a reason to operate at less than a particular operating profit margin (*i.e.,* 20%).

But there is no a priori reason to believe that a representative webcaster would not accept a lesser profit margin, so long as it earns a profit and/or finds no risk-adjusted rate of return that could be earned by an alternative investment. Indeed, basic microeconomic analysis recognizes that, in the short-run, it is in the interest of a firm to continue to produce *even at an operating loss,* so long as its variable costs are covered and some contribution can be made toward fixed costs—otherwise, the loss incurred by the firm will be even greater (*i.e.,* full fixed costs if no production takes place).[6] In short, Dr. Fratrik's assumption of a 20% profit margin totally ignores the possibility of webcasters with a whole range of potential acceptable operating profit margins—whether lesser or greater—that would be dependent on such things as varying capital investment costs among webcasters, changing market conditions in output markets, and the applicable time horizon.[7]

Still another difficulty with Dr. Fratrik's conceptual framework is that his single "representative" buyer is treated as tantamount to an industry. But no single firm is typically the equivalent of an industry on the demand side of the market, although there is the obvious exception where a single monopsonistic buyer constitutes the entire demand side of the market for a particular input. While Dr. Fratrik does not make the claim that his representative commercial webcaster is a monopsonist, his analysis effectively produces that result.

[6] See, for example, Varian, Hal, *Intermediate Microeconomics: A Modern Approach,* (W.W. Norton & Company, 2009) at 350, 401. Mansfield, Edwin and Yohe, Gary Wynn, *Microeconomics: Theory and Applications,* (W.W. Norton & Company, 2004) at 296, 407; see also 7/28/10 Tr. at 54:2–14 (Salinger).

[7] In the long-run, all short-run fixed costs become variable.

For example, Dr. Fratrik explains that he chose to wed a 20% operating profit margin assumption to his cost and revenue estimates to "derive a resulting value for the copyrighted work." Fratrik Corrected and Amended WDT at 15, 23. In other words, Dr. Fratrik and Live365 effectively claim that *no* buyer would ever be a "willing buyer" unless the price of only the one input here analyzed (i.e., the royalty rate for sound recordings) is low enough to provide *all* buyers with sufficient revenue after the royalty payment to cover all other input costs and yield an operating profit margin of 20%. It is a claim that, rather than resulting from any careful analysis of the market demand and supply schedules, blithely ignores such analysis in favor of a single price point wholly determined by a single actor on the demand side of the market without any reference to the supply side of the market.[8]

In other words, Dr. Fratrik's single "representative" buyer's business model is to be treated as if it is the *only* webcasting production model in the whole webcasting industry. Instead of a *market* demand curve, Dr. Fratrik puts forward the implicit assumption that the amount of sound recording performances demanded must be whatever his representative *firm* deems best for its particular technological and organizational structure. But no one *firm's* demand curve is equivalent to the *market's* demand curve, unless that firm is a monopsonist. Rather, as we have noted in *Webcaster II* and the CARP noted in *Webcaster I* before us, in the hypothetical marketplace we attempt to replicate, there would be significant variations, among *both* buyers and sellers, in terms of sophistication, economic resources, business exigencies, and myriad other factors. *Webcaster II,* 72 FR 24087 (May 1, 2007); *In the Matter of Rate Setting for the Digital Performance of Sound Recordings and Ephemeral Recordings, Report of the Copyright Arbitration Panel to the Librarian of Congress,* Docket No. 2000–9 CARP DTRA 1&2 ("*Webcaster I CARP Report*") at 24.

Finally, even assuming the absence of the additional errors catalogued below, Dr. Fratrik's analysis, which focuses on *past* operating income statements to determine a royalty rate for all commercial webcasters in the future, fails to establish any behavioral information that would help to delineate the hypothetical marketplace we must replicate. Instead, Dr. Fratrik's analysis is largely mechanical and leads to an unsupported conclusion that *past* revenues and non-royalty costs, coupled with a webcaster operating profit margin not demonstrated to be related to past operating revenue and cost considerations (*see infra* at Section II.B.3.a.ii.), will repeatedly recur at the same levels in each year over the five-year period of the license going forward. Having tightly constrained the possibilities of market behavior in this manner, Dr. Fratrik's model then automatically produces an unchanging residue and, hence, an unchanging royalty rate for the whole period.[9] This is a dubious result that flows from the unwarranted assumption of what amounts to a behavioral straitjacket.

Moreover, even if Dr. Fratrik's problematic behavioral constraints and implicit assumptions somehow could be ignored, his analysis suffers from so many other unwarranted explicit assumptions and data defects as to make it untenable.

ii. The Specific Elements of Dr. Fratrik's Model

Dr. Fratrik's assumptions regarding webcasting industry costs, revenues and profit margins are seriously flawed when viewed individually. Moreover, these flaws are compounded by merging revenue, costs and profit margin information gathered from disparate data sources into a single "economic model." [10]

Dr. Fratrik begins by assuming that "Live365's cost structure will serve as a good conservative proxy for the *industry* as it is a mature operator." Fratrik Corrected and Amended WDT at 16 (emphasis added). This assumption is not supported by the record of evidence in this proceeding which points to a wide variety of existing webcasting services and business models. SX PFF at ¶ 323. It defies credulity to claim, as does Live365, that all these disparate business models may be experiencing essentially the same unit costs. Indeed, Dr. Fratrik makes this assertion while recognizing that, unlike for many other participants in the market, at least two separate lines of business can be distinguished for Live365 (broadcasting services and webcasting) and, further, that Live365 acts as an aggregator with respect to webcasting. Dr. Fratrik offers no example of a comparable analogous participant in the industry who is structured in this manner. Furthermore, when he attempts to adjust Live365's costs to reflect only webcasting operations, he fails to adequately do so and he ignores the synergistic nature of Live365's various lines of business. SX PFF at ¶¶ 355, 357, 358. Finally, even though he argues for an additional aggregator discount to be applied to Live365's webcasting royalty rates based on monitoring and reporting savings purportedly provided to the collective (i.e., SoundExchange), he nowhere appears to adjust Live365's webcasting cost estimates to account for any resulting differences in costs that Live365 may incur as compared to other webcasters who are not aggregators. He makes no such adjustment despite the fact that it is the typical webcaster's unit costs he is seeking to model rather than the typical aggregator's unit costs. While any additional reporting and monitoring costs incurred by aggregators [11] may be offset by fees charged to the aggregated webcasters or by the reduced costs of programming that Live365 would otherwise have to undertake in order to make comparable channel offerings as a multi-channel broadcaster, such salient differences between the typical webcaster's unit costs and the typical aggregator's unit costs are not addressed by Dr. Fratrik's analysis. For all these reasons, the unit cost estimation for webcasting which Dr. Fratrik offers is seriously flawed.

On the revenue side of his analysis, Dr. Fratrik assumes that: (1) Webcaster revenue comes from advertising revenue and subscription revenue; (2) "publicly available industry reports from AccuStream and ZenithOptimedia serve as the lower and upper bounds, respectively, on advertising revenue measurements for the past period;" and (3) Live365's subscription revenue per listening hour can be utilized as a proxy for gauging subscription revenues in the webcasting industry. Fratrik Corrected and Amended WDT at 16–17, 24–25.

[8] Dr. Fratrik implies that because the record companies supplying the sound recordings will incur something near zero incremental costs, the supply side of the market may be largely ignored. 4/27/10 Tr. at 1131:12–1133:19 (Fratrik). But Dr. Fratrik offers no empirical support for his assertion as to actual incremental costs. We have clearly rejected a similar contention put forward in *Webcaster II* on both empirical and theoretical grounds. *Webcaster II,* 72 FR 24094 (May 1, 2007).

[9] In addition to the flat royalty rate growth recommended by Dr. Fratrik over the 2011–2015 term, his recommended royalty rate of $0.0009 per performance would return the statutory rate to near its 2006 statutory level.

[10] Dr. Fratrik uses the term "economic model" to broadly describe his analysis. It is more closely akin to a type of *pro forma* income statement that attempts to demonstrate the expected effect of varying royalty rates on a firm's financial viability. In other words, it is an accounting model that, relying on historical cost and revenue data for all but royalty costs, endeavors to demonstrate the anticipated results of alternative royalty rates on projected net revenues.

[11] For example, Dr. Fratrik notes that, in connection with its aggregation services, "Live365 has spent a considerable amount of time and investment establishing its software systems to accurately measure and document listening for each copyrighted work that is streamed." Fratrik Corrected and Amended WDT at 38 n.62.

Live365's rate proposal in this proceeding (i.e., $.0009 per performance throughout the period 2011–2015), however, is apparently based only on Dr. Fratrik's analysis of revenues using the ZenithOptimedia data. Indeed, use of the Accustream revenue data alternative produces the anomalous result that copyright owners would have to pay webcasters each time the owners' sound recordings were performed, no matter how low a profit margin Dr. Fratrik assumed for webcasters in his analysis. Fratrik Corrected and Amended WDT at 26, Table 4; 4/27/10 Tr. at 1157:1–1158:6 (Fratrik).

Undaunted by this anomalous result, Dr. Fratrik simply repeats his analysis, substituting, *in part,* the ZenithOptimedia advertising revenue data for the Accustream advertising revenue data and, in concert with a 20% assumed profit margin, obtains the $.0009 per performance royalty rate that has been proposed by Live365 to be applied without change throughout the period 2011–2015. Yet Dr. Fratrik's alternative ZenithOptimedia-based analysis does not completely divorce itself from the Accustream data; instead, because ZenithOptimedia did not provide the Aggregate Tuning Hours ("ATH") numbers associated with its total advertising revenue estimate, Dr. Fratrik fell back on the Accustream data for a total ATH number and calculated advertising revenue per ATH by dividing the ZenithOptimedia revenue data by the Accustream ATH data. In short, Dr. Fratrik combines advertising revenue data based on two separate data sources without making a determination that the data was capable of being combined in this manner.

Moreover, even Dr. Fratrik admitted that the ZenithOptimedia and Accustream advertising revenue estimates are "challenging" or difficult to produce because a vast number of webcasters do not report their revenues publicly. 4/27/10 Tr. at 1220:1–20 (Fratrik). Thus, these databases have clear limitations and the uncritical manner in which Dr. Fratrik mixes and matches data from these two separate advertising revenue databases and then further combines subscription revenue data from a third separate source (*i.e.,* the Live365 subscription revenue data) plainly suggests a less than rigorous approach to his analysis.

Finally, with respect to revenues, Dr. Fratrik's analysis reports, but neither takes into account nor provides an adequate explanation for, the growth in the ZenithOptimedia advertising revenues forecast from his 2008 base through 2011 (i.e., growth from $200 million to $291 million). Fratrik Corrected and Amended WDT, Ex. 8 at 187. It may be argued that growth in the *level* of revenues does not necessarily translate into growth in *unit* revenues. However, we find that it is difficult to accept Dr. Fratrik's unsupported assertion that he expects little improvement in such revenues on a unit basis (*see* Fratrik Corrected and Amended WDT at 5). Dr. Fratrik fails to provide any adequate empirical support for the implied assumption necessary to reach this conclusion—an assumption that the growth in performances will take place at precisely the pace necessary to assure that the anticipated growth in revenues over the relevant period will not alter the unit revenue ratio. Moreover, without such an implied assumption, it is difficult to avoid the conclusion that Dr. Fratrik's constant royalty rate should have been adjusted each year based on the implications of growing revenues for his own model. Yet, he offers no such adjusted royalty rate. At the very least, these changing advertising revenue totals call into question the reliability of the unchanging royalty rate derived by Dr. Fratrik from the lowest of the revenue totals available from the same data source (i.e., $200 million instead of $291 million).

Dr. Fratrik's assumption of a 20% operating margin for webcasters in his analysis is not solidly supported. That operating profit margin is not put forward as either a historical profit margin or a forecasted profit margin for webcasters, but rather as a profit margin derived from the over-the-air broadcasting industry. SX PFF at ¶¶ 328, 330. The record of evidence in this proceeding does not support the notion that profit margins for webcasters are likely to be similar to the more capital intensive terrestrial radio industry. SX PFF at ¶¶ 332–5. Furthermore, we find that Dr. Fratrik failed to establish a solid basis for concluding that the *minimum* operating profit margin for his representative webcaster was comparable to the *average* firm experience from firms that operate on a different platform (over-the-air radio).

Live365 argues in its proposed reply findings at ¶ 327 that Dr. Fratrik's 20% profit margin assumption is further corroborated by the recording industry's own expert testimony in *Webcaster I* (offered by Dr. Thomas Nagle, Chairman, Strategic Pricing Group, Inc.) which purportedly "recommended that webcasters should be able to achieve margins between 13.2% and 21.8%." However, although the Nagle exhibit referred to by Live365 was appended to Dr. Salinger's written rebuttal testimony, the exhibit was only mentioned briefly in a footnote to the Salinger testimony and then only to make a different argument. Dr. Salinger, in fact, made no specific reference to any of the varying operating profit-margin figures utilized in that 2001 Recording Industry Association of America ("RIAA") study. In other words, it can hardly be said that the figures in question were offered as "corroborative" evidence to support Dr. Fratrik's assumptions. Moreover, the point of this 2001 study appears to have been to recommend a royalty rate based on the operating profit margins necessary to generate an *assumed* range of rates of return on investment for webcasters. In fact, the Nagle study utilized an operating profit margin in the range of 8.43% to 17.05% in order to "arrive at the appropriate range for the statutory license royalty fee." *See* Salinger WRT, Exhibit 3 at 16 and Appendix 3 at 1. Dr. Fratrik's 20% assumption for webcaster operating profit margins lies substantially outside this range. Moreover, the CARP rejected Dr. Nagle's analysis as corroborating evidence in *Webcaster I.* ["Dr. Nagle's analysis necessarily relies upon a myriad of highly questionable assumptions that appear inconsistent with foreseeable market conditions."] *Webcaster I CARP Report* at 73; ["We conclude that Dr. Nagle's analysis does not support any particular rate level."] *Id.* at 74. We find it provides no corroborative support for Dr. Fratrik's assumed 20% webcaster operating profit margin in this proceeding.

Thus, we find that Dr. Fratrik's "model" is based upon a series of assumptions and analogies that, taken individually, add such a degree of uncertainty or inexactitude to the resulting model as to make it unsatisfactory for the purpose of portraying the likely outcome of negotiations between willing buyers and willing sellers in the market for sound recording inputs that are used in webcasting services. Indeed, Dr. Fratrik's model does not even adequately address some of the modest considerations for a modeling approach laid out by Live365's rebuttal expert, Dr. Salinger. SX PFF at ¶ 307. Questionable assumptions, reservations about the methodological appropriateness of mixing disparate data sources, and concerns over the resulting reliability of the data used in the Fratrik model lead us to find that this theoretical construct suffers serious deficiencies that do not lend themselves to remediation.

iii. Other Factors Put forward for Consideration

Live365 offers several other arguments to buttress its request for a royalty rate that would effectively return the statutory rates to near their 2006 statutory level.

First, Dr. Fratrik maintains that "[a]s industry projections for more robust growth in the Internet radio advertising market have clearly not materialized over the past few years," his valuation model must give rise to the conclusion that a "reduction in royalty rates from the prescribed rates covering 2006–2010" is warranted. Fratrik Corrected and Amended WDT at 31. In so doing, he incorrectly attributes the annual increase in rates established in *Webcaster II* to projections of growth primarily provided by Dr. Erik Brynjolffson and Mr. James Griffin in that proceeding. Fratrik Corrected and Amended WDT at 12–14. Similarly, Live365 argues that "[g]iven that the lofty expectations from the *Webcasting II* proceeding have not been fulfilled, it follows that the rates for the next five years should be set lower than the rates determined by the CRB [Judges] in *Webcasting II*." *See* Live365 PFF at ¶ 38. But, quite to the contrary, the Judges' determination in *Webcaster II* did not rely on those particular predictions in setting rates. Indeed, the Judges expressly rejected Dr. Brynjolfsson's modeling attempt and specifically cited the flaws in his effort "to project future growth rates" as a basis for not relying on them. *Webcaster II,* 72 FR 24093. Moreover, the evidence in the record on industry growth over the 2006–2010 period which shows *increased* advertising revenues, *increased* performances, and *increased* listening does not support a rate *reduction.* It more likely would support at least some modest rate increase. *See* SX PFF at ¶¶ 390–395, 398–401. While some Live365 data may show a flattening or decline for a particular pair of years, the overall trend of that same data does not show a decrease. For example, data presented by Live365 shows a year-to-year decline in listenership from 2006 to 2007, but this is followed by substantial increases in 2008 and 2009 and maintenance of 2009 levels in 2010. Overall, the trend in such listenership recorded since 2000 has been decidedly upward, even though the growth has occurred unevenly from year to year. *See* Smallens Corrected WRT at 7, Table 1.

Second, Live365 also contends that a downward adjustment of the current royalty rate is appropriate based on (1) The promotional value of statutory webcasting relative to its non-substitutional effect on other sales of music, including the promotional value to copyright owners stemming from the wide array of music and artists played on statutory webcasting services; (2) the relative creative contributions, technical contributions, investments, costs and risks made or borne by commercial webcasters compared to copyright owners; and (3) the relative disparate impact of certain competitive factors on webcasters as compared to copyright owners. After careful consideration, we find that the evidence submitted by Live365 on each of these claims is weak at best and, most certainly, too weak to establish the basis for a decrease in webcaster royalty rates. SX PFF at ¶¶ 415, 419–21, 426, 431, 446–9; SX RFF at ¶¶ 176, 179–180. Then too, Live365 does not present an acceptable empirical basis for quantifying the individual asserted effects of these various factors and/or for deriving a method for translating such magnitudes into a rate adjustment. Moreover, to the extent that Live365 claims that the Fratrik valuation model makes such a quantifiable translation, we need not further address these issues separate from our examination of that model which we have found seriously flawed and an inadequate representation of the market.

b. The SoundExchange Benchmark Approach

i. The Interactive Webcasting Market Benchmark

As in *Webcaster II,* SoundExchange maintains that one set of benchmark agreements with clear relevance for this proceeding as shown by an analysis prepared by its expert economist, Dr. Michael Pelcovits, consists of those agreements found in the market for interactive webcasting covering the digital performance of sound recordings. That is because the interactive webcasting market has characteristics reasonably similar to non-interactive webcasting, particularly after Dr. Pelcovits' final adjustment for the difference in interactivity.

Both markets have similar buyers and sellers and a similar set of rights to be licensed (a blanket license in sound recordings). Both markets are input markets and demand for these inputs is driven by or derived from the ultimate consumer markets in which these inputs are put to use. In these ultimate consumer markets, music is delivered to consumers in a similar fashion, except that in the interactive case the choice of music that is delivered is usually influenced by the ultimate consumer, while in the non-interactive case the consumer usually plays a more passive role. This difference is accounted for in the Pelcovits analysis. In order to make the benchmark interactive market more comparable to the non-interactive market, Dr. Pelcovits adjusts the benchmark by the added value associated with the interactivity characteristic. Pelcovits Amended and Corrected WDT at 23. This results in a rate of $0.0036 per play for a statutory non-interactive webcaster as a possible outcome in the target market. Pelcovits Amended and Corrected WDT at 4, 33.

The Judges find the interactive webcasting benchmark to be of the comparable type that the Copyright Act invites us to consider. 17 U.S.C. 114(f)(2)(B). ("In establishing such rates and terms, the Copyright Royalty Judges may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated under subparagraph (A).") Nevertheless, as we indicated in *Webcaster II,* this particular Pelcovits benchmark analysis is not without warts. *Webcaster II,* 72 FR 24094 (May 1, 2007).

In *Webcaster II* we recognized the potential implications of a benchmark analysis that focuses on only subscription services as does the interactive benchmark presented by Dr. Pelcovits. That is, ad-supported non-interactive services might pay less than subscription-based interactive services to use the same music if their advertising revenues failed to evolve to the point where ad-supported non-interactive services were just as lucrative as subscription-based interactive services on a per-listener hour basis. In that proceeding the Judges indicated that to the extent that ad-supported revenues did not come to match subscription revenues on a per-listener hour basis during the 2006–2010 term and, absent clear information on the substitutability of the subscription and non-subscription options among consumers, any resulting shortfall related to ad-supported webcasting revenues would likely be adequately mitigated by a phase-in of the per performance rates to the level indicated by the benchmark analysis, such that the benchmark recommended rate for 2006 would not become effective until the last year of the term. *Webcaster II,* 72 FR 24094 (May 1, 2007).

Here, unlike the absence of data supporting this critique which we noted in *Webcaster II,* Dr. Salinger provides some empirical data to support the position that a benchmark which

reflects a weighted average of revenues obtained from *subscribers and non-subscribers* may result in a lower estimated royalty rate than Dr. Pelcovits' benchmark which focuses on only subscription rates. Salinger WRT at 10–11. Therefore, we are not persuaded that Dr. Pelcovits' benchmark estimates are sufficiently reflective of the hypothetical target market as to support the immediate implementation of a royalty rate equivalent to the $0.0036 outcome estimated by Dr. Pelcovits. Some further downward adjustment to his recommendation to adequately address the subscription/non-subscription revenue level differences may well be in order, although the magnitude of such an adjustment is not clear.

While Dr. Salinger shows that there is likely some "upward bias" introduced into the Pelcovits analysis through its focus on only subscription-based services in the benchmark market, the amount of such upward bias is not persuasively determined. Non-interactive webcasters in the market like Live365 often provide both subscription and non-subscription offerings. 7/28/10 Tr. at 40:10–15 (Salinger). Therefore, subscription-based revenues clearly must be considered. Moreover, the data used by Dr. Salinger to support his criticism, as Dr. Salinger admits, is not without its shortcomings. 7/28/10 Tr. at 98:2–104:6 (Salinger). Similarly, Dr. Fratrik admitted that the ZenithOptimedia and Accustream advertising revenue estimates are "challenging" or difficult to produce because a vast number of webcasters do not report their revenues publicly. 4/27/10 Tr. at 1220:1–20 (Fratrik). There is also the difficulty of segmenting intermingled revenues from webcasting business models that may often directly and/or indirectly depend on both subscription and nonsubscription lines of business, as well as potentially on other sources of revenue. 7/28/10 Tr. at 40:10–15, 92:1–19 (Salinger); Ordover WRT at 10–11. Nevertheless, Dr. Salinger's critique is sufficiently supported to raise legitimate concerns about the potential for upward bias in the Pelcovits estimates. It is only the magnitude of the potential upward bias that is not clearly quantified. What is clear from the record of evidence in this proceeding is that $0.0036 can be no more than the upper bounds of the range of possible rates reasonably applicable to the target market and that the most likely prevailing rate in that market is currently lower than $0.0036.

Dr. Salinger also criticizes the Pelcovits interactive webcasting benchmark analysis for: (1) Relying only on contracts with the four major record companies to the exclusion of the independent record labels; (2) ignoring the downward trend in the effective play rates paid by interactive services by utilizing the average rate in his calculations; and (3) inappropriately constructing the hedonic regression model that is used as one alternative measure of interactivity in the analysis. Salinger WRT at 15–21.

The first of these criticisms fails for lack of persuasive evidence in the record that the use of independent record contracts would have made a material difference. SX RFF at ¶¶ 101–103.

Although the second and third criticisms have some merit, the Judges find that these criticisms indicate that the Pelcovits interactive webcasting benchmark may overstate the likely prevailing market rate in the target market without necessarily rendering the Pelcovits analysis fatally flawed. With respect to the second criticism, Dr. Salinger acknowledged that this concern could be addressed by multiplying the recommended rate by 0.8737.[12] SX PFF at ¶ 209. Such an adjustment, of course, would reduce the recommended rate. SoundExchange offers no evidence that such an adjustment is unwarranted and even appears to endorse such an approach by performing this exact calculation with respect to the $0.0036 rate and reducing it to $0.0031. *See* SX PFF at ¶ 210. But SoundExchange's calculation was applied to the highest possible outcome Dr. Pelcovits lists for his benchmark analysis (*i.e.,* $0.0036), when in fact, Dr. Pelcovits indicates that his rate after substitution adjustment would result in a "range of *recommended* rates" with a "simple average of $0.0033." Thus, it appears that this $0.0033 average also requires adjustment to meet Dr. Salinger's criticism (*e.g.,* to approximately $0.0029). This is not a trivial consideration in light of the fact that in *Webcaster II,* it was Dr. Pelcovits' recommended rates *after the substitution adjustment* that formed the basis for SoundExchange's rate proposal and that formed the basis for the determination by the Judges of a royalty rate to be achieved by the end of the term in 2010 (i.e., a per play rate of $0.19). *See Webcaster II,* 72 FR 24096 (May 1, 2007). In any event, the validity of this criticism of the Pelcovits approach regarding the effective per play rate clearly erodes the weight to be accorded to the $0.0036 figure.

Dr. Salinger also criticizes the Pelcovits hedonic regression analysis that formed the basis for one of the alternative measures of interactivity in the interactive webcasting benchmark approach. Dr. Salinger expressed concerns about the use of certain fixed effects variables (alternatively described as dummy variables) in the specification of the regression model and about the broad confidence interval surrounding the estimated interactivity coefficient in the hedonic regression. Salinger WRT at 20; 21 n.31 and Exhibit 6; 7/28/10 Tr. at 66:4–69:22 (Salinger). These criticisms have some merit, especially in light of Dr. Pelcovits' admitted lack of familiarity with some of the relevant economic literature, including recent literature cautioning against the indiscriminant use of dummy variables in certain hedonic estimations. 4/20/10 Tr. at 373:18–376:15 (Pelcovits). SoundExchange, in response to this criticism, claims that any problem associated with the hedonic regression is negated by Dr. Pelcovits' use of other methods that result in rates almost identical to the $0.0036 average. *See, for example,* SX RFF at ¶ 107. However, this does not wholly obviate the impact of any resulting overstatement. The rate associated with the hedonic regression is the highest of the three values that are used to calculate the $0.0036 average. Removing the rate associated with the hedonic regression from the average would, in this case, reduce the average. Thus, this criticism of the Pelcovits approach additionally erodes the weight that the Judges accord to the $0.0036 figure.

In short, the potential for upward bias or actual demonstrated upward bias in the Pelcovits estimates persuade us that $0.0036 can be no more than the upper bounds of the range of possible rates reasonably applicable to the target market and that the most likely prevailing rate at the present time in that market is significantly lower than $0.0036.

ii. The National Association of Broadcasters and SiriusXM Agreements

In addition to the interactive webcasting benchmark, Dr. Pelcovits offers a second benchmark based on the average of rates established for the 2011–2015 term in precedential Webcaster Settlement Act Agreements ("WSA agreements") between SoundExchange and the National Association of Broadcasters and between SoundExchange and SiriusXM ("SiriusXM agreement" or "Commercial

[12] The 0.8737 multiplier represents the value of a ratio where the numerator consists of the effective per play rate for 2009 (*i.e.,* 0.01917) and the denominator consists of the average effective play rate over the three years in question (*i.e.,* 0.02194).

Webcasters agreement"). Pelcovits Amended and Corrected WDT at 22.

While these precedential WSA agreements certainly pertain to rates to be paid by non-interactive webcasters in the commercial webcasting market at issue in this proceeding, the buyers' and sellers' circumstances are not comparable to those that would prevail in the absence of the Webcaster Settlement Act. Rather than a single seller, the sellers in the hypothetical market we are to consider consist of multiple record companies. *Webcaster II,* 72 FR 24087, 24091 (May 1, 2007); *Webcaster I,* 67 FR 45244 (July 8, 2002). Thus, in *Webcaster II* we found that the fact that there were multiple buyers and multiple sellers in the benchmark market as well as in the target market supported a benchmark analysis. *Webcaster II,* 72 FR 24093 (May 1, 2007). While the applicable law does not require a perfectly competitive benchmark market, the market must be at least "competitive" in the sense that buyers and sellers have comparable resources and market power. *Webcaster II,* 72 FR 24093 (May 1, 2007); *Webcaster I,* 67 FR 45245 (July 8, 2002). This would be generally consistent with free market principles. Yet, the buyers' and sellers' circumstances underlying the WSA agreements were not comparable to market conditions that would prevail in the absence of the WSA. That legislation permitted a single seller representative to enter into negotiations with buyers in the market with respect to rates that would be permitted to supplant the statutory rates previously established in the 2006–2010 period, as well as with respect to rates applicable to the 2011–2015 period. Even Dr. Pelcovits admits that "[e]ach of these contracts, of course, was negotiated in the shadow of the regulatory scheme and against the background of statutory rates previously set by this Court. To that extent, they may or may not represent the same outcome that would result in a pure market negotiation with no regulatory overtones." Pelcovits Amended and Corrected WDT at 15. Therefore, we find that these precedential WSA agreements, which may be fairly characterized as single-seller agreements reached under atypical marketplace conditions, cannot satisfy the comparability requirements for an appropriate benchmark.

However, we further find that, because the NAB-SoundExchange and SiriusXM-SoundExchange agreements clearly govern the rates for a substantial number of commercial webcasters over the relevant 2011–2015 period (Pelcovits Amended and Corrected WDT at 15) and the commercial webcasters covered by these agreements are competitors with the other commercial webcasters who comprise the remainder of the non-interactive webcasting services (Salinger WRT at 24; Smallens Corrected WRT at 21), these agreements are a useful gauge of the weight to be assigned to the rates suggested by the interactive webcasting benchmark discussed *supra* at Section II.B.3.b.i. Moreover, nothing in the Webcaster Settlement Act constrains us from using these agreements for that purpose. *See* 17 U.S.C. 114(f)(5)(C).

The NAB-SoundExchange and SiriusXM agreements provide for royalty rates on a per performance basis. For the five-year period beginning 2011, the NAB-SoundExchange agreement sets the following rates: $0.0017 for 2011, $0.0020 for 2012, $0.0022 for 2013, $0.0023 for 2014 and $0.0025 for 2015. For the same period, the SiriusXM agreement sets the following rates: $0.0018 for 2011, $0.0020 for 2012, $0.0021 for 2013, $0.0022 for 2014 and $0.0024 for 2015. Pelcovits Amended and Corrected WDT at 15. Two characteristics of these rates are noteworthy. First, the 2011 rate is slightly less than the current 2010 statutory rate of $0.0019 and the rates in the precedential WSA agreements covering the years 2009 and 2010 were somewhat lower than the corresponding statutory rate for those years. Pelcovits Amended and Corrected WDT at 15. Second, the rates in the NAB-SoundExchange and SiriusXM agreements over their entire term are substantially lower than the range of annual rate possibilities suggested for implementation pursuant to the proposed interactive benchmark ($0.0036) or the interactive benchmark after Dr. Pelcovits' substitution adjustment ($0.0033) or the interactive benchmark adjusted to give a more likely reading of the impact of downward trend in the effective play rates paid by interactive services ($0.0031).

Thus, we find that these negotiated rates indicate that the interactive benchmark may likely overstate the prevailing market rate in the target market even when subjected to Dr. Pelcovits' substitution adjustment or Dr. Salinger's adjustment to mitigate the impact of downward trend in the effective play rates paid by interactive services. As a consequence, we further find that the interactive benchmark, even when subjected to these alternative adjustments, provides for rates near the upper bounds of the range of possible rates reasonably applicable to the target market, when the most likely prevailing rate in that market appears to be lower than the interactive benchmark rates. In other words, the NAB-SoundExchange and SiriusXM agreements lend weight to the need for a further downward adjustment in the benchmark rate to reflect a prevailing rate in the target market closer to the current statutory rate.

Dr. Fratrik contends that the royalty rates in the NAB-SoundExchange agreement must overvalue the input in question, because the NAB received a particularly valuable concession with respect to the waiver of performance complement rules as part of the rate agreement. *See* Fratrik Corrected and Amended WDT at 43–44. ["Consequently, these terrestrial broadcasters, already with the programming established to webcast, *should* be willing to pay more than other webcasters in order to relieve themselves of these provisions." (emphasis added)]. This claim of a one-sided benefit to broadcasters is not adequately supported in the record. The testimony of Dr. Pelcovits, Dr. Ordover and Mr. McCrady indicates that the waivers had value to *both* the NAB and to the record companies. Pelcovits Amended and Corrected WDT at 20 n.21; Ordover WRT at 5, 18; McCrady WDT at 5–6. There is no clear evidence in the record to support either the notion that the limited performance complement waiver in the NAB-SoundExchange agreement was a largely one-sided benefit accruing only to the broadcasters or that broadcasters *did,* in fact, pay more than other webcasters to obtain these provisions.

Dr. Fratrik also contends that terrestrial broadcasters were willing to pay more because they have fewer other costs to cover than pure webcasters. But Dr. Fratrik offers less than persuasive evidence of major cost differences between pure webcasters and broadcasters who engage in webcasting generally or between pure webcasters and the more limiting case of those broadcasters who exclusively simulcast. Dr. Fratrik appears to center his analysis on the latter case. Of course, focusing on this latter comparison simplifies from the reality of the market by assuming that all the webcasting performed by broadcasters consists of simulcasting when, in fact, the NAB-SoundExchange agreement provides for other types of webcasting (*e.g.,* through side channels). *See* SX Ex. 102–DP at Article 1.1(d), 4.2. In addition to that analytical shortcoming, Dr. Fratrik's analysis suffers from other unsupported conclusions. Dr. Fratrik's cost-based contention appears to largely rest on the notion that simulcasters, unlike other

commercial webcasters, have no additional programming costs as those costs have already been paid in connection with their over-the-air operations. *See* Fratrik Corrected and Amended WDT at 41. But no specific empirical data in the record unambiguously supports this asserted relative difference. For example, Dr. Fratrik's conclusion ignores the wide range of business models utilized by commercial webcasters, including that of Live365, a webcaster that is apparently paid to put on programming designed by its clients as opposed to incurring a cost for originating such programming itself. Floater Corrected WDT at 4–8; 4/27/10 Tr. at 1274:5–16; 1301:1–4 (Fratrik).

Several other theories are offered by the contending parties to suggest that the precedential WSA agreements are either higher or lower than the likely prevailing rate in the target market.

For example, the possibility is raised that since the rates in the NAB-SoundExchange agreement were negotiated collectively on behalf of the record companies by SoundExchange, the rates might reflect some additional bargaining power exercised by SoundExchange as a single seller, relative to the bargaining power that would have otherwise been exercised by the individual record companies, leading to higher than free market-determined royalty rates. *See* Ordover WRT at 22, Salinger WRT at 27. While, at first blush, this contention appears to be consistent with economic theory, the facts surrounding the SoundExchange-NAB negotiation and the rates resulting from the negotiation cast serious doubt on the operation of normal economic theory in this case.

These negotiations took place in the context of the WSA legislation specifically providing for SoundExchange to engage in such negotiations as a collective in order to reach agreements that would exempt webcasters from the 2006–2010 statutory rates, as well as allow for 2011–2015 negotiated rates in lieu of any statutory rates that might be determined by the Judges for that term of the applicable license pursuant to a statutory proceeding. 17 U.S.C. 114(f)(5)(A). That is, the rates were to be negotiated in response to a specifically legislated, post-determination, second-chance opportunity afforded the parties to voluntarily reshape applicable webcasting rates. Thus, the rates could be said to have been negotiated both in the shadow of a specific regulatory scheme, as well as against the background of previously set statutory rates, which influenced the outcomes available to the parties and, in particular, constrained the exercise of monopoly power. Failing to reach an agreement for the 2011–2015 period, the buyers could still avail themselves of the statutory rate-setting procedure. That is, the buyers retained their rights to reject a settlement with SoundExchange and resort to the statutory rate-setting procedure for the 2011–2015 term of the license. Pelcovits Amended and Corrected WDT at 17; Ordover WRT at 23; Salinger WRT at 27. In other words, the buyers in this case maintained some leverage that otherwise would be absent if they faced a monopolist seller without any such recourse.

Additionally, here, the NAB, which negotiated on behalf of broadcasters, effectively served as a single buyer and, thus, may be said to have exercised countervailing market power relative to SoundExchange. Ordover WRT at 23. At the same time, the SoundExchange-SiriusXM agreement certainly offers the example of a non-NAB webcasting buyer for whom negotiations produced rates very similar to the NAB-SoundExchange agreement, indicating that the NAB-SoundExchange agreement, on its face, did not result in the price discrimination sometimes associated with monopoly power.

In short, the NAB-SoundExchange negotiated royalty rates do not appear to have been pushed *above* what might prevail in a multi-seller market as a result of SoundExchange's legislatively permitted role as a single seller in these negotiations because, under the circumstances, it was unlikely to have the ability to exercise the equivalent of the unchecked bargaining power of an unregulated monopolist.

On the other hand, Dr. Ordover's attempt to cast the NAB-SoundExchange agreement as producing royalty rates *below* what might prevail in a free market is also not supported by the record of evidence in this proceeding. Dr. Ordover suggests that, *if certain circumstances can be assumed to be present,* the NAB-SoundExchange agreement may represent a situation where SoundExchange, acting as a single seller, nevertheless would agree to lower royalty rates as compared to those that would occur in a free market in which individual record companies function as sellers. But Dr. Ordover's analysis is predicated on, among other assumptions, the key notion that the repertoire of all four major labels is necessary for simulcasters to operate a viable streaming service. That is, the sound recordings of record companies must be perceived as complementary inputs rather than as substitutes. Here, there is no evidence in the record which establishes that to be the case for any of the particular broadcasters who have opted into the NAB-SoundExchange agreement, let alone that it is the case generally for all broadcasters.[13] For example, Dr. Ordover offers no evidence that these sound recording inputs are complements based on standard measures such as the cross-elasticity of demand. Moreover, the proffered notion that the NAB-SoundExchange agreement for broadcasters represents lower than average webcasting royalty rates based on some assumed *unique* requirement associated with simulcasting, is not borne out by the agreement itself which provides for *no* distinction between the royalty rate applicable to simulcasting and the royalty rate applicable to broadcasters who engage in other types of webcasting (*e.g.,* side channels). *See* SX Ex. 102–DP at Article 1.1(d), 4.2. Nor is there a substantial difference between the royalty rates applicable to simulcasting in the NAB-SoundExchange agreement and the royalty rates applicable to commercial webcasting in the SiriusXM-SoundExchange agreement. In short, while Dr. Ordover's proposed explanation may be a plausible theory under certain circumstances, here it suffers from a lack of sufficient empirical support to demonstrate the presence of those circumstances.

Finally, Dr. Salinger claims that the rates in both the NAB-SoundExchange and SiriusXM agreements are higher than average webcasting royalty rates in the period 2011–2015 based on a theory that the NAB and SiriusXM structured their agreements with SoundExchange to provide for lower-than-statutory-rates for the years 2009–2010, but above-market rates for the 2011–2015 period, in anticipation that such a restructuring would adversely affect their rivals' costs in the latter period.

Yet, this is also a theory without sufficient facts to support it in the instant case. There is no evidence in the record to suggest any coordination between the NAB and SiriusXM to reach their separate agreements with SoundExchange. Indeed, as NAB broadcasters and SiriusXM are competitors not only with respect to webcasting but also for listeners more generally, it would appear such coordination is unlikely. In addition, for the strategy of raising rivals' costs to work, SoundExchange would have to agree to go along with the NAB and

[13] In *Webcaster II,* a similar assumption that a viable streaming service requires the repertoire of all four major labels was rejected by the Judges. See Webcaster II, 72 FR 24091 (May 1, 2007).

SiriusXM. 7/28/10 Tr. at 132:1–10 (Salinger). There is no evidence in the record to support this additional coordination. A further condition necessary to the success of the strategy is that the NAB and SiriusXM would have to feel assured that a rate setting proceeding would not result in a lower rate than those in their agreements with SoundExchange. There is no evidence in the record to suggest that any protection against a lower statutory rate was embodied in their agreements with SoundExchange. SX PFF at ¶ 270.

Dr. Salinger suggests that one of the possible benefits to SoundExchange from cooperating with a NAB-SiriusXM raising rivals' costs strategy is that copyright owners may "get a rate that's so high but then they get to practice price discrimination by negotiating lower." 7/28/10 Tr. at 133:18–22 (Salinger). However, as Dr. Fratrik acknowledged, in order to price discriminate the seller must "be able to segment out customers." 4/27/10 Tr. at 1249:8–13 (Fratrik). No such market segmentation is supported by the record of evidence in this proceeding. On the contrary, simulcasting and other commercial webcasting compete for the same ultimate consumers who may easily substitute one service for the other as their listening choice. SX PFF at ¶¶ 277, 278. In *Webcaster II,* similarly noting that the balance of the evidence in the record did not persuade us that these simulcasters operate in a submarket separate from and noncompetitive with other commercial webcasters, we declined to set a differentiated rate for commercial broadcasters. By contrast, where we did find sufficient evidence in the record that supported a finding that certain noncommercial webcasters constituted a distinct segment of the market, we did set a differentiated rate. *Webcaster II,* 72 FR 24095, 24097 (May 1, 2007). In *Webcaster II* we noted that "[a] segmented marketplace may have multiple equilibrium prices because it has multiple demand curves for the same commodity relative to a single supply curve" and further, that "[t]he multiple demand curves represent distinct classes of buyers and each demand curve exhibits a different price elasticity of demand." *Webcaster II,* 72 FR 24097. Price discrimination is a feature of such markets. *Id.* Dr. Salinger offers no persuasive empirical evidence of price discrimination related to different price elasticities of demand associated with distinct classes of buyers in the market.

Dr. Salinger's analysis also fails to address other important features of the "raising rivals' costs" construct. For example, he does not empirically examine whether it would make economic sense for NAB and SiriusXM in terms of profitability, to effectively shift up their respective average cost curves at the original output's average cost. In other words, by agreeing to a higher price for the sound recording input, NAB and SiriusXM may sacrifice some of their profitability, depending on the demand for their output. Dr. Salinger does not empirically address the extent to which that may or may not occur. Nor does he examine how the results of such a profitability analysis might support or undermine the incentives behind the "raising rivals' costs" strategy that he opines was operative in motivating NAB and SiriusXM negotiating behavior. For all these reasons, we do not find Dr. Salinger's "raising rivals' costs" theory persuasive.

However, it cannot be disputed that the 2009 and 2010 rates negotiated in these settlements were lower than the statutory rates otherwise applicable to commercial webcasters. Dr. Pelcovits offers another possible adjustment to mitigate the effects of the lower 2009–2010 rates enjoyed by the NAB and SiriusXM as compared to those commercial webcasters that remained subject to the statutory rate. The rates resulting from Dr. Pelcovits' calculation "would give webcasters that are not part of the WSA settlements the same effective rate over the eight-year period [2009–2015] as the NAB and SiriusXM, assuming they all experience the same level of growth in performances." Pelcovits Amended and Corrected WDT at Appendix II. This calculation results in rates equal to the current statutory rate for the first year of the 2011–2015 term and only somewhat higher thereafter. For the five-year period beginning 2011, these adjusted NAB/SiriusXM agreement rates are as follows: $0.0019 for 2011, $0.0020 for 2012, $0.0020 for 2013, $0.0020 for 2014 and $0.0021 for 2015. Pelcovits Amended and Corrected WDT at Appendix II.

After a careful consideration of the evidence presented on the various suggested sources of potential overvaluation and undervaluation of the market rates by the NAB-SoundExchange and SiriusXM agreements, we find that the rates in these agreements do not appear to seriously overvalue or undervalue input prices likely to prevail in the market. Therefore, because the NAB-SoundExchange and SiriusXM agreements clearly govern the rates for a substantial number of commercial webcasters over the relevant 2011–2015 period and the commercial webcasters covered by these agreements are competitors with the other commercial webcasters who comprise the remainder of the non-interactive webcasting services, we find these agreements are a useful gauge of the weight to be assigned to the rates suggested by the interactive webcasting benchmark. *See supra* at Section II.B.3.b.ii.

Inasmuch as there are only small differences between the 2011, 2012 and 2013 rates in the NAB and SiriusXM agreements and the 2010 statutory rate, we decline to assign a weight to the interactive webcasting benchmark that results in a rate at great variance with the current statutory rate. In other words, the rates in these negotiated agreements serve as a caution to us not to depart radically from past rates where we cannot be confident, based on the quality of the benchmark evidence in the record, that the magnitude of such a departure is fully supported in the target market. Here, the NAB and SirusXM agreements serve as a means of roughly correcting the interactive benchmark for any overvaluation not captured by the variables directly considered in the analysis. As a consequence, we find that the current statutory rate ($0.0019) sets the lower bounds for a range of rates reasonably applicable to the target market and that the most likely prevailing rate in that market is closer to this lower boundary than to the upper boundary identified hereinabove.

4. The Section 114 Commercial Webcaster Rates Determined by the Judges

As previously indicated, *supra* at Section II.B.3.b.i., the Judges find the interactive webcasting benchmark to be of the comparable type that the Copyright Act invites us to consider. It is a benchmark with characteristics reasonably similar to non-interactive webcasting, particularly after some adjustment to account for the differences attributable to interactivity. *Id.* However, we cannot find sufficient evidence in the record to support an increase that *fully* implements the rates proposed on the basis of the interactive benchmark. Rather, we find that a rate of $0.0036, derived from the interactive market and adjusted for interactivity differences, can be no more than the upper bounds of a range of possible rates reasonably applicable to the target market. That is because: (1) There is likely some "upward bias" introduced into the interactive benchmark analysis through its focus on only subscription-based services in the benchmark market (*see supra* at Section II.B.3.b.i.) and (2) there is some merit to Dr. Salinger's

identification of some additional sources of upward bias in the Pelcovits interactive benchmark analysis. *Id.*

Two measures available to test the magnitude of such upward bias are the NAB-SoundExchange and SiriusXM–SoundExchange agreements. That is, we find that these agreements are a useful gauge of the weights to be assigned to the rates suggested by the interactive webcasting benchmark, because the NAB-SoundExchange and SiriusXM–SoundExchange agreements clearly govern the rates for a substantial number of commercial webcasters over the relevant 2011–2015 period and the commercial webcasters covered by these agreements are competitors with the other commercial webcasters who comprise the remainder of the non-interactive webcasting services (*see supra* at Section II.B.3.b.ii.). These negotiated rates indicate that the interactive benchmark may likely overstate the prevailing market rate in the target market even when subjected to Dr. Pelcovits' substitution adjustment or Dr. Salinger's adjustment to mitigate the impact of downward trend in the effective play rates paid by interactive services. *Id.* Indeed, the NAB-SoundExchange and SiriusXM agreements lend weight to the need for a further downward adjustment in the benchmark rate to reflect a prevailing rate in the target market closer to the current statutory rate. *Id.* In this way, the NAB-SoundExchange and SirusXM agreements serve as a means of roughly correcting the interactive benchmark for any overvaluation not captured by the variables directly considered in the analysis. Therefore, inasmuch as there appears to be only a small difference between the 2011 rate in the NAB-SoundExchange and SiriusXM agreements and the 2010 statutory rate, we find that the current statutory rate ($0.0019) sets the lower bounds for a range of rates reasonably applicable to the target market and that the most likely prevailing rate in that market is closer to this lower boundary than to the interactive benchmark rates recommended by Dr. Pelcovits.

In other words, while we accept the interactive benchmark as suggesting an increase in royalty rates for non-interactive webcasting over or by the end of the period 2011–2015, we find that the weight of the evidence does not allow us to accept the full amount of the increases suggested by either the unadjusted or the various adjusted versions of the interactive benchmark. Rather having identified the $0.0036 rate as the upper boundary for a zone of reasonableness for potential marketplace benchmarks and the $0.0019 rate as the lower boundary for a zone of reasonableness for potential marketplace benchmarks, we find that the most likely prevailing rate in the target market is closer to the lower boundary than to the upper boundary of this zone of reasonableness (*see supra* at Section II.B.3.b.ii.).

However, the most likely prevailing rate at the present time is also likely to shift upward over the 2011–2015 term. We recognize that the interactive benchmark derived in this proceeding after adjusting for interactivity and accounting for substitution (i.e., $0.0033) itself indicates an increase when compared to a similarly adjusted interactive benchmark derived in *Webcaster II* (i.e., $0.0019). *See supra* at Section II.B.3.b.i.; *Webcaster II,* 72 FR 24094, 24096. Similarly, the NAB-SoundExchange and SiriusXM-SoundExchange agreements exhibit an increase in rates over the 2011–2015 term for competing webcasters. *See supra* at Section II.B.3.b.ii. Moreover, we also find that the evidence in the record on industry growth in *increased* advertising revenues, *increased* performances, and *increased* listening likely support at least a modest increase over the 2011–2015 term. *See supra* at Section II.B.3.a.iii. However, we recognize that while the trend in industry growth, as captured by some measures such as listenership, has been decidedly upward, that growth has occurred unevenly from year to year, with two-year plateaus succeeded by large jumps in growth. *Id.*

Our findings suggest three criteria for an appropriate rate based on the marketplace evidence we have been presented. These criteria are: (1) A rate structure that reflects our finding that the most likely prevailing rate in the target market is closer to the lower boundary than to the upper boundary of the zone of reasonableness for potential marketplace benchmarks; (2) a rate structure that accommodates some modest growth in rates over the term of the license period; and (3) a rate structure that provides for longer periods of stable rates during the term of the license period. We find that the following rate structure for commercial webcasters, based on our downward adjustment of the interactive benchmark, meets these three criteria: For the five-year period beginning 2011, the per play rate applicable to each year of the license for Commercial Webcasters is: $0.0019 for 2011, $0.0021 for 2012, $0.0021 for 2013, $0.0023 for 2014 and $0.0023 for 2015.

The willing buyer/willing seller standard in the Copyright Act encompasses consideration of economic, competitive and programming information presented by the parties, including (1) the promotional or substitution effects of the use of webcasting services by the public on the sales of phonorecords or other effects of the use of webcasting that may interfere with or enhance the sound recording copyright owner's other streams of revenue from its sound recordings; and (2) the relative contributions made by the copyright owner and the webcasting service with respect to creativity, technology, capital investment, cost and risk in bringing the copyrighted work and the service to the public. Because we adopt an adjusted benchmark approach to determining the rates, we agree with *Webcaster II* and *Webcaster I* that such considerations would have already been factored into the negotiated price in the benchmark agreements. 72 FR 24095 (May 1, 2007); 67 FR 45244 (July 8, 2002). Therefore, such considerations have been reviewed by the Copyright Royalty Judges in our determination of the most appropriate benchmark from which to set rates. Similar considerations would have been factored into the negotiated price of the NAB-SoundExchange and SiriusXM-SoundExchange agreements which we utilized to roughly gauge the further downward adjustment necessary to assure that the interactive benchmark rates reasonably reflected likely rates in the target market.

Nevertheless, we have also further separately reviewed the evidence bearing on these considerations. We find that no further upward or downward adjustment is indicated. We have previously noted that the evidence submitted by Live365 on each of these considerations is too weak to establish a basis for a decrease in webcaster royalty rates from the current statutory rate (*see supra* at Section II.B.3.a.iii.). Nor does Live365 present an acceptable empirical basis for quantifying the individual asserted effects of these various factors and/or for deriving a method for translating such magnitudes into a rate adjustment. *Id.* Similarly, to the extent that SoundExchange treats each of these factors separate from its proffered benchmark analysis, it also does not present an acceptable empirical basis for quantifying the individual asserted effects of these various factors and/or for deriving a method for translating such magnitudes into a rate adjustment. Moreover, SoundExchange explicitly relies on Dr. Pelcovits' interactive services benchmark analysis to encompass these considerations. SX RCL at ¶ 20. Therefore, our further consideration of

these factors leads us to find no need for any further adjustment to the rates determined hereinabove.

5. The Proposed Aggregator Discount to the Section 114 Commercial Webcaster Rates

Live365 seeks a further 20% discount applicable to the commercial webcasting per performance rate for certain "qualified webcast aggregation services" who operate a network of at least 100 independently operated "aggregated webcasters" that individually "stream less than 100,000 ATH per month of royalty-bearing performances." Rate Proposal For Live365, Inc., Appendix A, Proposed Regulations at § 380.2 and § 380.3(a)(2). This "discount" proposal may be more properly understood as a proposed term rather than an additional rate proposal. It is conditional; that is, it is applicable only to the extent that certain defined conditions are met (*e.g.,* minimum number of 100 aggregated webcasters and each individual aggregated webcaster streaming less than 100,000 ATH per month). It proposes to establish a mechanism whereby a group of commercial webcasters under certain qualifying conditions may utilize a "webcast aggregation service" to aggregate their monitoring and reporting functions. Rate Proposal For Live365, Inc., Appendix A, Proposed Regulations at § 380.2(m). Monitoring and reporting are compliance-related functions that are currently required of all individual webcaster licensees.

We find no persuasive evidence in the record to support the imposition of an aggregator discount that would apply to the statutory rate for commercial webcasters. Live365 submitted testimony from Dr. Fratrik and Mr. Floater to support this request. The testimony of the latter witness does not, in any meaningful way, address the purported rationale behind this request—namely, that an administrative benefit accrues to the collective which, by implication, reduces transactions costs. Rather Mr. Floater's testimony speaks largely about the asserted benefits of using an aggregation service that flow to "individual webcasters" who make use of the service and to copyright owners of having multiple webcaster stations assembled on a single platform. ["* * * a streaming architecture that can aggregate tens of thousands of individual webcasters * * * Live365's broadcast tools and services enable broadcasters to economically and efficiently stream their programming * * * Live365's aggregation helps broadcasters contain their costs * * * Live365 allows small webcasters to broadcast content * * * while generating increased performances, sales, royalties and promotional benefits for a wide range of artists and copyright holders."] Floater Corrected WDT at 11–14. These asserted benefits to individual webcasters and copyright owners, which are not quantified sufficiently to ascertain their value, are benefits that are largely indistinguishable from those that might be asserted by any multi-channel webcaster. Nor do these benefits address the issues at heart of the proposal; that is, whether an *aggregator* like Live365 provides any administrative benefit that could be shown to reduce transactions costs, whether any administrative benefit provided by the aggregator can be measured and translated into a discount applicable to the commercial webcasting royalty rate, and whether the full amount of the purported administrative benefit should properly flow to the aggregator, to the individual webcasters so aggregated, to the copyright owners or to some combination thereof.[14] We do not find Mr. Floater's testimony helpful in resolving any of these issues.

Live365 also submitted testimony from Dr. Fratrik to support its request for an aggregator discount that attempts, in part, to address the administrative savings issue. Dr. Fratrik opines that aggregators are entitled to this discount because they "collect and compile all of the necessary documentation of the actual copyrighted works that are streamed and the number of total listening levels for each of these copyrighted works" and because "aggregators make royalty payments to the appropriate parties." Fratrik Corrected and Amended WDT at 38. But again these functions are part of the same sort of compliance activities for which any multi-channel webcaster would necessarily be responsible on behalf of the multiplicity of channels it offered. They do not appear to be unique to an "aggregator." Indeed, when questioned about his description of the aggregator discount, Dr. Fratrik offered no practical distinction between an "aggregator" and any commercial webcaster or simulcaster who offered 100 or more channels. 4/27/10 Tr. at 1265:9–1266:22; 1267:7–1270:15 (Fratrik). We find that Dr. Fratrik's claim of administrative cost savings provided by aggregators describes a benefit that is largely indistinguishable from those that might be asserted by any multi-channel webcaster. Therefore, inasmuch as multi-channel webcasters already receive a benefit under current regulations[15] (37 CFR 380.3(b)(1)) by way of a $50,000 cap on the minimum fee for services with 100 or more stations or channels, the proposed additional discount for indistinguishable administrative services provided by an "aggregator" is unwarrantedly cumulative. SX PFF at ¶ 597.

Furthermore, Dr. Fratrik admitted that the choice of 100 channels or stations as the threshold for triggering the proposed aggregator discount was not supported by any examination of administrative costs to see what relative administrative cost savings specifically demarcated the boundaries of the discount's applicability. 4/27/10 Tr. at 1270:12–1271:3 (Fratrik). In other words, Dr. Fratrik establishes no cost savings basis in the record for a distinction between the administrative cost savings that might accrue from aggregating 100 stations as compared to 50 or 300 stations where each such station meets the additional condition of accounting for streaming of less than 100,000 ATH per month.

At the same time, Dr. Fratrik reaches his estimated 20% discount rate through the offer of a kind of benchmark analysis that uses purported aggregator discounts provided to Live365 in its agreements with the Performance Rights Organizations ("PROs") pertaining to musical works royalties. But Dr. Fratrik indicated in his testimony that the Live365–BMI agreement he utilized to support this benchmark does not provide a discount to Live365 for aggregating webcasters. Instead, the agreement apparently provides a discount more directly to very small webcasters that utilize Live365 for certain administrative functions related to compliance. 4/27/10 Tr. 1261:18–1262:19 (Fratrik). That is *not* comparable to the proposal before us which calls for the aggregator to receive the full benefits of any discount.

In any case, even if Live365 were to receive the full benefits of any aggregator discount in the BMI agreement, such PRO agreements do not constitute a benchmark that inspires sufficient confidence to be useful. Dr. Fratrik asserts that Live365 provides centralized administration for the

[14] For example, it is obvious that if the *full* amount of any purported administrative savings were to flow to the aggregator, then no benefit accrues to anyone else. In such a formulation, the aggregator proposal would seem to reduce to a mere stalking horse for obtaining a less than competitive market rate that advantages Live365 as compared to other commercial webcasters and simulcasters.

[15] Under the May 14, 2010 Stipulation executed by SoundExchange and Live365, the $50,000 cap on minimum fees was also agreed to by the parties for the 2011–2015 term. *See supra* at Section II.B.1.

benefit of the PROs, including centralized collection, reporting and compliance. But he offers no evidence to suggest that the types and level of centralized administrative services provided to the PROs are comparable to the administrative services to be provided by the aggregator to SoundExchange. In *Webcaster II,* we found that another benchmark offered in that proceeding based on the musical works market was flawed because the sellers in that market are different and they are selling different rights. 72 FR 24094 (May 1, 2007). Yet, in the instant proceeding, Dr. Fratrik fails to show that these different sellers and different rights give rise to comparably valued "centralized" administrative services provided by a third party in the target sound recordings market. Nor does Dr. Fratrik address the issue of whether any adjustments to the data from the benchmark musical works market are required that could make it more comparable to the target sound recordings market.

In short, we find that Live365 makes no sufficient showing that an aggregator discount can be justified in general, or adequately measured in particular, on the basis of the evidence in the record.

To the extent that Live365's proposed aggregator discount is viewed strictly as a rate proposal rather than a term, Live365 also fails to delineate a basis for a different royalty rate applicable to a distinct submarket of the larger commercial webcasting market. *Webcasting II* determined that a key factor in differentiating between classes of webcasters for rate purposes is whether the webcasters operate in a distinct market segment or submarket that does not directly compete with the remainder of all webcasters. *Webcaster II,* 72 FR 24095, 24097 (May 1, 2007); *see also supra* at Section II.B.3.b.ii. Live365 as the aggregator does not appear to meet this standard. The record clearly establishes that Live365 competes directly with other commercial webcasters. SX PFF at ¶ 280. And, of course, whether considered as a proposed rate for a new category of commercial webcasters or, as noted hereinabove as a proposed term, we are not persuaded by the record of evidence in this proceeding of a particular market value provided by an aggregator in terms of reduced transactions costs that can, or should, be translated into a discount applicable to the commercial webcasting royalty rate.

In addition, some aspects of the Live365 proposal appear likely to engender confusion. For example, Live365 proposes definitions for a "webcast aggregation service," "aggregated webcasters," "commercial webcaster," and "licensee." Taken together, these definitions fail to explicitly delineate that Live365 intends the webcast aggregation service to serve as the licensee in its proposed arrangement and that the webcasters whose programming is transmitted are not the licensees. The proposed regulations, by contrast, identify webcasters specifically as licensees and, therefore, suggest that any commercial webcaster, whether aggregated or unaggregated, remains responsible for payment of the applicable statutory license fee. *See* Rate Proposal For Live365, Inc., Appendix A, Proposed Regulations at § 380.2(b), § 380.2(e), § 380.2(h), § 380.2(o); 9/30/10 Tr. at 622:14–22, 669:18–677:12 (Closing Arguments, Oxenford). Such confusion has practical consequences. Given that the aggregator, as the licensee, is not obligated to provide a list of webcasters for whom it purports to pay SoundExchange and the aggregator, as licensee, may not voluntarily provide such a list to SoundExchange, it may result in more time-consuming administrative effort for SoundExchange to determine whether a particular webcaster is subject to or properly complying with the statutory licenses. This burden was pointed out by Mr. Funn in the context of SoundExchange's specific experience with Live365. Funn WRT at 2; 8/2/10 Tr. at 445:13–446:2 (Funn).

For all the above reasons, we decline to adopt Live365's proposal for a 20% aggregator discount, applicable under certain conditions to the commercial webcasting royalty rate.

III. Noncommercial Webcasters

Having determined the rates for commercial webcasters, the Judges now turn to the noncommercial category. As previously mentioned, certain services argued in *Webcaster II* that they were distinguishable from commercial webcasters and, as a result, deserved a lower royalty rate. We observed:

> Based on the available evidence, we find that, up to a point, certain "noncommercial" webcasters may constitute a distinct segment of the noninteractive webcasting market that in a willing buyer/willing seller hypothetical marketplace would produce different, lower rates than we have determined hereinabove for Commercial Webcasters. A segmented marketplace may have multiple equilibrium prices because it has multiple demand curves for the same commodity relative to a single supply curve. An example of a segmented market is a market for electricity with different prices for commercial users and residential users. In other words, price differentiation or price discrimination is a feature of such markets. The multiple demand curves represent distinct classes of buyers and each demand curve exhibits a different price elasticity of demand. By definition, if the commodity in question derives its demand from its ultimate use, then the marketplace can remain segmented only if buyers are unable to transfer the commodity easily among ultimate uses. Put another way, each type of ultimate use must be different.

Webcaster II, 72 FR 24097 (footnote omitted). We found that the evidence supported a submarket for noncommercial webcasting, but included safeguards to assure that the submarket did not converge or overlap with the submarket for commercial webcasting. A cap of 159,140 ATH per month marked the boundary between noncommercial and commercial webcasting, and we adopted a $500 per station or channel rate which included the annual, non-refundable, but recoupable, $500 minimum fee payable in advance.[16]

In this proceeding, certain participants have once again asked us for adoption of lower rates for noncommercial webcasting. Greater refinements to the category are also sought; namely, separate rates for distinct "types" of services (all still under the general rubric of noncommercial). SoundExchange and CBI have submitted an agreement, pursuant to 17 U.S.C. 801(b)(7)(A), for rates and terms for a type of service that they identify as "noncommercial educational webcasters." SX PFF at ¶ 65; CBI PFF at ¶ 5. IBS urges us to recognize and set rates for two types of services: small noncommercial webcasters, defined as those whose ATH does not exceed 15,914 per month, and very small noncommercial webcasters, defined as those whose ATH does not exceed 6,365 per month. IBS PFF (Reformatted) at ¶ 26. We address these requests beginning with the SoundExchange-CBI agreement.

A. Noncommercial Educational Webcasters

On August 13, 2009, slightly more than eight months into the cycle of this proceeding, SoundExchange and CBI submitted a joint motion to adopt a partial settlement "for certain internet transmissions by college radio stations and other noncommercial educational webcasters." *Joint Motion to Adopt*

[16] The United States Court of Appeals for the District of Columbia Circuit remanded the $500 minimum fee for lack of evidence. *Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Board,* 574 F.3d 748, 767 (DC Cir. 2009). After taking evidence, we adopted a $500 minimum fee. Digital *Performance Right in Sound Recordings and Ephemeral Recordings (Remand order*), 75 FR 56873, 56784 (September 17, 2010).

Partial Settlement at 1. The settlement was achieved under authorization granted by the Webcaster Settlement Act of 2009, Public Law 111–36, discussed *supra* at Section I.B., and was published by the Copyright Office in the **Federal Register**. *See* 74 FR 40616 (August 12, 2009). By virtue of that publication, the SoundExchange-CBI agreement is now "available, as an option, to any * * * noncommercial webcaster meeting the eligibility conditions of such agreement." 17 U.S.C. 114(f)(5)(B). In submitting the agreement to the Judges, SoundExchange and CBI urged us to likewise publish it in the **Federal Register** and adopt it, under 17 U.S.C. 801(b)(7)(A), as *the* rates and terms applicable to noncommercial educational webcasters for the period 2011 through 2015.[17]

On April 1, 2010, the Judges did publish the SoundExchange/CBI agreement under the authority of section 801(b)(7)(A). 75 FR 16377. With respect to rates, the agreement proposes an annual, nonrefundable minimum fee of $500 for each station or individual channel, including each of its individual side channels. *Id.* at 16384 (April 1, 2010). For those noncommercial educational webcasters whose monthly ATH exceed 159,140, additional fees are paid on a per-performance basis. There is also an optional $100 proxy fee that may be paid by noncommercial educational webcasters in lieu of submitting reports of use of sound recordings. The agreement also contains a number of terms of payment.

Our consideration of the SoundExchange-CBI agreement, as is the case with the NAB-SoundExchange agreement is governed by 17 U.S.C. 801(b)(7)(A). The Judges received 24 comments, from managers and representatives of terrestrial radio stations, favoring adoption of the SoundExchange-CBI agreement. Many of these comments asserted that the rate structure was compatible with their budget restraints, *see,* e.g., Comment of Bill Keith for WSDP Radio, Plymouth-Canton Community Schools ("The monetary amount was reasonable and most college or high school stations can live with the amounts charged for webcasting"), and several expressed satisfaction with the $100 proxy fee in lieu of reports of use. *See, e.g.,* Comments of Christopher Thuringer for WRFL, University of Kentucky; Comments of David Black, General Manager, WSUM–FM. We received one comment objecting to the settlement from IBS.[18] We held a hearing on the motion on May 5, 2010.

During the course of the hearing, it became clear that IBS' arguments centered upon the proposed annual $500 minimum fee for stations with less than 159,140 ATH. Most significantly, IBS contended that if the Judges adopted the proposed minimum fee for noncommercial educational webcasters, it would be precluded from presenting its own minimum fee proposal and, effectively, its participation in this proceeding would be ended. 5/5/10 Tr. at 51:22–52:2 ("I think Mr. DeSanctis' [counsel for SoundExchange] last remarks indicate that this is an attempt to freeze IBS out of statutory rights to a decision from the Board on the record.") (Hearing on Joint Motion to Adopt Partial Settlement). After conclusion of the hearing, the Judges did not render a decision on the adoption of the settlement, preferring instead to let IBS present its case in the main and consider the matter after all testimony had been presented.

It is now evident that IBS' contention of a "freeze out" was erroneous from the start, for IBS never proposed any rates and terms for noncommercial *educational* webcasters. Rather, as noted above, IBS requested rates and terms only for certain noncommercial webcasters (defined by it as "small" and "very small"). The Judges pressed counsel for IBS at closing argument as to whether he still objected to adoption of the SoundExchange-CBI agreement as the basis for establishing rates and terms for noncommercial educational webcasters. After some dissembling, he concluded that he did to the extent that adoption of the agreement might influence or prejudice his rate proposal.[19] We find that his response does not support a proper objection raised under section 801(b)(7)(A)(ii) which would require us to consider the reasonableness of the SoundExchange/CBI agreement. *Cf.* 37 CFR 351.10 (admissible evidence must be relevant); FRE 401. Even if we were to conclude otherwise, IBS has not presented any credible testimony that the agreement is unreasonable. Twenty-four noncommercial broadcasters that purportedly will operate their webcasting services under the agreement find it to be reasonable and affordable. IBS has not provided documented testimony to the contrary, despite an invitation to do so. 5/5/10 Tr. at 81:7–82:10 (Hearing on Joint Motion to Adopt Partial Settlement). Instead, it has relied upon the bald assertions of its counsel and its witnesses, arguing that some unidentified and unspecified number of its members cannot afford the fees contained in the agreement and will be driven from the webcasting business.

[17] At the hearing to consider the SoundExchange/CBI motion, there was significant discussion as to whether SoundExchange and CBI were asking the Judges to adopt the agreement as an option for noncommercial educational webcasters or whether the agreement would be binding on all noncommercial educational webcasters. *See* 5/5/10 Tr. at 5:8–51:11 (Hearing on Joint Motion To Adopt Partial Settlement). The confusion was created by the last two sentences of proposed § 380.20(b) to the Judges' rules, 37 CFR, which provided:

However, if a Noncommercial Educational Webcaster is also eligible for any other rates and terms for its Eligible Transmissions during the period January 1, 2011, through December 31, 2015, it may by written notice to the Collective in a form to be provided by the Collective, elect to be subject to such other rates and terms rather than the rates and terms specified in this subpart. If a single educational institution has more than one station making Eligible Transmissions, each such station may determine individually whether it elects to be subject to this subpart.

Digital Performance Right in Sound Recordings and Ephemeral Recordings (Proposed rule), 75 FR 16377, 16383 (April 1, 2010). After deliberations, counsel for SoundExchange conceded that such language was confusing and unnecessary, since the purpose of the motion was to set the rates and terms for all services that met the definition of a noncommercial educational webcaster, and could be removed. 5/5/10 Tr. at 46:14–47:16, 50:12–51:11 (Hearing on Joint Motion To Adopt Partial Settlement). In adopting The SoundExchange/CBI agreement today, we are accepting SoundExchange's offer and are not adopting this language.

[18] IBS has asserted several times throughout the course of this proceeding that it represents more college and high school radio stations than CBI. *See, e.g.* 5/5/10 Tr. at 80:16–81:3 (Hearing on Joint Motion to Adopt Partial Settlement). However, it has never provided any evidence to demonstrate this is true. In fact, IBS has never revealed to the Judges how many members it has, let alone their identities.

[19] [THE JUDGES]: You're not proposing a rate for noncommercial educational webcasters. Only CBI and SoundExchange are.

MR. MALONE: Right.

[THE JUDGES]: So why are you objecting to the adoption of that if you have a—two separate categories that you want adopted?

MR. MALONE: Well, the judges can certainly say that—I mean, there's nothing incompatible with them. The—

[THE JUDGES]: But I'm asking you why are you still objecting to the adoption of a $500 minimum fee for noncommercial educational webcasters when you have proposed new fees for two new types of services and have not proposed a fee for something called a noncommercial educational webcaster?

MR. MALONE: Well, our—

[THE JUDGES]: Where is your dog in that fight? I don't see it.

MR. MALONE: All right. The dog in that fight is—and, again, excluding indirect effects that I understand to be the context of your question.

We have no objection to the terms that are there as long as they don't apply to our small stations.

[THE JUDGES]: So you're just objecting to it on the theory that you just hope that what's ever in there doesn't somehow get applied to your case, even though you're asking for two completely different services?

MR. MALONE: That's essentially correct, Your Honor.

9/30/10 Tr. at 660:13—661:22 (IBS Closing Argument).

Without proper evidence, we could not find the agreement unreasonable, were we inclined to do so.

Finding neither a proper nor a credible objection to the SoundExchange-CBI agreement, nor other grounds requiring rejection, we adopt the agreement (*see supra* n.17) as the basis for rates and terms for noncommercial educational webcasters for the period 2011–2015. *See supra* Section II.A.

B. All Other Noncommercial Webcasters

1. Rate Proposals for the Section 114 License for Noncommercial Webcasters

The Judges' adoption of the SoundExchange-CBI agreement under section 801(b)(7)(A) does not resolve the matter of rates for the broader category of noncommercial webcasters that we recognized in *Webcaster II.* SoundExchange urges adoption of the same rates for noncommercial webcasters as noncommercial educational webcasters. IBS agrees, but proposes that we recognize two new types of services: small and very small noncommercial webcasters. We address these proposals separately.

For noncommercial webcasters operating under the sections 112 and 114 licenses, SoundExchange proposes a royalty of $500 per station or channel per year, subject to the 159,140 ATH limit. The base royalty would be paid in the form of a $500 per station or channel annual minimum fee, with no cap. If a station or channel exceeds the ATH limit, then the noncommercial webcaster would pay at the commercial usage rates for any overage. SX PFF at ¶¶ 489, 471. In support of its proposal, SoundExchange points to the fact that 363 noncommercial webcasters paid royalties in 2009 similar to its current proposal, with 305 of those webcasters paying only the $500 minimum fee. *Id.* at ¶ 493. This, in its view, demonstrates noncommercial webcasters' ability and willingness to pay the requested fees.

SoundExchange also submits that the reasonableness of the $500 minimum fee is confirmed by the testimony of Barrie Kessler, its chief operating officer. While SoundExchange does not track its administrative costs on a service-by-service basis, Ms. Kessler presented a "reasonableness check" by estimating its administrative cost per service and per channel. First, she divided SoundExchange's total expenses for 2008 by the number of licensees, and then divided that number by the average number of stations or channels per licensee (seven). The result was an approximate average administrative cost of $825 per station or channel. Kessler Corrected WDT at 25.

Finally, SoundExchange offers its agreement with CBI, discussed above, as support for its rate proposal. The fees are the same, along with the 159,140 ATH limitation and no cap on the minimum fee. The agreement, along with the 24 comments received in favor of it, "is strong evidence of the rates and terms that noncommercial webcasters are willing to pay." SX PFF at ¶ 501.

IBS agrees with SoundExchange's proposal for noncommercial webcasters, but asks the Judges to recognize two additional types of noncommercial services that it identifies as "small" and "very small." Its arrival at this request has followed a decidedly convoluted path throughout this proceeding, metamorphosing from the written direct statements through the closing argument. Section 351.4(a)(3) of the Judges' rules, which governs the content of written direct statements, provides that in a rate proceeding, "each party must state its requested rate." IBS did not do this in plain fashion, instead including its request within the body of testimony of one of its three witnesses. Frederick J. Kass, Jr., the "treasurer, director of operation (chief operating officer), and a director of" IBS stated that: "IBS Members should only pay for their direct use of the statutory license by the IBS Member. There should be no minimum fee greater than that which would reasonably approximate the annual direct use of the statutory license, not to exceed $25.00 annually." Kass WDT at 1, 9. However, Mr. Kass attached as an exhibit to his statement a joint petition to adopt an agreement negotiated between the RIAA, IBS, and the Harvard Radio Broadcasting, Co. that was submitted to the Copyright Office on August 26, 2004.[20] That agreement provided for a minimum annual fee of $500 for noncommercial educational webcasters, except that the fee was $250 for any noncommercial educational webcaster that affiliated with an educational institution with fewer than 10,000 enrolled students or where substantially all of the programming transmitted was classified as news, talk, sports or business programming. Kass WDT, Exhibit A at 5. Despite the inclusion of this exhibit, Mr. Kass expressly disavowed endorsement of its rates in the hearing on his written direct statement. Instead, he asserted that "the appropriate rates are what most people were paying in the marketplace for the direct use of the statutory license," without stating what that fee or amount should be. 4/22/10 Tr. at 779:22–780:2 (Kass). When the Judges questioned Mr. Kass as to exactly what was his rate proposal, he responded that IBS members should pay only for their actual use of sound recordings and that the fee should be 50 cents per continuous listener per year to a station or channel,[21] not to exceed $25 per year. *Id.* at 781:3–792:12 (Kass). He then later characterized the $25 as a "flat fee" and concluded his testimony on this point that each IBS station should pay an annual $25 flat fee. *Id.* at 791:17–792:12 (Kass).

After the close of the direct case hearings and before the submission of written rebuttal cases, IBS filed a "Restatement of IBS' Rate Proposal." This proposal identified two new types of services: a "small noncommercial webcaster," described as a service with total performances of digitally recorded music less than 15,914 ATH per month or the equivalent; and a "very small noncommercial webcaster," described as a service with total performances of less than 6,365 ATH per month or the equivalent. For small noncommercial webcasters, IBS proposed a flat annual fee of $50, and for very small noncommercial webcasters a flat annual fee of $20. No mention was made of the broader category of noncommercial webcaster. On July 29, 2010, after the submission of written rebuttal cases, IBS filed an "Amplification of IBS' Restated Rate Proposal." This filing was far more than an amplification, because for the first time it proposed an annual minimum fee of $500 for noncommercial webcasters per station or channel, along with annual minimum fees of $50 and $20 for small noncommercial webcasters and very small noncommercial webcasters, respectively. IBS also expressly endorsed SoundExchange's per performance rate proposal for the sections 114 and 112 licenses.[22] And, as an alternative to this rate structure, IBS proposed paying an annual lump sum of $10,000 to SoundExchange to cover all performances by IBS members that are not covered by a negotiated agreement.

[20] The joint petition was submitted to the Copyright Office as a settlement of rates and terms for the sections 112 and 114 licenses for the period 2005 and 2006. It was not acted upon by the Office.

[21] This fee is very roughly derived from an agreement negotiated between the RIAA and the Corporation for Public Broadcasting under the Small Webcaster Settlement Act of 2002, which was submitted by IBS in the *Webcaster II* proceeding.

[22] IBS does not define "noncommercial webcaster," but the proposal suggests that it is a webcaster with no more than 159,140 ATH per month per station or channel, but no less than 15,915 ATH. The endorsement of the SoundExchange per performance proposal would then apply to the overage of 159,140 ATH. 9/30/10 Tr. at 651:11–652:21 (IBS Closing Argument).

IBS added that "[i]f the amount of IBS members participating exceeds $10,000.00 there will be a true up within 15 days of the end of the year." Amplification of IBS' Restated Rate Proposal at 3 (July 29, 2010).[23]

During the hearings on the written rebuttal cases, SoundExchange objected to the testimony of Mr. Kass, IBS' only rebuttal witness, on the grounds that he did not verify his testimony as required by § 350.4(d) of the Judges' rules, and did not appear to know what was in his testimony.[24] The Judges granted the motion and his testimony was not admitted.[25] IBS sought reconsideration of the decision, which was denied. *Order Denying IBS' Motion For Reconsideration of the Rulings Excluding Its Rebuttal Case,* Docket No. 2009–1 CRB Webcasting III (August 18, 2010). Even if his testimony had been admitted, it did not contain support for IBS' new rate proposals, nor could it given that such testimony would be outside the scope of the rebuttal proceedings.

IBS changed its proposed rates one final time with the filing of its proposed findings of fact and conclusions of law. It withdrew its proposal of a $10,000 annual lump sum payment, and proposed regulatory language that permitted SoundExchange to accept unspecified collective payments on behalf of small and very small noncommercial webcasters.[26]

2. The Section 114 Noncommercial Webcaster Rates Determined by the Judges

The statutory standards that apply to the Judges' determination of section 114 rates for commercial webcasters apply with equal force to our consideration of rates for noncommercial webcasters. IBS requests that we distinguish between two different types of noncommercial webcasters—small and very small—within the broader category, thereby invoking the provision of section 114(f)(2)(B) that requires that rates (and terms)

> shall distinguish among different types of eligible nonsubscription transmission services then in operation and shall include a minimum fee for each such type of service, such differences to be based on criteria including, but not limited to, the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers.

17 U.S.C. 114(f)(2)(B). IBS asks that we make such a distinction for small and very small noncommercial webcasters despite the fact that it has not presented one iota of evidence regarding the relative quantities of music used by these services,[27] nor the nature of their use of sound recordings covered by the license.[28] Likewise, it has completely failed to present any evidence that would enable the Judges to determine the degree to which these proposed services promoted or substituted for the purchase of phonorecords by consumers. IBS has done nothing more than create two arbitrary subcategories of noncommercial webcaster, separated by unsupported amounts of monthly aggregated tuning hours, in an effort to obtain lower royalty rates for its members. IBS has failed to satisfy the statutory burden of presenting evidence to enable the Judges to determine if distinctions within the noncommercial webcaster category are required or warranted, and there is nothing in the record of this proceeding that requires the Judges under section 114(f)(2)(B) to establish separate terms and rates for types of services other than noncommercial webcasters.

IBS' failure on this point is endemic to its failure to the even greater task at hand: The rates that would be negotiated in the marketplace between a willing buyer and willing seller. IBS' constantly changing rate proposals were not fashioned with this standard in mind (let alone the evidence to support it), but rather appeared to spring from some undefined meaning of "fairness," or more likely the impressions of Mr. Kass as to what his members would like to pay for statutory royalties. Indeed, even with respect to Mr. Kass' somewhat consistent mantra, that IBS members should not pay for any more than the music that they used, there was no proffer of evidence to demonstrate the nature or volume of that use, by what stations, or under what circumstances. The aridity of the record necessitates the rejection of IBS' proposal.

There is no dispute between SoundExchange and IBS that noncommercial webcasting is a distinct segment of the noninteractive webcasting market for which a willing buyer/willing seller hypothetical marketplace would produce different, lower rates than we have determined hereinabove for commercial webcasters. SX PFF at ¶¶ 489–90; IBS PFF at ¶¶ 4, 26. There is also no dispute that the boundary of that submarket is marked by 159,140 ATH per month per station or channel and that any noncommercial webcaster exceeding this limitation should pay the commercial rates adopted in this proceeding for the overage. SX PFF at ¶ 489; IBS PFF at ¶ 26. There is a dispute as to the annual $500 minimum, recoupable fee (*i.e.,* the flat fee rate) proposed by SoundExchange and adopted by the Judges in the *Webcaster II* proceeding. *See* 75 FR 56873 (September 17, 2010) (Remand order). IBS contends that many of its members cannot afford the fee and will cease webcasting activities, but it did not provide any financial records, data or other information, beyond bare allegations of its counsel and Mr. Kass, to support its claim. To the contrary, financial data obtained from IBS' witness John E. Murphy, General Manager of WHUS, licensed to the University of Connecticut, revealed that in 2009 WHUS generated total revenues of $527,364.21 and had a profit of $87,041.55. 4/21/10 Tr. at 583:1–586:12 (Murphy).[29] Mr. Murphy was the only witness to present radio station financial data. Even Mr. Kass' statement that the average operating budget of IBS members is $9,000, though wholly unsupported by documentation, does not demonstrate a lack of ability to pay.[30] Three hundred and five noncommercial webcasters paid SoundExchange the $500 minimum fee in 2009 pursuant to the decision in *Webcaster II,* with an additional 58

[23] IBS does not explain what is meant by IBS members exceeding $10,000 in participation. However, the pleading does offer a number of annual statutory performances covered by the $50 annual minimum fees for small noncommercial webcasters (2,291,616) and very small noncommercial webcasters (916,646). Presumably, IBS is offering to pay additional unspecified amounts for those members that exceed that number of performances in a given year.

[24] Section 350.4(d) provides that "[t]he testimony of each witness shall be accompanied by an affidavit or a declaration made pursuant to 28 U.S.C. 1746 supporting the testimony."

[25] It was apparent after *voir dire* of the witness that not only did he not comply with the verification rule in filing his written rebuttal statement, but that he was not familiar with substantial portions of his testimony, which had been drafted by IBS' counsel. 7/29/10 Tr. at 292:1–296:15 (Kass).

[26] To further roil the waters, IBS attached to its proposed findings its Amplification of IBS' Restated Rate Proposal which does contain the $10,000 lump sum payment language.

[27] IBS distinguishes between the services based upon the number of ATH, but ATH is not a measurement of the quantity of use of sound recordings covered by the section 114 license. It is only a time measurement of reception of a transmission.

[28] Counsel for IBS conceded at closing argument that the record was devoid of evidence on this statutory requirement. 9/30/10 Tr. at 647:12–651:5 (IBS Closing Argument).

[29] It was revealed that WHUS did not pay *any* statutory license fees in 2009 nor did it file required reports of use. 4/21/10 Tr. at 579:21–582:3, 594:5–600:2 (Murphy).

[30] Interestingly, IBS members pay an annual $125 membership fee to IBS, and pay $85 per person, or $480 per station, to attend IBS' annual conference in New York City, plus the cost of hotel rooms. 4/21/10 Tr. at 593:12–594:3 (Murphy).

services paying more for exceeding the ATH cap or streaming more than one station or channel. 75 FR 56874 (September 17, 2010) (Remand order). Twenty-four noncommercial educational stations endorsed the SoundExchange-CBI agreement which contains the same flat $500 fee. *See supra* at Section III.A. In sum, we reject IBS' contention that the $500 fee is not affordable and cannot represent what a willing buyer would pay in the hypothetical marketplace.

Having rejected *in toto* the contentions and claims of IBS,[31] we are persuaded that the presentation of SoundExchange best represents the rates that would be paid in the willing buyer/willing seller hypothetical marketplace for noncommercial webcasting. The annual minimum fee of $500 per station or channel functions as the royalty payable for usage of sound recordings up to 159,140 ATH per month. This flat fee is the same that we adopted in *Webcaster II* and, as discussed above, is demonstrably affordable to noncommercial webcasters. We find that the SoundExchange-CBI agreement, which contains the very same fee and rate structure, and the 24 comments supporting it are corroborative evidence that our determination satisfies the statutory standard. As a minimum fee, and mindful of the Court of Appeals' admonition regarding evidence of administrative costs administering the licenses, *Intercollegiate Broadcast System, Inc.* v. *Copyright Royalty Bd.,* 574 F.3d at 761 (DC Cir. 2009), we are persuaded that the testimony of Ms. Kessler as to estimates of average administrative costs per licensee shows that a $500 minimum fee for noncommercial webcasters is more than reasonable. SX PFF at ¶ 484; *see also* 75 FR 56874 (September 17, 2010) (Remand order).

3. The Section 112 Noncommercial Webcaster Rates Determined by the Judges

Although there is not a stipulation as to the rates for the section 112 license for noncommercial webcasters as there is for commercial webcasters, *supra* at Section II.B.1, there is no disagreement between SoundExchange and IBS. SoundExchange proposes the same bundled rate approach for both the section 112 and 114 rights, five percent of which is allocated as the section 112 royalty for making ephemeral copies, and IBS endorses the proposal. SX PFF at ¶¶ 671; IBS PFF at ¶ 24. The testimony offered by SoundExchange supports this proposal and we adopt it. SX PFF at ¶¶ 672–688.

IV. Terms

The standard for setting terms of payment is what the record reflects would have been agreed to by willing buyers and willing sellers in the marketplace. *Webcaster II,* 72 FR 24102 (May 1, 2007); *see also Webcaster I,* 67 FR 45266 (July 8, 2002). In *Webcaster II,* we further established that we are obligated to "adopt royalty payment and distribution terms that are practical and efficient." *Webcaster II,* 72 FR 24102 (May 1, 2007). The parties each submitted proposals of the terms that they believe satisfy both of these requirements.[32] SoundExchange based its proposal generally on the current terms as adopted in *Webcaster II* and the proceeding setting the sections 112 and 114 rates and terms for preexisting satellite digital audio radio services, with certain revisions, and proposed conforming editorial changes to the webcasting terms in light of changes made in that proceeding. SX PFF at ¶ 549. Live365 proposed changes to the definitions of two terms in § 380.2 of the current webcasting regulations.[33] Live365 PFF at ¶¶ 382–87; Live365 PCL at ¶¶ 77–79. IBS proposed terms for noncommercial webcasters. IBS PFF at ¶ 26.

SoundExchange and Live365 also stipulated to certain terms. *See Stipulation of SoundExchange, Inc. and Live365, Inc. Regarding Certain Proposed Terms,* Docket No. 2009–1 CRB Webcasting III (September 10, 2010) ("*Joint Stipulation*").

When adopting royalty terms, we also strive, where possible, to maintain consistency across the licenses set forth in sections 112 and 114 in order to maximize efficiency in and minimize the overall costs associated with the administration of the license. *Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services (Final rule and order),* 73 FR 4080, 4098 (January 28, 2008) ("*SDARS*"). However, this goal is not overriding. We will vary terms across the licenses where a party can demonstrate the need for and the benefits of such variance. *Id.*

A. Collective

SoundExchange requests to be named the sole collective for the collection and distribution of royalties paid by commercial and noncommercial webcasters under the sections 112 and 114 licenses for the period 2011–2015. SX PFF at ¶ 602; Second Revised Rates and Terms of SoundExchange, Inc., Docket No. 2009–1 CRB Webcasting III, at Proposed Regulations § 380.4(b) (July 23, 2010). Live365 takes no position regarding SoundExchange's request, Live365 RFF at ¶ 602, and IBS does not appear to object, given its rate proposal refers to SoundExchange as the collective. *See* Amplification of IBS' Restated Rate Proposal, Docket No. 2009–1 CRB Webcasting III, at 2 (July 29, 2010).

We have determined previously that designation of a single Collective "presents the most economically and administratively efficient system for collecting royalties under the blanket license framework created by the statutory licenses." *Webcaster II,* 72 FR 24104 (May 1, 2007); *see also SDARS,* 73 FR 4099 (January 24, 2008). No party has submitted evidence that would compel us to alter that determination here. Indeed, no party requested the designation of multiple collectives, and SoundExchange was the only party requesting to be selected as a collective.[34]

[31] In its proposed findings, and for the first time in this proceeding, IBS contends that "Congress in Section 114(f)(2) intended that the minimum rate be tailored to the type of service in accord with the general public policy favoring small businesses," and that as a consequence the Judges are required under the Regulatory Flexibility Act, 5 U.S.C. 601(6), to determine whether the $500 fee unnecessarily burdens IBS' members. IBS PFF (Reformatted) at ¶¶ 10–13. There is no support in the text or legislative history of the Copyright Act for the proposition that section 114(f)(2) favors small businesses, and, indeed, IBS does not supply any. To the contrary, section 114(f)(2)(B) is very clear as to our task in this proceeding: To fashion rates (and terms) that "most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller." IBS has also failed to support its contention that the Judges must conduct a Regulatory Flexibility Act assessment of impact of the $500 fee on IBS' members in particular. IBS has not supplied the Judges with any evidence to adduce whether its members are "small entities" within the meaning of 5 U.S.C. 601—IBS has not supplied us with any documentary evidence of its membership, even their names—nor has it demonstrated that the Regulatory Flexibility Act applies to rate proceedings before the Judges. *See* 5 U.S.C. 601(2) (exempting from the definition of a rule of a government agency "a rule of particular applicability relating to rates"); *c.f. American Moving and Storage Assoc.* v. *DOD,* 91 F.Supp.2d 132, 136 (D.D.C. 2000) (exception for "a rule of particular applicability relating to rates" is explicit and broad). In any event, the Judges did consider the circumstances of noncommercial webcasters, discussed above, in establishing the $500 fee.

[32] CBI's proposal consisted of the terms contained in the agreement with SoundExchange submitted for adoption by the Judges. Since we are adopting that agreement, see supra at Section III.A., CBI's proposal will not be discussed here.

[33] Live365's request for an aggregator discount initially was proposed as a term. However, as discussed *supra* at Section II.B.5., the aggregator discount was handled in the section on proposed rates and thus will not be discussed here. *See also,* 9/30/10 Tr. at 615:5–22 (Live365 Closing Argument).

[34] As noted *supra* at n.4, RLI filed a written direct statement but did not present oral testimony;

SoundExchange (and its predecessor) has served as the Collective for the collection, processing and distribution of royalty payments made under the sections 112 and 114 statutory licenses since their inception thereby accumulating a wealth of knowledge and expertise in administering these licenses. *See* Kessler Corrected WDT at 4. Moreover, SoundExchange's designation as the sole Collective is supported by artists and copyright owners. *See* Roberts Hedgpeth WDT at 1–2; McCrady WDT at 19. This coupled with the absence of any opposition or record evidence to suggest that SoundExchange should not serve in that capacity here leads us to designate SoundExchange as the Collective for the 2011–2015 license period.

B. Stipulated Terms and Technical and Conforming Changes

On September 10, 2010, SoundExchange and Live365 submitted a stipulation regarding certain proposed terms in the Proposed Regulations appearing as an attachment to Second Revised Proposed Rates and Terms of SoundExchange, Inc. filed July 23, 2010. In several instances, they have stipulated that current provisions of the webcasting terms will remain unchanged. For example, SoundExchange and Live365 agree that the current definitions of the following terms in § 380.2 shall remain unchanged: "Commercial Webcaster," "Copyright Owners," "Ephemeral Recording," "Noncommercial Webcaster," "Performers," and "Qualified Auditor." *Joint Stipulation,* Exhibit A at 2–4 (September 10, 2010). Similarly, the current provisions of § 380.5 will remain unchanged. *Id.* at 9–11.

In other instances, stipulated terms consist of eliminating provisions which were solely applicable to the 2006–2010 license period (*see,* e.g., § 380.4(d)) and reflecting changes necessitated by the adoption of the NAB-SoundExchange and SoundExchange-CBI agreements (*see,* e.g., § 380.2 definition of "Licensee"). *Id.* at 3, 8.

We find that the stipulated terms constitute for the most part technical and non-controversial changes that will add to the clarity of the regulations adopted today. Therefore, we are adopting the terms stipulated to by SoundExchange and Live365.

For these same reasons, we are adopting the technical and conforming changes proposed by SoundExchange, and not opposed by any party, in Section IV of their Second Revised Rates and Terms, filed July 23, 2010.

We now turn to those contested terms proposed for Commercial Webcasters.

C. Contested Terms for Commercial Webcasters

1. Terms Proposed by Live365

Live365 proposes changes to the definitions of two terms in § 380.2, namely, "performance" and "aggregate tuning hours."[35] Live365 PFF at ¶ 387 and PCL at ¶ 79. Specifically, Live365 proposes to modify the definition of "performance" to "exclude any performances of sound recording that are not more than thirty (30) consecutive seconds." Live365 PFF at ¶ 387. According to Live365, this proposed modification conforms the definition of "performance" in § 380.2 to that of a "performance" or "play" as defined in the four interactive service agreements reviewed by Dr. Pelcovits. *Id.* Live365 also contends that past precedent has excluded partial performances from "royalty-bearing" performances, citing to the Librarian's adoption of a settlement agreement among SoundExchange, AFTRA, the American Federation of Musicians of the United States and Canada, and Digital Media Association which excluded from payment performances that suffered technical interruptions or the closing down of a media player or channel switching. Live365 PCL at ¶ 78, citing *Digital Performance Right In Sound Recordings And Ephemeral Recordings, Docket Nos. 2002–1 CARP DTRA3 & 2001–2 CARP DTNSRA,* 74 FR 27506, 27509 (May 20, 2003).

Similarly, Live365 seeks to revise the current definition of "aggregate tuning hours" to exclude programming that does not contain sound recordings such as talk, sports, and advertising not containing sound recordings. Live365 PCL at ¶ 79. Live365 justifies its request by asserting that "programming without sound recordings should not be subject to consideration in regulations dealing with a royalty to be paid for the use of sound recordings." *Id.*

SoundExchange vehemently opposes adoption of either proposed modification. First, SoundExchange contends that these proposed modifications constitute new terms, not a revision to an existing proposal, in violation of § 351.4(b)(3) which allows for revision of a rate proposal at any time up to and including submission of proposed findings of fact.[36] SX RFF at ¶ 223. Next, SoundExchange asserts that Live365's citation to the four interactive service agreements without more does not provide sufficient record support for either the need for or benefit of this request. *Id.* at ¶¶ 226–228. With regard to the request to redefine "aggregate tuning hours," SoundExchange argues that Live365 fails to point to anything in the record explaining, much less supporting, the need for such proposal. *Id.* at ¶¶ 231–232. Finally, SoundExchange points to Live365's failure to consider the potential effect of its definition of "performance" on the per-performance rate as yet another reason not to accept Live365's proposal. *Id.* at ¶ 230. Were Live365's definition adopted, SoundExchange contends that an upward adjustment would be needed to the per-performance rate since neither Drs. Pelcovits nor Fratrik excluded performances of less than 30 seconds in the calculation of their respective per-performance rates.[37] *Id.*

The Judges decline to adopt either of Live365's proposed definitions. Live365 has provided insufficient record support for either of its proposals. This is especially true with regard to its proposed definition of "aggregate tuning hours." It appears for the first time in Live365's proposed conclusions of law without any citation to the record or any substantive explanation as to why such a change is needed or what benefits would result from its adoption. All Live365 has provided is the unsupported assertions of counsel. Thus, Live365 has not met its burden regarding adoption of this term. *See SDARS,* 73 FR 4101 (January 28, 2008) (refusal to adopt bare proposals unsupported by record evidence).

Likewise, Live365 has not met its burden with respect to adoption of its proffered definition of "performance." Neither the mere citation to the four interactive service agreements in the record here without more nor a reference to a settlement agreement adopted by the Librarian in a CARP proceeding demonstrates that a willing buyer and a willing seller would agree to such a term in the non-interactive market. Live365 simply states that its

therefore, their written direct statement was not considered. In any event, RLI did not seek designation as a Collective.

[35] In the proposed regulations attached to its proposed findings of fact, Live365 included an additional term: A proposed deadline for the completion and issuance of a report regarding an audit to verify royalty payments. *See* Attachment to Live365's Proposed Findings of Fact and Conclusions of Law, § 380.6(g). Since this proposal was not discussed in its proposed findings of fact and Live365 presented no evidence to support the need for such a term, we decline to adopt it.

[36] We need not address the validity of this argument since we decline to adopt this term on other grounds.

[37] According to SoundExchange, the upward adjustment would result from a reduction in the number of plays in the calculation of a per-performance rate. SX RFF at ¶ 230.

requested definition conforms to the definitions of "performance" and "play" in the agreements reviewed by Dr. Pelcovits with no discussion of or cited support for why such conformance is needed or beneficial or even appropriate here.

Live365's reference to adoption by the Librarian of the settlement agreement in a prior CARP proceeding is unpersuasive. As with its proposal regarding aggregate tuning hours, this justification is offered for the first time in Live365's proposed conclusions of law. Thus, like its proposed definition for aggregate tuning hours, the proffered justification amounts to nothing more than an unsupported argument of counsel.

More importantly, as SoundExchange correctly observes, since neither Dr. Pelcovits nor Dr. Fratrik excluded performances from the calculation of their respective per-performance rates, there would be fewer plays in such calculations, thereby necessitating an upward adjustment to the per-performance rates. Live365 never acknowledges this effect much less addresses how to make the adjustment. *See* SX RFF at ¶ 230. The lack of supportive evidence presented by Live365 when combined with the potential problematic effect on the per-performance rates requires rejection of this term.

2. Terms Proposed by SoundExchange

SoundExchange proposes several terms. We note at the outset that several of SoundExchange's proposed terms are contained in some or all of the WSA agreements, including the NAB–SoundExchange and SoundExchange-CBI agreements adopted herein. Parties are free to agree to whatever terms they choose. When such agreement is submitted to the Judges for adoption, we are obligated to adopt said agreement in the absence of objections after publication in the **Federal Register**. 17 U.S.C. 801(b)(7)(A); *see supra* at Section II.A. However, when parties litigate over the adoption of a term, even one that is contained in an adopted agreement, the requesting party must meet its burden with respect to the standards set forth *supra*.

Evaluating SoundExchange's proposals in this light, we find that SoundExchange has not met its burden.

a. Server Log Retention

SoundExchange urges the Judges to clarify that server logs are among the records to be retained for three years pursuant to § 380.4(h) and to be made available during an audit conducted pursuant to § 380.6. *See* Second Revised Rates and Terms of SoundExchange, Inc., Section III.A., Proposed Regulations, § 380.4(h) (July 23, 2010); Kessler Corrected WDT at 27. Although SoundExchange believes that retention of these records is required under the current regulations, it requests an amendment to include server logs since oftentimes such logs are not retained. SX PFF at ¶¶ 556–57; Kessler Corrected WDT at 27. SoundExchange asserts that "[t]he evidence indicates marketplace acceptance of such a term," citing to the SoundExchange-CBI agreement which contains an equivalent term. SX PFF at ¶ 555.

In its opposition to this term, Live365 notes that neither the NAB-SoundExchange agreement nor the Commercial Webcasters agreement contains this term nor do any of the interactive service agreements submitted in this proceeding. Live365 RFF at ¶ 555. Live365 further argues that SoundExchange failed to establish how the benefits to SoundExchange of this term outweigh the burden on licensees to comply. *Id.* at ¶ 557.

Section 380.4(h), which governs the retention of records, requires licensees to retain "books and records" relating to royalty payments. The language does not include server logs and SoundExchange's assumption that it does is incorrect. The question remains, however, whether server logs should be included, and the Judges answer in the negative because the record evidence does not support such a finding. None of the interactive agreements in evidence here contain such specificity. Live365 Exs. 17 and 18; McCrady WDT, Exs. 104–DR & 106–DR. Rather, the agreements require licensees only to retain records relating to their obligations under the agreement and in terms no more specific than in the current regulation. *See,* e.g., Live365 Exs. 17 at ¶ 7(h) and Ex. 18 at ¶ 7(h); McCrady WDT, Exs. 104–DR at ¶ 6(j) and 106–DR at ¶ 4(h). Since these agreements were negotiated in a setting free from the constraints of the regulatory scheme, they provide the best evidence of the agreement of a willing buyer and a willing seller in this respect.

We disagree with SoundExchange's assertion that inclusion of this term in the SoundExchange-CBI WSA agreement constitutes "marketplace acceptance." As discussed *supra* and as acknowledged by SoundExchange, such agreements were reached under atypical marketplace conditions, since their negotiations were overshadowed by the possibility of a regulatory proceeding. *See supra* at Section II.B.3.b.ii.; *see also* 9/30/10 Tr. at 547:20–548:5 (SoundExchange Closing Argument). Furthermore, while the SoundExchange-CBI agreement contains the term, the NAB–SoundExchange and Commercial Webcasters agreements do not despite the assertion of Ms. Kessler that server logs contain data that is "critical for verifying that licensees have made the proper payments." Kessler Corrected WDT at 27; *see also* 4/20/10 Tr. at 455:15–17 (Kessler). If such data is "critical," it is difficult to understand why server logs were not included in the NAB–SoundExchange and Commercial Webcasters agreements, particularly where these agreement were negotiated by SoundExchange and cover "webcasters representing a substantial part of [the webcasting] market." 9/30/10 Tr. at 508:3–4 (SoundExchange Closing Argument); *see supra* at Section II.B.3.b.ii.

Finally, retention of server logs for a three-year period may present significant issues to webcasters regarding storage and costs. No evidence was adduced by SoundExchange as to these important considerations, and the Judges are hesitant to adopt a term without such data. In sum, SoundExchange's request for retention of server logs appears to be more of a want than a need, and we decline to amend § 380.4(h) of our rules.

b. Standardized Forms for Statements of Account

SoundExchange proposes to require licensees to submit statements of account on a standardized form prescribed by SoundExchange in order to simplify licensees' calculations of the royalties owed and to facilitate SoundExchange's ability to efficiently collect information from licensees. SX PFF at ¶¶ 572, 575. SoundExchange currently provides a template statement of account on its Web site. *Id.* at ¶ 574. SoundExchange notes that noncommercial educational webcasters are required pursuant to their WSA agreement to use a form supplied by SoundExchange. McCrady WDT, Ex. 103–DP at section 4.4.1.

Live365 opposes adoption of this term on the grounds that it is addressed more appropriately in a notice and recordkeeping proceeding. Live365 RFF at ¶ 574.

We are not persuaded that a need for mandatory use of a standardized statement of account exists at this time nor do we find support in the record for adoption of this term. As Mr. Funn testified, the majority of webcasters currently use the template form made available on SoundExchange's Web site. Funn WRT at 2; 8/2/10 Tr. at 492:2–3 (Funn) ("much more than half" of

webcasters currently use template). Mr. Funn provided no information quantifying the additional work for SoundExchange to process a statement of account for the few webcasters who choose not to use the template. The only example given in this regard focused on Live365 and its submission of an altered form using incorrect rates, which is irrelevant to SoundExchange's request. *See* Funn WDT at 3–4; 8/2/10 Tr. at 465:19–22 (Funn).

Our skepticism regarding the need to require use of a standardized form also stems from the fact that neither the NAB–SoundExchange WSA agreement nor the Commercial Webcasters WSA agreement contains this term. McCrady WDT, Exs. 101–DP and 102–DP. Moreover, although the SoundExchange-CBI WSA agreement requires use of a SoundExchange-supplied form, *see* McCrady WDT, Ex. 103–DP at section 4.4.1, such language was not included in the SoundExchange-CBI agreement submitted to the Judges and adopted herein. *See Digital Performance Right in Sound Recordings and Ephemeral Recordings (Proposed rule),* 75 FR 16377, 16385 (§ 380.23(f)) (April 1, 2010).

Given the already widespread use of SoundExchange's template form, the lack of quantification in the record of the time savings to SoundExchange by having a standardized form, and SoundExchange's failure to include this term in the NAB-SoundExchange and Commercial Webcasters WSA agreements or the SoundExchange-CBI agreement submitted to the Judges, we find that the record before us does not support the adoption of this term.

c. Electronic Signature on Statement of Account

SoundExchange seeks to eliminate the requirement in the current § 380.4(f)(3) of a handwritten signature on the statement of account. SX PFF at ¶ 576. According to SoundExchange, allowing electronic signatures would make it easier for licensees to submit their statements of account. *Id., citing* Funn WRT at 3 n.1. SoundExchange further asserts that "none [of the WSA agreements in evidence] requires that statements of account bear a handwritten signature." SX PFF at ¶ 577.

Live365 does not oppose this request as its own proposed regulations eliminate the requirement for a handwritten signature on the statement of account. *See* Attachment to PFF, Proposed Regulations, § 380.4(f)(3).

The Judges determine that the record evidence does not support adoption of this term. The WSA agreements, as submitted as exhibits to Mr. McCrady's written direct testimony do, despite SoundExchange's assertions to the contrary, require a handwritten signature on a statement of account. SoundExchange is correct that each agreement requires statements of account to be provided each month, although neither agreement sets forth the specific information to be included. *See* McCrady WDT, Ex. 101–DP at section 4.6 (NAB), Ex. 102–DP at section 4.5 (Commercial Webcasters), and Ex. 103–DP at section 4.4.1 (CBI). However, SoundExchange ignores the provision in each agreement which states "[t]o the extent not inconsistent with the Rates and Terms herein, all applicable regulations, including 37 CFR Parts 370 and 380, shall apply to activities subject to these Rates and Terms." *See* McCrady WDT, Ex. 101–DP at section 6.1 (NAB), Ex. 102–DP at section 5.1 (Commercial Webcasters) and Ex. 103–DP at section 6.1 (CBI). Current § 380.4(f)(3) requires a handwritten signature; such requirement is not inconsistent with the agreements' general requirement to simply submit statements of account. Our interpretation is confirmed by the fact that the NAB-SoundExchange and SoundExchange-CBI WSA agreements submitted to the Judges for adoption here each retained the requirement for a handwritten signature. *See Proposed rule,* 75 FR 16380 (§ 380.13(f)(3)), 16385 (§ 380.23(f)(4)) (April 1, 2010). Since we are adopting those provisions as proposed on April 1, 2010, to accept SoundExchange's proposal here would create an inconsistency in terms that does not exist currently.

d. Identification of Licensees and Late Fee for Reports of Use

SoundExchange requests that the Judges harmonize identification of licensees among the notice of intent to use the sections 112 and 114 licenses, the statements of account and the reports of use, and to impose a late fee for reports of use. These two requests differ from the rest of their requests in that these are notice and recordkeeping terms.[38] [39] *See* Kessler Corrected WDT at 20–23, 27–28. This is not the first time we have been asked to adopt terms regarding notice and recordkeeping in this context. *Webcaster II,* 72 FR 24109 (May 1, 2007); *SDARS,* 73 FR 4101 (January 28, 2008). While the Copyright Act grants us the authority to adopt such terms here (said terms would supersede those set forth in 37 CFR Part 370), such authority is discretionary. 17 U.S.C. 803(c)(3). To date, we have declined to exercise this discretion. *Webcaster II,* 72 FR at 24109–10 (May 1, 2007); *SDARS,* 73 FR at 4101 (January 28, 2008).

Our prior refusals stemmed from our findings that the issues presented, such as census reporting, were more appropriately addressed in the context of a rulemaking proceeding and that "no persuasive testimony compelling an adjustment of the current recordkeeping regulations" was presented in either instance. *SDARS,* 73 FR 4101 (January 28, 2008), *citing Webcaster II,* 72 FR 24110 (May 1, 2007). In light of the record before us, we decline to adopt SoundExchange's proposals regarding the harmonization of licensee identification and the imposition of a late fee for reports of use because the evidence does not compel us to amend the current recordkeeping regulations here; rather, these issues are more appropriately addressed in a future rulemaking proceeding, for the reasons discussed below.

i. Identification of Licensees

SoundExchange asserts that harmonization of the identification of licensees can be accomplished by (1) requiring licensees to identify themselves on their statements of account and reports of use "in exactly the same way [they are] identified on the corresponding notice of use * * * and that they cover the same scope of activity (e.g., the same channels or stations)," SX PFF at ¶ 568, Kessler Corrected WDT at 28; (2) making the regulations clear that the "Licensee" is "the *entity* identified on the notice of use, statement of account, and report of use and that each Licensee must submit its own notice of use, statement of account, and report of use," *id.* (emphasis in original); and (3) requiring licensees to use an account number issued by SoundExchange. *Id.* at ¶ 571. In support of these requests, Ms. Kessler testified that these proposals would allow SoundExchange to more quickly and efficiently match the requisite

[38] SoundExchange requested these same, or similar, changes in a rulemaking concluded last year where we imposed census reporting for all services except those broadcasters paying no more than the minimum fee. See Comments of SoundExchange, Docket No. RM 2008–7, at 20–23 (January 29, 2009). Such requests were outside the scope of that rulemaking, which was to improve the reporting regulations in light of technological developments since promulgation of the interim regulation, and were deferred for consideration in a future rulemaking. *See Notice and Recordkeeping for Use of Sound Recordings Under Statutory License (Final rule),* 74 FR 52418, 52422–23 (October 13, 2009).

[39] Ms. Kessler acknowledges, at least with respect to the late fees for reports of use, that such proposals could be implemented in either the notice and recordkeeping regulations or in the license terms. Kessler Corrected WDT at 28.

notice of use, statement of account and report of use to the correct licensee. Kessler Corrected WDT at 29; 4/20/10 Tr. at 461:2–8 (Kessler). She also claims that such requirements would impose "little or no evident cost" to licensees, and licensees' accounting and reporting efforts would be simplified by use of an account number. Kessler Corrected WDT at 29. SoundExchange also points out that these proposals are included in the NAB–SoundExchange and SoundExchange-CBI agreements.[40] SX PFF at ¶ 569.

While Live365 does not dispute SoundExchange's proposed findings of fact on this issue, it did not stipulate to the language provided by SoundExchange.

These claims are not sufficiently supported in the record. For instance, there is nothing in the record that supports Ms. Kessler's assertion regarding the potential costs, or lack thereof, to licensees in complying with such a requirement. Without input from licensees regarding such information, we are reluctant to adopt such a proposal. Similarly, there is insufficient evidence to support mandating the use of an account number. None of the WSA agreements in evidence contain such a provision. McCrady WDT, Exs. 101–DP (NAB), 102–DP (Commercial Webcasters) and 103–DP (CBI). All that exists is Ms. Kessler's assertion that use of an account number may simplify a licensee's accounting and reporting. Kessler Corrected WDT at 29. Moreover, while the SoundExchange-CBI agreement as adopted herein requires that statements of account list the licensee's name as it appears on the notice of use, *see* § 380.23(f)(1), it does not impose that requirement with regard to reports of use. *Compare* McCrady Ex. 103–DP, section 5.2.2 *with* § 380.23(g). Thus, even if we adopted SoundExchange's proposal, there would still be an inconsistency within the webcasting regulations. We are, therefore, not persuaded that such a proposal should be adopted here; rather, this issue is more appropriately addressed in a future rulemaking proceeding.

ii. Late Fee for Reports of Use

SoundExchange seeks the imposition of the same late fee of 1.5% for reports of use as currently exists for late payments and statements of account. *See* 37 CFR 380.4(c). In support of its request, SoundExchange proffered the testimony of Ms. Kessler. She testified that currently there is widespread noncompliance with reporting requirements, either failure to file a report of use at all or provision of late and/or "grossly inadequate" reports. Kessler Corrected WDT at 28. Given that a report of use is "a critical element in the fair and efficient distribution of the royalties," 4/20/10 Tr. at 458:21–22 (Kessler), such noncompliance significantly hampers SoundExchange's ability to timely distribute the royalties. Kessler Corrected WDT at 28. Ms. Kessler further noted "that late fees in other areas does [sic] help with our compliance situation." 4/20/10 Tr. at 458:19–20 (Kessler). SoundExchange also points to the inclusion of a late fee for untimely reports of use in the NAB–SoundExchange and SoundExchange-CBI WSA agreements as further support for its request. SX PFF at ¶ 564.

Live365 questions SoundExchange's characterization of a payment as being useless without a report of use given that both the NAB–SoundExchange and CBI–SoundExchange agreements contain reporting waivers. Live365 RCL at ¶ 20.

We are not persuaded by the record before us that there is a need to adopt a late fee for reports of use in this context. The record evidence does not show that a willing buyer and a willing seller would agree to a late fee with respect to reporting, as none of the interactive agreements in evidence contain such a term. Live365 Exs. 17, 18; McCrady WDT, Exs.104–DR and 106–DR. Although the NAB–SoundExchange and SoundExchange-CBI WSA agreements do contain the late fee, they were negotiated under the shadow of a regulatory proceeding, and we note that this late fee was not included in the Commercial Webcasters WSA agreement negotiated by SoundExchange.

D. Contested Terms for Noncommercial Webcasters

IBS has proposed two terms. The first is an exemption from the recordkeeping reporting requirements for the small and very small noncommercial webcaster subcategories it proposed in its rate request. As discussed, *supra,* the Judges declined to recognize the proffered subcategories, thus making IBS' request for recordkeeping reporting exemptions moot. The second term proposed by IBS is an express authorization that SoundExchange "may elect to accept collective payments on behalf of small and very small noncommercial webcasters." IBS PFF at ¶ 26. This request is also moot.[41]

V. Determination and Order

Having fully considered the record, the Copyright Royalty Judges make the above Findings of Fact based on the record. Relying on these Findings of Fact, the Copyright Royalty Judges unanimously adopt this Final Determination of Rates and Terms for the statutory licenses for the digital audio transmission of sound recordings, pursuant to 17 U.S.C. 114, and for the making of ephemeral phonorecords, pursuant to 17 U.S.C. 112(e), for the license period 2011–2015.

So ordered.

Dated: January 5, 2011.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

William J. Roberts, Jr.,

U.S. Copyright Royalty Judge.

Stanley C. Wisniewski,

U.S. Copyright Royalty Judge.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges revise part 380 of title 37 of the Code of Federal Regulations to read as follows:

PART 380—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Subpart A—Commercial Webcasters and Noncommercial Webcasters

Sec.
380.1 General.
380.2 Definitions.
380.3 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.4 Terms for making payment of royalty fees and statements of account.
380.5 Confidential Information.
380.6 Verification of royalty payments.
380.7 Verification of royalty distributions.
380.8 Unclaimed funds.

Subpart B—Broadcasters

380.10 General.
380.11 Definitions.
380.12 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.13 Terms for making payment of royalty fees and statements of account.
380.14 Confidential Information.
380.15 Verification of royalty payments.
380.16 Verification of royalty distributions.
380.17 Unclaimed funds.

[40] We note that neither agreement mandates the use of an account number.

[41] Even if the request were not moot, it seems unnecessary. SoundExchange is authorized, by virtue of its recognition as the collective under the sections 112 and 114 licenses, to accept payments on behalf of copyright owners, from one or more users of the licenses.

Subpart C—Noncommercial Educational Webcasters

380.20 General.
380.21 Definitions.
380.22 Royalty fees for the public performance of sound recordings and for ephemeral recordings.
380.23 Terms for making payment of royalty fees and statements of account.
380.24 Confidential Information.
380.25 Verification of royalty payments.
380.26 Verification of royalty distributions.
380.27 Unclaimed funds.

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

Subpart A—Commercial Webcasters and Noncommercial Webcasters

§ 380.1 General.

(a) *Scope.* This subpart establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by Licensees as set forth in this subpart in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, 2011, through December 31, 2015.

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and Licensees shall apply in lieu of the rates and terms of this subpart to transmission within the scope of such agreements.

§ 380.2 Definitions.

For purposes of this subpart, the following definitions shall apply:

Aggregate Tuning Hours (ATH) means the total hours of programming that the Licensee has transmitted during the relevant period to all listeners within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions or noninteractive digital audio transmissions as part of a new subscription service, less the actual running time of any sound recordings for which the Licensee has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a service transmitted one hour of programming to 10 simultaneous listeners, the service's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the service's Aggregate Tuning Hours would equal 10.

Broadcaster is a type of Licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2011–2015 license period, the Collective is SoundExchange, Inc.

Commercial Webcaster is a Licensee, other than a Noncommercial Webcaster, that makes eligible digital audio transmissions.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114.

Ephemeral Recording is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114, and subject to the limitations specified in 17 U.S.C. 112(e).

Licensee is a person that has obtained a statutory license under 17 U.S.C. 114, and the implementing regulations, to make eligible nonsubscription transmissions, or noninteractive digital audio transmissions as part of a new subscription service (as defined in 17 U.S.C. 114(j)(8)) other than a Service as defined in § 383.2(h) of this chapter, or that has obtained a statutory license under 17 U.S.C. 112(e), and the implementing regulations, to make Ephemeral Recordings for use in facilitating such transmissions, but that is not—

(1) A Broadcaster as defined in § 380.11; or

(2) A Noncommercial Educational Webcaster as defined in § 380.21.

Noncommercial Webcaster is a Licensee that makes eligible digital audio transmissions and

(1) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501),

(2) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted, or

(3) Is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

Performance is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission (*e.g.,* the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.,* a sound recording that is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

Side Channel is a channel on the Web site of a Broadcaster which channel transmits eligible transmissions that are not simultaneously transmitted over the air by the Broadcaster.

§ 380.3 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Royalty rates.* Royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114, and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) are as follows:

(1) *Commercial Webcasters:* For all digital audio transmissions, including simultaneous digital audio retransmissions of over-the-air AM or

FM radio broadcasts, and related Ephemeral Recordings, a Commercial Webcaster will pay a royalty of: $0.0019 per performance for 2011; $0.0021 per performance for 2012; $0.0021 per performance for 2013; $0.0023 per performance for 2014; and $0.0023 per performance for 2015.

(2) *Noncommercial Webcasters:* (i) For all digital audio transmissions totaling not more than 159,140 Aggregate Tuning Hours (ATH) in a month, including simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts, and related Ephemeral Recordings, a Noncommercial Webcaster will pay an annual per channel or per station performance royalty of $500 in 2011, 2012, 2013, 2014, and 2015.

(ii) For all digital audio transmissions totaling in excess of 159,140 Aggregate Tuning Hours (ATH) in a month, including simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts, and related Ephemeral Recordings, a Noncommercial Webcaster will pay a royalty of: $0.0019 per performance for 2011; $0.0021 per performance for 2012; $0.0021 per performance for 2013; $0.0023 per performance for 2014; and $0.0023 per performance for 2015.

(b) *Minimum fee*—(1) *Commercial Webcasters.* Each Commercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the period 2011–2015 during which it is a Licensee pursuant to 17 U.S.C. 112(e) or 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Commercial Webcasters, and is also payable for each individual Side Channel maintained by Broadcasters who are Commercial Webcasters, provided that a Commercial Webcaster shall not be required to pay more than $50,000 per calendar year in minimum fees in the aggregate (for 100 or more channels or stations). For each such Commercial Webcaster, the annual minimum fee described in this paragraph (b)(1) shall constitute the minimum fees due under both 17 U.S.C. 112(e)(4) and 114(f)(2)(B). Upon payment of the minimum fee, the Commercial Webcaster will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

(2) *Noncommercial Webcasters.* Each Noncommercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the period 2011–2015 during which it is a Licensee pursuant to 17 U.S.C. 112(e) or 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Noncommercial Webcasters, and is also payable for each individual Side Channel maintained by Broadcasters who are Noncommercial Webcasters. For each such Noncommercial Webcaster, the annual minimum fee described in this paragraph (b)(2) shall constitute the minimum fees due under both 17 U.S.C. 112(e)(4) and 114(f)(2)(B). Upon payment of the minimum fee, the Noncommercial Webcaster will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

(c) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of all Ephemeral Recordings used by the Licensee solely to facilitate transmissions for which it pays royalties shall be included within, and constitute 5% of, the total royalties payable under 17 U.S.C. 112(e) and 114.

§ 380.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Licensee shall make the royalty payments due under § 380.3 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Licensees due under § 380.3 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in this paragraph (b)(2), such representatives shall file a petition with the Copyright Royalty Judges designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized the Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments.* A Licensee shall make any payments due under § 380.3 on a monthly basis on or before the 45th day after the end of each month for that month. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any minimum payment due under § 380.3(b) by January 31 of the applicable calendar year, except that payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments and statements of account.* A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment and/or statement of account received by the Collective after the due date. Late fees shall accrue from the due date until payment and the related statement of account are received by the Collective.

(f) *Statements of account.* Any payment due under § 380.3 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation.

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Licensee, or officer or partner, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(g) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 370.4 of this chapter.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (g)(1) of the section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with § 380.8.

(h) *Retention of records.* Books and records of a Licensee and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 380.5 Confidential Information.

(a) *Definition.* For purposes of this subpart, "Confidential Information" shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Licensee's statement of account pursuant to § 380.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.7;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114 by the Licensee whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114 before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.6 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Judges a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.7 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; provided, however, that

nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Judges a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.8 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Subpart B—Broadcasters

§ 380.10 General.

(a) *Scope.* This subpart establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions made by Broadcasters as set forth herein in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Broadcasters as set forth herein in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, 2011, through December 31, 2015.

(b) *Legal compliance.* Broadcasters relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations not inconsistent with the rates and terms set forth herein.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and digital audio services shall apply in lieu of the rates and terms of this subpart to transmission within the scope of such agreements.

§ 380.11 Definitions.

For purposes of this subpart, the following definitions shall apply:

Aggregate Tuning Hours means the total hours of programming that the Broadcaster has transmitted during the relevant period to all listeners within the United States from any channels and stations that provide audio programming consisting, in whole or in part, of Eligible Transmissions.

Broadcaster means an entity that:

(1) Has a substantial business owning and operating one or more terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission;

(2) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings;

(3) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations; and

(4) Is not a noncommercial webcaster as defined in 17 U.S.C. 114(f)(5)(E)(i).

Broadcaster Webcasts mean eligible nonsubscription transmissions made by a Broadcaster over the Internet that are not Broadcast Retransmissions.

Broadcast Retransmissions mean eligible nonsubscription transmissions made by a Broadcaster over the Internet that are retransmissions of terrestrial over-the-air broadcast programming transmitted by the Broadcaster through its AM or FM radio station, including ones with substitute advertisements or other programming occasionally substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained. For the avoidance of doubt, a Broadcast Retransmission does not include programming that does not require a license under United States copyright law or that is transmitted on an Internet-only side channel.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2011–2015 license period, the Collective is SoundExchange, Inc.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

Eligible Transmission shall mean either a Broadcaster Webcast or a Broadcast Retransmission.

Ephemeral Recording is a phonorecord created for the purpose of facilitating an Eligible Transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Performance is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission (*e.g.,* the delivery of any portion of a

single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.,* a sound recording that is not copyrighted);

(2) A performance of a sound recording for which the Broadcaster has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

Small Broadcaster is a Broadcaster that, for any of its channels and stations (determined as provided in § 380.12(c)) over which it transmits Broadcast Retransmissions, and for all of its channels and stations over which it transmits Broadcaster Webcasts in the aggregate, in any calendar year in which it is to be considered a Small Broadcaster, meets the following additional eligibility criteria:

(1) During the prior year it made Eligible Transmissions totaling less than 27,777 Aggregate Tuning Hours; and

(2) During the applicable year it reasonably expects to make Eligible Transmissions totaling less than 27,777 Aggregate Tuning Hours; provided that, one time during the period 2011–2015, a Broadcaster that qualified as a Small Broadcaster under the foregoing definition as of January 31 of one year, elected Small Broadcaster status for that year, and unexpectedly made Eligible Transmissions on one or more channels or stations in excess of 27,777 aggregate tuning hours during that year, may choose to be treated as a Small Broadcaster during the following year notwithstanding paragraph (1) of the definition of "Small Broadcaster" if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 27,777 aggregate tuning hours during that following year. As to channels or stations over which a Broadcaster transmits Broadcast Retransmissions, the Broadcaster may elect Small Broadcaster status only with respect to any of its channels or stations that meet all of the foregoing criteria.

§ 380.12 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Royalty rates.* Royalties for Eligible Transmissions made pursuant to 17 U.S.C. 114, and the making of related ephemeral recordings pursuant to 17 U.S.C. 112(e), shall, except as provided in § 380.13(g)(3), be payable on a per-performance basis, as follows:

(1) 2011: $0.0017;

(2) 2012: $0.0020;

(3) 2013: $0.0022;

(4) 2014: $0.0023;

(5) 2015: $0.0025.

(b) *Ephemeral royalty.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Broadcaster during this license period and used solely by the Broadcaster to facilitate transmissions for which it pays royalties as and when provided in this section is deemed to be included within such royalty payments and to equal the percentage of such royalty payments determined by the Copyright Royalty Judges for other webcasting as set forth in § 380.3.

(c) *Minimum fee.* Each Broadcaster will pay an annual, nonrefundable minimum fee of $500 for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year or part of a calendar year during 2011–2015 during which the Broadcaster is a licensee pursuant to licenses under 17 U.S.C. 112(e) and 114, provided that a Broadcaster shall not be required to pay more than $50,000 in minimum fees in the aggregate (for 100 or more channels or stations). For the purpose of this subpart, each individual stream (*e.g.,* HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum, except that identical streams for simulcast stations will be treated as a single stream if the streams are available at a single Uniform Resource Locator (URL) and performances from all such stations are aggregated for purposes of determining the number of payable performances hereunder. Upon payment of the minimum fee, the Broadcaster will receive a credit in the amount of the minimum fee against any additional royalties payable for the same calendar year for the same channel or station. In addition, an electing Small Broadcaster also shall pay a $100 annual fee (the "Proxy Fee") to the Collective for the reporting waiver discussed in § 380.13(g)(2).

§ 380.13 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Broadcaster shall make the royalty payments due under § 380.12 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Broadcasters due under § 380.12 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) and 114(g).

(2) If SoundExchange, Inc. should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in this paragraph (b)(2), such representatives shall file a petition with the Copyright Royalty Board designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this section an order designating the Collective named in such petition.

(c) *Monthly payments and reporting.* Broadcasters must make monthly payments where required by § 380.12, and provide statements of account and reports of use, for each month on the 45th day following the month in which the Eligible Transmissions subject to the payments, statements of account, and reports of use were made. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Broadcaster shall make any minimum

payment due under § 380.12(b) by January 31 of the applicable calendar year, except that payment by a Broadcaster that was not making Eligible Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) as of said date but begins doing so thereafter shall be due by the 45th day after the end of the month in which the Broadcaster commences to do so.

(e) *Late fees.* A Broadcaster shall pay a late fee for each instance in which any payment, any statement of account or any report of use is not received by the Collective in compliance with applicable regulations by the due date. The amount of the late fee shall be 1.5% of a late payment, or 1.5% of the payment associated with a late statement of account or report of use, per month, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully compliant payment, statement of account or report of use is received by the Collective, provided that, in the case of a timely provided but noncompliant statement of account or report of use, the Collective has notified the Broadcaster within 90 days regarding any noncompliance that is reasonably evident to the Collective.

(f) *Statements of account.* Any payment due under § 380.12 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Broadcaster or a duly authorized agent of the owner, if the Broadcaster is not a partnership or corporation;

(ii) A partner or delegee, if the Broadcaster is a partnership; or

(iii) An officer of the corporation, if the Broadcaster is a corporation.

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Broadcaster is a partnership or corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

I, the undersigned owner or agent of the Broadcaster, or officer or partner, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(g) *Reporting by Broadcasters in General.* (1) Broadcasters other than electing Small Broadcasters covered by paragraph (g)(2) of this section shall submit reports of use on a per-performance basis in compliance with the regulations set forth in part 370 of this chapter, except that the following provisions shall apply notwithstanding the provisions of such part 370 of this chapter from time to time in effect:

(i) Broadcasters may pay for, and report usage in, a percentage of their programming hours on an Aggregate Tuning Hour basis as provided in paragraph (g)(3) of this section.

(ii) Broadcasters shall submit reports of use to the Collective on a monthly basis.

(iii) As provided in paragraph (d) of this section, Broadcasters shall submit reports of use by no later than the 45th day following the last day of the month to which they pertain.

(iv) Except as provided in paragraph (g)(3) of this section, Broadcasters shall submit reports of use to the Collective on a census reporting basis (*i.e.,* reports of use shall include every sound recording performed in the relevant month and the number of performances thereof).

(v) Broadcasters shall either submit a separate report of use for each of their stations, or a collective report of use covering all of their stations but identifying usage on a station-by-station basis;

(vi) Broadcasters shall transmit each report of use in a file the name of which includes:

(A) The name of the Broadcaster, exactly as it appears on its notice of use, and

(B) If the report covers a single station only, the call letters of the station.

(vii) Broadcasters shall submit reports of use with headers, as presently described in § 370.4(e)(7) of this chapter.

(viii) Broadcasters shall submit a separate statement of account corresponding to each of their reports of use, transmitted in a file the name of which includes:

(A) The name of the Broadcaster, exactly as it appears on its notice of use, and

(B) If the statement covers a single station only, the call letters of the station.

(2) On a transitional basis for a limited time in light of the unique business and operational circumstances currently existing with respect to Small Broadcasters and with the expectation that Small Broadcasters will be required, effective January 1, 2016, to report their actual usage in compliance with then-applicable regulations. Small Broadcasters that have made an election pursuant to paragraph (h) of this section for the relevant year shall not be required to provide reports of their use of sound recordings for Eligible Transmissions and related Ephemeral Recordings. The immediately preceding sentence applies even if the Small Broadcaster actually makes Eligible Transmissions for the year exceeding 27,777 Aggregate Tuning Hours, so long as it qualified as a Small Broadcaster at the time of its election for that year. In addition to minimum royalties hereunder, electing Small Broadcasters will pay to the Collective a $100 Proxy Fee to defray costs associated with this reporting waiver, including development of proxy usage data.

(3) Broadcasters generally reporting pursuant to paragraph (g)(1) of this section may pay for, and report usage in, a percentage of their programming hours on an Aggregate Tuning Hours basis, if

(i) Census reporting is not reasonably practical for the programming during those hours, and

(ii) If the total number of hours on a single report of use, provided pursuant to paragraph (g)(1) of this section, for which this type of reporting is used is below the maximum percentage set forth below for the relevant year:

(A) 2011: 16%;

(B) 2012: 14%;

(C) 2013: 12%;

(D) 2014: 10%;

(E) 2015: 8%.

(iii) To the extent that a Broadcaster chooses to report and pay for usage on an Aggregate Tuning Hours basis pursuant to this paragraph (g)(3), the Broadcaster shall

(A) Report and pay based on the assumption that the number of sound recordings performed during the relevant programming hours is 12 per hour;

(B) Pay royalties (or recoup minimum fees) at the per-performance rates provided in § 380.12 on the basis of paragraph (g)(3)(iii)(A) of this section;

(C) Include Aggregate Tuning Hours in reports of use; and

(D) Include in reports of use complete playlist information for usage reported on the basis of Aggregate Tuning Hours.

(h) *Election of Small Broadcaster Status.* To be eligible for the reporting waiver for Small Broadcasters with respect to any particular channel in a given year, a Broadcaster must satisfy the definition set forth in § 380.11 and must submit to the Collective a completed and signed election form (available on the SoundExchange Web site at *http://www.soundexchange.com*) by no later than January 31 of the applicable year. Even if a Broadcaster has once elected to be treated as a Small Broadcaster, it must make a separate, timely election in each subsequent year in which it wishes to be treated as a Small Broadcaster.

(i) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Broadcasters to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify and pay the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Broadcaster equally based upon information provided under the report of use requirements for Broadcasters contained in § 370.4 of this chapter and this subpart, except that in the case of electing Small Broadcasters, the Collective shall distribute royalties based on proxy usage data in accordance with a methodology adopted by the Collective's Board of Directors.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (g)(1) of this section within 3 years from the date of payment by a Broadcaster, such distribution may be first applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

(j) *Retention of records.* Books and records of a Broadcaster and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 380.14 Confidential Information.

(a) *Definition.* For purposes of this subpart, "Confidential Information" shall include the statements of account and any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Broadcaster submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to the Confidential Information;

(2) An independent and Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Broadcaster's statement of account pursuant to § 380.15 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.16;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Broadcaster whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but not less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.15 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Broadcaster.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Broadcaster, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Board a notice of intent to audit a particular Broadcaster, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Broadcaster to be audited. Any such audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Broadcaster shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Broadcaster being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate

agent or employee of the Broadcaster reasonably cooperates with the auditor to remedy promptly any factual error or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Broadcaster shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.16 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Board a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent and Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.17 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Subpart C—Noncommercial Educational Webcasters

§ 380.20 General.

(a) *Scope.* This subpart establishes rates and terms, including requirements for royalty payments, recordkeeping and reports of use, for the public performance of sound recordings in certain digital transmissions made by Noncommercial Educational Webcasters as set forth herein in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by Noncommercial Educational Webcasters as set forth herein in accordance with the provisions of 17 U.S.C. 112(e), during the period January 1, 2011, through December 31, 2015.

(b) *Legal compliance.* Noncommercial Educational Webcasters relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those sections, the rates and terms of this subpart, and any other applicable regulations not inconsistent with the rates and terms set forth herein.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this subpart, the rates and terms of any license agreements entered into by Copyright Owners and digital audio services shall apply in lieu of the rates and terms of this subpart to transmissions within the scope of such agreements.

§ 380.21 Definitions.

For purposes of this subpart, the following definitions shall apply:

ATH or Aggregate Tuning Hours means the total hours of programming that a Noncommercial Educational Webcaster has transmitted during the relevant period to all listeners within the United States over all channels and stations that provide audio programming consisting, in whole or in part, of Eligible Transmissions, including from any archived programs, less the actual running time of any sound recordings for which the Noncommercial Educational Webcaster has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a Noncommercial Educational Webcaster transmitted one hour of programming to 10 simultaneous listeners, the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 10. If three minutes of that hour consisted of transmission of a directly licensed recording, the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one listener listened to a Noncommercial Educational Webcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Noncommercial Educational Webcaster's Aggregate Tuning Hours would equal 10.

Collective is the collection and distribution organization that is designated by the Copyright Royalty Judges. For the 2011–2015 license period, the Collective is SoundExchange, Inc.

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this subpart pursuant to the

statutory licenses under 17 U.S.C. 112(e) and 114(f).

Eligible Transmission means an eligible nonsubscription transmission made by a Noncommercial Educational Webcaster over the Internet.

Ephemeral Recording is a phonorecord created for the purpose of facilitating an Eligible Transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

Noncommercial Educational Webcaster means Noncommercial Webcaster (as defined in 17 U.S.C. 114(f)(5)(E)(i)) that

(1) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings;

(2) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations;

(3) Is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are staffed substantially by students enrolled at, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and

(4) Is not a "public broadcasting entity" (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

Performance is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission (*e.g.,* the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.,* a sound recording that is not copyrighted);

(2) A performance of a sound recording for which the Noncommercial Educational Webcaster has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings, including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

Performers means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

Qualified Auditor is a Certified Public Accountant.

§ 380.22 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Minimum fee.* Each Noncommercial Educational Webcaster shall pay an annual, nonrefundable minimum fee of $500 (the "Minimum Fee") for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year it makes Eligible Transmissions subject to this subpart. For clarity, each individual stream (*e.g.,* HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum. In addition, a Noncommercial Educational Webcaster electing the reporting waiver described in § 380.23(g)(1), shall pay a $100 annual fee (the "Proxy Fee") to the Collective.

(b) *Additional usage fees.* If, in any month, a Noncommercial Educational Webcaster makes total transmissions in excess of 159,140 Aggregate Tuning Hours on any individual channel or station, the Noncommercial Educational Webcaster shall pay additional usage fees ("Usage Fees") for the Eligible Transmissions it makes on that channel or station after exceeding 159,140 total ATH at the following per-performance rates:

(1) 2011: $0.0017;

(2) 2012: $0.0020;

(3) 2013: $0.0022;

(4) 2014: $0.0023;

(5) 2015: $0.0025.

(6) For a Noncommercial Educational Webcaster unable to calculate actual total performances and not required to report ATH or actual total performances under § 380.23(g)(3), the Noncommercial Educational Webcaster may pay its Usage Fees on an ATH basis, provided that the Noncommercial Educational Webcaster shall pay its Usage Fees at the per-performance rates provided in paragraphs (b)(1) through (5) of this section based on the assumption that the number of sound recordings performed is 12 per hour. The Collective may distribute royalties paid on the basis of ATH hereunder in accordance with its generally applicable methodology for distributing royalties paid on such basis. In addition, and for the avoidance of doubt, a Noncommercial Educational Webcaster offering more than one channel or station shall pay Usage Fees on a per-channel or -station basis.

(c) *Ephemeral royalty.* The royalty payable under 17 U.S.C. 112(e) for any ephemeral reproductions made by a Noncommercial Educational Webcaster and covered by this subpart is deemed to be included within the royalty payments set forth in paragraphs (a) and (b)(1) through (5) of this section and to equal the percentage of such royalty payments determined by the Copyright Royalty Judges for other webcasting in § 380.3.

§ 380.23 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Noncommercial Educational Webcaster shall make the royalty payments due under § 380.22 to the Collective.

(b) *Designation of the Collective.* (1) Until such time as a new designation is made, SoundExchange, Inc., is designated as the Collective to receive statements of account and royalty payments from Noncommercial Educational Webcasters due under § 380.22 and to distribute such royalty payments to each Copyright Owner and Performer, or their designated agents, entitled to receive royalties under 17 U.S.C. 112(e) or 114(g).

(2) If SoundExchange, Inc., should dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by a successor Collective upon the fulfillment of the requirements set forth in paragraph (b)(2)(i) of this section.

(i) By a majority vote of the nine Copyright Owner representatives and the nine Performer representatives on the SoundExchange board as of the last day preceding the condition precedent in this paragraph (b)(2), such representatives shall file a petition with the Copyright Royalty Board designating a successor to collect and distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Collective.

(ii) The Copyright Royalty Judges shall publish in the **Federal Register** within 30 days of receipt of a petition filed under paragraph (b)(2)(i) of this

section an order designating the Collective named in such petition.

(c) *Minimum fee.* Noncommercial Educational Webcasters shall submit the Minimum Fee, and Proxy Fee if applicable, accompanied by a statement of account, by January 31st of each calendar year, except that payment of the Minimum Fee, and Proxy Fee if applicable, by a Noncommercial Educational Webcaster that was not making Eligible Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) as of said date but begins doing so thereafter shall be due by the 45th day after the end of the month in which the Noncommercial Educational Webcaster commences doing so. Payments of minimum fees must be accompanied by a certification, signed by an officer or another duly authorized faculty member or administrator of the institution with which the Noncommercial Educational Webcaster is affiliated, on a form provided by the Collective, that the Noncommercial Educational Webcaster.

(1) Qualifies as a Noncommercial Educational Webcaster for the relevant year; and

(2) Did not exceed 159,140 total ATH in any month of the prior year for which the Noncommercial Educational Webcaster did not submit a statement of account and pay any required Usage Fees. At the same time the Noncommercial Educational Webcaster must identify all its stations making Eligible Transmissions and identify which of the reporting options set forth in paragraph (g) of this section it elects for the relevant year (provided that it must be eligible for the option it elects).

(d) *Usage fees.* In addition to its obligations pursuant to paragraph (c) of this section, a Noncommercial Educational Webcaster must make monthly payments of Usage Fees where required by § 380.22(b), and provide statements of account to accompany these payments, for each month on the 45th day following the month in which the Eligible Transmissions subject to the Usage Fees and statements of account were made. All monthly payments shall be rounded to the nearest cent.

(e) *Late fees.* A Noncommercial Educational Webcaster shall pay a late fee for each instance in which any payment, any statement of account or any report of use is not received by the Collective in compliance with the applicable regulations by the due date. The amount of the late fee shall be 1.5% of the late payment, or 1.5% of the payment associated with a late statement of account or report of use, per month, compounded monthly for the balance due, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully compliant payment, statement of account or report of use (as applicable) is received by the Collective, provided that, in the case of a timely provided but noncompliant statement of account or report of use, the Collective has notified the Noncommercial Educational Webcaster within 90 days regarding any noncompliance that is reasonably evident to the Collective.

(f) *Statements of account.* Any payment due under § 380.22 shall be accompanied by a corresponding statement of account. A statement of account shall contain the following information:

(1) The name of the Noncommercial Educational Webcaster, exactly as it appears on the notice of use, and if the statement of account covers a single station only, the call letters or name of the station;

(2) Such information as is necessary to calculate the accompanying royalty payment as prescribed in this subpart;

(3) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(4) The handwritten signature of an officer or another duly authorized faculty member or administrator of the applicable educational institution;

(5) The printed or typewritten name of the person signing the statement of account;

(6) The date of signature;

(7) The title or official position held by the person signing the statement of account;

(8) A certification of the capacity of the person signing; and

(9) A statement to the following effect:

> I, the undersigned officer or other duly authorized faculty member or administrator of the applicable educational institution, have examined this statement of account and hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence.

(g) *Reporting by Noncommercial Educational Webcasters in general*—(1) *Reporting waiver.* In light of the unique business and operational circumstances currently existing with respect to Noncommercial Educational Webcasters, and for the purposes of this subpart only, a Noncommercial Educational Webcaster that did not exceed 55,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 55,000 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to pay to the Collective a nonrefundable, annual Proxy Fee of $100 in lieu of providing reports of use for the calendar year pursuant to the regulations at § 370.4 of this chapter. In addition, a Noncommercial Educational Webcaster that unexpectedly exceeded 55,000 total ATH on one or more channels or stations for more than one month during the immediately preceding calendar year may elect to pay the Proxy Fee and receive the reporting waiver described in this paragraph (g)(1) during a calendar year, if it implements measures reasonably calculated to ensure that it will not make Eligible Transmissions exceeding 55,000 total ATH during any month of that calendar year. The Proxy Fee is intended to defray the Collective's costs associated with this reporting waiver, including development of proxy usage data. The Proxy Fee shall be paid by the date specified in paragraph (c) of this section for paying the Minimum Fee for the applicable calendar year and shall be accompanied by a certification on a form provided by the Collective, signed by an officer or another duly authorized faculty member or administrator of the applicable educational institution, stating that the Noncommercial Educational Webcaster is eligible for the Proxy Fee option because of its past and expected future usage and, if applicable, has implemented measures to ensure that it will not make excess Eligible Transmissions in the future.

(2) *Sample-basis reports.* A Noncommercial Educational Webcaster that did not exceed 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 159,140 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to provide reports of use on a sample basis (two weeks per calendar quarter) in accordance with the regulations at § 370.4 of this chapter, except that, notwithstanding § 370.4(d)(2)(vi), such an electing Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances and may in lieu thereof provide channel or station name and play frequency. Notwithstanding the foregoing, a Noncommercial Educational Webcaster that is able to report ATH or actual total performances is encouraged to do so.

These reports of use shall be submitted to the Collective no later than January 31st of the year immediately following the year to which they pertain.

(3) *Census-basis reports.* If any of the following three conditions is satisfied, a Noncommercial Educational Webcaster must report pursuant to this paragraph (g)(3):

(i) The Noncommercial Educational Webcaster exceeded 159,140 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year;

(ii) The Noncommercial Educational Webcaster expects to exceed 159,140 total ATH for any individual channel or station for any calendar month in the applicable calendar year; or

(iii) The Noncommercial Educational Webcaster otherwise does not elect to be subject to paragraphs (g)(1) or (2) of this section. A Noncommercial Educational Webcaster required to report pursuant to this paragraph (g)(3) shall provide reports of use to the Collective quarterly on a census reporting basis (*i.e.,* reports of use shall include every sound recording performed in the relevant quarter), containing information otherwise complying with applicable regulations (but no less information than required by § 370.4 of this chapter), except that, notwithstanding § 370.4(d)(2)(vi), such a Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances, and may in lieu thereof provide channel or station name and play frequency, during the first calendar year it reports in accordance with this paragraph (g)(3). For the avoidance of doubt, after a Noncommercial Educational Webcaster has been required to report in accordance with this paragraph (g)(3) for a full calendar year, it must thereafter include ATH or actual total performances in its reports of use. All reports of use under this paragraph (g)(3) shall be submitted to the Collective no later than the 45th day after the end of each calendar quarter.

(h) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Noncommercial Educational Webcasters to Copyright Owners and Performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners, Performers, or their designated agents who provide the Collective with such information as is necessary to identify and pay the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Noncommercial Educational Webcaster equally based upon the information provided under the report of use requirements for Noncommercial Educational Webcasters contained in § 370.4 of this chapter and this subpart, except that in the case of Noncommercial Educational Webcasters that elect to pay a Proxy Fee in lieu of providing reports of use pursuant to paragraph (g)(1) of this section, the Collective shall distribute the aggregate royalties paid by electing Noncommercial Educational Webcasters based on proxy usage data in accordance with a methodology adopted by the Collective's Board of Directors.

(2) If the Collective is unable to locate a Copyright Owner or Performer entitled to a distribution of royalties under paragraph (h)(1) of this section within 3 years from the date of payment by a Noncommercial Educational Webcaster, such distribution may first be applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

(i) *Server logs.* Noncommercial Educational Webcasters shall retain for a period of no less than three full calendar years server logs sufficient to substantiate all information relevant to eligibility, rate calculation and reporting under this subpart. To the extent that a third-party Web hosting or service provider maintains equipment or software for a Noncommercial Educational Webcaster and/or such third party creates, maintains, or can reasonably create such server logs, the Noncommercial Educational Webcaster shall direct that such server logs be created and maintained by said third party for a period of no less than three full calendar years and/or that such server logs be provided to, and maintained by, the Noncommercial Educational Webcaster.

§ 380.24 Confidential Information.

(a) *Definition.* For purposes of this subpart, "Confidential Information" shall include the statements of account and any information contained therein, including the amount of Usage Fees paid, and any information pertaining to the statements of account reasonably designated as confidential by the Noncommercial Educational Webcaster submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Collective are public knowledge. The party claiming the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Collective use any Confidential Information for any purpose other than royalty collection and distribution and activities related directly thereto.

(d) *Disclosure of Confidential Information.* Access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, for the purpose of performing such duties during the ordinary course of their work and who require access to Confidential Information;

(2) An independent Qualified Auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Collective with respect to verification of a Noncommercial Educational Webcaster's statement of account pursuant to § 380.25 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty distributions pursuant to § 380.26;

(3) Copyright Owners and Performers, including their designated agents, whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Noncommercial Educational Webcaster whose Confidential Information is being supplied, subject to an appropriate confidentiality agreement, and including those employees, agents, attorneys, consultants and independent contractors of such Copyright Owners and Performers and their designated agents, subject to an appropriate confidentiality agreement, for the purpose of performing their duties during the ordinary course of their work and who require access to the Confidential Information; and

(4) In connection with future proceedings under 17 U.S.C. 112(e) and 114(f) before the Copyright Royalty Judges, and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings or the courts.

(e) *Safeguarding of Confidential Information.* The Collective and any person identified in paragraph (d) of this section shall implement procedures to safeguard against unauthorized access to or dissemination of any Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to the Collective or person.

§ 380.25 Verification of royalty payments.

(a) *General.* This section prescribes procedures by which the Collective may verify the royalty payments made by a Noncommercial Educational Webcaster.

(b) *Frequency of verification.* The Collective may conduct a single audit of a Noncommercial Educational Webcaster, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Collective must file with the Copyright Royalty Board a notice of intent to audit a particular Noncommercial Educational Webcaster, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Noncommercial Educational Webcaster to be audited. Any such audit shall be conducted by an independent Qualified Auditor identified in the notice and shall be binding on all parties.

(d) *Acquisition and retention of report.* The Noncommercial Educational Webcaster shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Collective, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Noncommercial Educational Webcaster being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that an appropriate agent or employee of the Noncommercial Educational Webcaster reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Collective shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Noncommercial Educational Webcaster shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.26 Verification of royalty distributions.

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty distributions made by the Collective; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or Performer and the Collective have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or Performer may conduct a single audit of the Collective upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Royalty Board a notice of intent to audit the Collective, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Collective. Any audit shall be conducted by an independent Qualified Auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of report.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent Qualified Auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Collective in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Collective reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Collective shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

§ 380.27 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty distribution under this subpart, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: January 5, 2011.

James Scott Sledge,
Chief U.S. Copyright Royalty Judge.

Approved by:
James H. Billington,
Librarian of Congress.

[FR Doc. 2011–4995 Filed 3–8–11; 8:45 am]

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